

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNITA SUE NELSON, INDIVIDUALLY,
AND IN HER CAPACITY AS
INVESTMENT TRUSTEE OF THE LYNITA
S. NELSON NEVADA TRUST DATED
MAY 30, 2001,
Appellants/Cross-Respondents,
vs.
MATT KLABACKA AS DISTRIBUTION
TRUSTEE OF THE ERIC L. NELSON
NEVADA TRUST DATED MAY 30, 2001;
AND ERIC L. NELSON,
Respondents/Cross-Appellant.
and
ERIC L. NELSON,
Respondent.

SUPREME COURT CASE NO.: 87234
District Court Case No.: D411537

Electronically Filed
Sep 27 2023 04:49 PM
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

1. Judicial District Eighth Department O
County Clark Judge Regina M. McConnell
District Ct. Cast No. D-09-411537-D
2. **Attorney filing this docketing statement:**
- Attorneys Matthew D. Whittaker, Esq. and Stacy Howlett, Esq.
Telephone (702) 731-2333
Firm Michaelson Law
Address 1746 W. Horizon Ridge Parkway, Henderson, Nevada 89012
Client(s) Lynita Sue Nelson, Individually, and in Her Capacity as Investment Trustee of The Lynita S. Nelson Nevada Trust Dated May 30, 2001
3. **Attorney(s) representing Respondents:**
- Attorneys Jeffrey P. Luszeck, Esq.
Telephone (702) 853-5483
Firm Solomon Duggins Freer & Steadman, Ltd.
Address 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129
Client(s) Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust Dated May 30, 2001
- Attorneys Michelle A. Hauser, Esq.
Telephone (702) 867-8313
Firm Hauser Family Law
Address 1489 W. Warm Springs Road, Suite 100, Henderson, NV 89014
Client(s) Eric L. Nelson, Individually, and in His Capacity as Investment Trustee of the ERIC L. NELSON NEVADA TRUST Dated May 30, 2001

4. Nature of disposition below (check all that apply):

- | | | |
|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: | |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction | |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim | |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute | |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): | |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input checked="" type="checkbox"/> Divorce Decree: | |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input checked="" type="checkbox"/> Original | <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other Disposition (specify) | Post-trial |
| | | award of |
| | | attorney's fees |
| | | and motion for |
| | | immediate |
| | | payment |
| | | reduced to |
| | | judgments |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

A. NOLA HARBER, AS DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE FRANK P. SULLIVAN, DISTRICT JUDGE, Respondents, and ERIC L. NELSON AND LYNITA S. NELSON, INDIVIDUALLY, LSN NEVADA TRUST DATED MAY 30, 2011; AND LARRY DERTSCH, Real Parties in Interest, Docket Number 63432.

B. NOLA HARBER, AS DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE FRANK P. SULLIVAN, DISTRICT JUDGE, Respondents, and ERIC L.

1 NELSON AND LYNITA S. NELSON, INDIVIDUALLY; LSN NEVADA TRUST DATED
2 MAY 30, 2011, Real Parties in Interest, Docket Number 63545;

3 C. MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON
4 NEVADA TRUST DATED MAY 30, 2001, Appellant/Cross-Respondent, vs. ERIC L. NELSON,
5 INDIVIDUALLY, AND IN HIS CAPACITY AS INVESTMENT TRUSTEE OF THE ERIC L.
6 NELSON NEVADA TRUST DATED MAY 30, 2001; AND LYNITA SUE NELSON,
7 INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LSN
8 NEVADA TRUST DATED MAY 30, 2001, Respondents/Cross-Appellants, Docket Number
9 66772, consolidated with Docket Number 68292.

10 D. LYNITA SUE NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS
11 INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY
12 30, 2001, Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
13 NEVADA, FAMILY DIVISION, CLARK COUNTY; THE HONORABLE FRANK P.
14 SULLIVAN, Respondents, ERIC L. NELSON, INDIVIDUALLY, AND IN HIS CAPACITY AS
15 INVESTMENT TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST, DATED MAY 30,
16 2001, and MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON
17 NEVADA TRUST, DATED MAY 30, 2001, Real Parties in Interest, Docket Number 77254.

18 E. LYNITA SUE NELSON, Appellant, vs. ERIC L. NELSON, INDIVIDUALLY
19 AND IN HIS CAPACITY AS INVESTMENT TRUSTEE OF THE ERIC L. NELSON NEVADA
20 TRUST DATED MAY 30, 2001; AND MATT KLABACKA, AS DISTRIBUTION TRUSTEE
21 OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Respondents, Docket
22 Number 77473.

23 F. LYNITA SUE NELSON, INDIVIDUALLY AND IN HER CAPACITY AS
24 INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY
25 30, 2001, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
26 NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE FRANK P.
27 SULLIVAN, DISTRICT JUDGE, Respondents, and ERIC L. NELSON, INDIVIDUALLY AND
28 IN HIS CAPACITY AS INVESTMENT TRUSTEE OF THE ERIC L. NELSON NEVADA

TRUST DATED MAY 30, 2001; AND MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Real Parties in Interest, Docket Number 81564.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

(a) Lynita Sue Nelson, individually, and in her capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust, dated May 30, 2001, vs. Eric L. Nelson, individually, and in his capacity as Investment Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001, Eighth Judicial District Court, Clark County, Nevada, Case No. A-17-763004-C, dismissed on September 22, 2022. This Court denied a Petition for Writ of Mandamus concerning this case filed by ELN Trust in Case No. 75676.

(b) In Re: Dynasty Development Group, LLC, D/B/A Paradise Bay Hotel & Casino, United States Bankruptcy Court, Southern District of Mississippi, Case No. 11-50997-NPO, dismissed on June 24, 2011.

(c) In Re: Dynasty Development Group, LLC, D/B/A Paradise Bay Hotel & Casino, United States Bankruptcy Court, District of Nevada, Case No. 12-16334-LED, dismissed on December 3, 2013.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The Nevada Supreme Court reversed, in part, the Decree of Divorce entered by the district court on June 3, 2013, and remanded the case to the district court to trace the assets held in the ELN Trust and LSN Trust to determine the parties' community property rights and division. The Nevada Supreme Court also reversed, in part, the Decree of Divorce to the extent that the Decree of Divorce ordered the ELN Trust to pay the personal debts of Eric Nelson.

Following remand, the district court proceeded to a trial concerning the tracing issue. Ultimately, the district court ruled against Appellant and found that 1) it was Lynita Nelson's burden to prove that community property existed within the trusts and 2) Lynita Nelson failed to

1 meet her burden at trial. The district court then granted attorney's fees to Respondent Eric Nelson
2 and the ELN Trust pursuant to NRS 18.010 and EDCR 5.219 upon finding that Lynita Nelson and
3 LSN Trust proceeded to the tracing trial on frivolous grounds. Additionally, the district court
4 granted ELN Trust's Motion for Immediate Payment of Funds Belonging to ELN Trust as part of
5 the court's effort to undo the court's earlier orders "leveling" the value of assets between ELN
6 Trust and LSN Trust and otherwise ordering the ELN Trust to pay the personal debts of Eric
7 Nelson.

8
9 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate
10 sheets as necessary):

11 Appellant challenges the two orders granting attorney's fees to Respondents and the order
12 granting ELN Trust's Motion for Immediate Payment.

13 1) Appellant appeals the two attorney's fees order because the trial court misinterpreted
14 and misapplied NRS 18.010 and EDCR 5.219 when it determined that, though
15 Appellant defeated a motion for summary judgment, Appellant nevertheless proceeded
16 to trial on the community property tracing issue unreasonably or meaning only to harass
17 Respondents. Further, the trial court misinterpreted and failed to apply NRS 123.220
18 when the court ruled that Appellant's trust is jointly and severally liable for
19 Respondents' attorney's fees because the only issue before the court was Ms. Nelson's
20 personal right to division of community property.

21 2) Appellant appeals from the order granting ELN Trust's Motion for Immediate Payment
22 because the trial court misinterpreted and declined to apply Nevada Rule of Appellate
23 Procedure 37 when it ordered Appellant and her trust to pay interest upon this Court's
24 reversal, in part, of the divorce decree that did not contain instructions about the
25 allowance of interest.

26 ///

27 ///

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
☐ Yes
☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions
☒ A substantial issue of first impression
☒ An issue of public policy
☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
☐ A ballot question

If so, explain:

The Court has not addressed the parameters or other factors that a trial court may consider when determining whether NRAP 37(b) applies.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should not retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter could presumptively be assigned to the Court of Appeals. Pursuant to NRAP 17(b)(11), the Court of Appeals is presumptively assigned cases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings." This case also involves trust and estate matters with a corpus in excess of \$5,430,000, which are not presumptively assigned to

the Court of Appeals pursuant to NRAP 17(b)(15). The Supreme Court has previously heard an appeal in this matter – Nevada Supreme Court Case No. 66772 – which resulted in a published decision: *Klabacka v. Nelson*, 133 Adv. Op. 29, 394 P.3d 940 (2017).

14. Trial. If this action proceeded to trial, how many days did the trial last? The divorce trial lasted fifteen days, and a post-divorce evidentiary hearing lasted nine days.

Was it a bench or jury trial? Bench trial.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

16. Date of entry of written judgment or order appealed from: July 27, 2023 and August 2, 2023.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served July 27, 2023 and August 2, 2023.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method or service of the motion, and the date of filing:

- | | | |
|-------------------------------------|----------------|-------|
| <input type="checkbox"/> NRCP 50(b) | Date of filing | _____ |
| <input type="checkbox"/> NRCP 52(b) | Date of filing | _____ |
| <input type="checkbox"/> NRCP 59 | Date of filing | _____ |

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

- ☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal filed:

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Appellant Lynita Nelson filed a Notice of Appeal on August 25, 2023.

Respondent ESN Trust filed a Notice of Appeal on September 1, 2023.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP(4)(a)(1).

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The trial court disposed of all pending issues on remand and awarded attorney's fees and costs and closed the case. The trial court reduced the monetary orders at issue to judgments against Appellant.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff Eric Nelson.

Defendant Lynita Nelson, individually and as investment trustee of the Lynita S. Nelson Trust.

Participant/Interest Party Matt Klabacka, distribution trustee of the Eric L. Nelson Nevada Trust.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

1
2 **23. Give a brief description (3 to five words) of each party's separate claims,**
3 **counterclaims, cross-claims, or third-party claims and the date of formal disposition of**
4 **each claim.**

- 5 (a) Eric L. Nelson, Individually and as Investment Trustee of the Eric L. Nelson Nevada
6 Trust dated May 30, 2001;
7 a. Divorce, June 3, 2013;
8 b. Declaratory Relief, June 3, 2013;
9 (b) Lynita Sue Nelson, Individually and as Investment Trustee of the LSN Nevada Trust
10 dated May 30, 2001;
11 a. Divorce, June 3, 2013;
12 b. Veil-Piercing, June 3, 2013;
13 c. Constructive Trust, June 3, 2023;
14 d. Injunctive Relief, August 29, 2012 and June 3, 2013.
15 (c) Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May
16 30, 2001;
17 a. Declaratory Relief, June 3, 2013

18 On remand, the trial court conducted a trial on the issue of tracing community property in the ELN
19 Trust and LSN Trust that the court formally disposed by order on June 29, 2022.

20 **24. Did the judgment or order appealed from adjudicate ALL the claims alleged below**
21 **and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

- 22 ☒ Yes
23 ☐ No

24 The trial court granted attorney's fees after the community property tracing trial. The Court
25 then granted Respondent ELN Trust's Motion for Immediate Payment from Appellant Lynita
26 Nelson and the LSN Trust. The trial court ordered the case closed in the order.

27 After Appellant filed the Notice of Appeal, Respondents filed motions still pending before
28 the trial court. Respondent Eric Nelson filed a Motion for Equitable Offset on September 18, 2023.
Respondent ELN Trust filed a Motion for Judgment Debtor's Exam of Lynita Nelson on
September 18, 2023. Respondent ELN Trust filed a Motion to Convey Properties Titled in the
Name of Pink Peonies LLC/Pink Peonies-Wyoming LLC and Southern Magnolia LLC on
September 22, 2023.

///

///

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Lynita Sue Nelson

Name of Appellant

Matthew D. Whittaker, Esq.

Name of Counsel of Record

September 27, 2023

Date

/s/ Matthew D. Whittaker

Signature of Counsel of Record

State of Nevada, County of Clark

State and County where signed

CERTIFICATE OF SERVICE

Pursuant to NRAP 14(b), the undersigned hereby certifies that on September 27, 2023, a copy of the **DOCKETING STATEMENT CIVIL APPEALS** was filed with the Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

| | |
|--|--|
| Jeffrey P. Luszeck, Esq. SOLOMON DWIGGINS FREER & STEADMAN, LTD. 9060 West Cheyenne Avenue Las Vegas, NV 89129 Tel: (702) 853-5483 Fax: (702) 853-5485 jluszeck@sdfnvlaw.com <i>Attorneys for Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001</i> | Michelle A. Hauser, Esq. Hauser Family Law 1489 W. Warm Springs Road, Suite 100 Henderson, NV 89014 michelle@hauserfamilylaw.com <i>Attorney for Plaintiff Eric Nelson Individually</i> |
|--|--|

MICHAELSON LAW

/s/ Michelle Ekanger

An Employee of Michaelson Law

EXHIBIT A

FILED

MAY 6 4 08 PM '09

CLERK OF THE COURT

Fax (702) 384-8150

Tel (702) 384-1700 300 South Fourth Street Las Vegas, Nevada 89101
Bank of America Plaza, Suite 901

(continued)

Time of Hearing: N/A

COMES NOW, Plaintiff, ERIC L. NELSON, through his attorneys, HOWARD ECKER, ESQ., and EDWARD L. KAINEN, ESQ., of the law firm of ECKER & KAINEN, CHARTERED, and states his cause of action against Defendant, LYNITA SUE NELSON, as follows:

I.

That Plaintiff is a resident of the State of Nevada, and for a period of more than six weeks before commencement of this action has resided and been physically present and domiciled therein, and during all of said period of time, Plaintiff has had, and still has, the intent to make said State of Nevada, his home, residence and domicile for an indefinite period of time.

ECKER & KAINEN CHARTERED
A Professional Law Corporation

II.

That Plaintiff and Defendant were intermarried in St. George, Utah, on or about the 17th day of September, 1983, and are husband and wife.

III.

That there are two (2) minor children the issue of said marriage, to wit: Garrett Nelson, born September 13, 1994; and Carli Ann Nelson, born October 17, 1997; and three (3) adult children, Amanda Nelson, Aubrey Nelson, and Eric Nelson. There are no children adopted by the parties and, to the best of Plaintiff's knowledge, Defendant is not pregnant.

IV.

That the parties have entered into a Stipulated Parenting Agreement, dated October 15, 2008, by which all matters relating to custody and visitation relating to the minor children have been resolved.

V.

That said Stipulated Parenting Agreement should, by its terms, be ratified, approved and confirmed by the Court, and shall be merged into, and made a part of, any Decree entered herein.

VI.

That both parents have an obligation to support said minor children, pursuant to statute, until such time as each child, respectively, (1) becomes emancipated, or (2) attains the age of eighteen (18) years, the age of majority, unless each child is still attending secondary education when each child reaches

1 eighteen (18) years of age, in which event said child support
2 payments shall continue until each child, respectively, graduates
3 from high school, or attains the age of nineteen (19) years,
4 whichever event first occurs.

5
6 VII.

7 That Plaintiff shall continue to provide major medical
8 insurance coverage for the minor children herein. Further, that
9 the parties should equally divide all medical, dental (including
10 orthodontic), psychological and optical expenses of said minor
11 children not covered by insurance, until such time as each child,
12 respectively, (1) becomes emancipated, or (2) attains the age of
13 eighteen (18) years, the age of majority, unless each child is
14 still attending secondary education when each child reaches
15 eighteen (18) years of age, in which event said medical coverage
16 shall continue until each child, respectively, graduates from high
17 school, or attains the age of nineteen (19) years, whichever event
18 first occurs.

19
20 VIII.

21 That neither party is entitled to alimony from the other
22 party herein.

23 IX.

24 That there is community property of the parties herein
25 to be adjudicated by the Court, the full nature and extent of
26 which is unknown to Plaintiff at this time and Plaintiff prays
27 leave of the Court to amend this Complaint when additional
28 information becomes available.

1 X.

2 That there are community and joint debts of the parties
3 herein to be adjudicated by the Court, the full nature and extent
4 of which is unknown to Plaintiff at this time and Plaintiff prays
5 leave of the Court to amend this Complaint when additional
6 information becomes available.

7 XI.

8 That there exists separate property of the parties to be
9 adjudicated by the Court, the full nature and extent of which is
10 unknown to Plaintiff at this time and Plaintiff prays leave of the
11 Court to amend this Complaint when additional information becomes
12 available.

13 XII.

14 That there exists separate debt of the parties to be
15 adjudicated by the Court, the full nature and extent of which is
16 unknown to Plaintiff at this time and Plaintiff prays leave of the
17 Court to amend this Complaint when additional information becomes
18 available.

19 XIII.

20 That Plaintiff requests this Court to jointly restrain
21 the parties herein in accordance with the terms of the Joint
22 Preliminary Injunction issued herewith.
23
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XIV.

That Plaintiff has been required to retain the services of ECKER & KAINEN, CHARTERED, to prosecute this action, and is therefore entitled to reasonable attorney's fees and costs of suit.

XV.

That the parties hereto are incompatible in marriage.

* * *

WHEREFORE, Plaintiff prays judgement as follows:

1. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved; that Plaintiff be granted an absolute Decree of Divorce; and that each of the parties hereto be restored to the status of a single, unmarried person;

2. That the Court ratify, approve and confirm the Stipulated Parenting Agreement entered into by the parties on October 15, 2008;

3. For the Court to confirm that both parents have an obligation to support said minor children, pursuant to statute, until such time as each child, respectively, (1) becomes emancipated, or (2) attains the age of eighteen (18) years, the age of majority, unless each child is still attending secondary education when each child reaches eighteen (18) years of age, in which event said child support payments shall continue until each child, respectively, graduates from high school, or attains the age of nineteen (19) years, whichever event first occurs;

1 4. For the Court to confirm that Plaintiff shall
2 continue to maintain the existing major medical insurance coverage
3 for the minor children herein, with the parties equally dividing
4 all medical, dental (including orthodontic), psychological or
5 optical expenses of said minor children not covered by insurance,
6 until such time as each child, respectively, (1) becomes
7 emancipated, or (2) attains the age of eighteen (18) years, the
8 age of majority, unless each child is still attending secondary
9 education when each child reaches eighteen (18) years of age, in
10 which event said medical coverage and payment of each child's non-
11 covered medical expenses shall continue until each child,
12 respectively, graduates from high school, or attains the age of
13 nineteen (19) years, whichever event first occurs;

15 5. That neither party be required to pay
16 alimony/spousal support to the other.

17 6. That this Court make an equitable division of the
18 community assets;

19 7. That this Court make an equitable division of the
20 community obligations;

21 8. That the Court confirm to the parties their
22 respective separate property and separate debt.

23 9. That this Court issue its Joint Preliminary
24 Injunction enjoining the parties pursuant to the terms stated
25 therein;

26

27
28

1 10. That Defendant be ordered to pay a reasonable sum
2 to Plaintiff's counsel as and for attorney's fees, together with
3 the cost of bringing this action; and

4 11. For such other and further relief as the Court may
5 deem just and proper in the premises.

6 Dated this 5th day of May, 2009.

ECKER & KAINEN CHARTERED

By: 

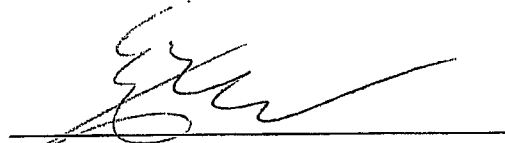
HOWARD ECKER, ESQ.
Nevada Bar No. 1207
EDWARD KAINEN, ESQ.
Nevada Bar No. 5029
300 S. Fourth St., Suite 901
Las Vegas, Nevada 89101
Attorneys for Plaintiff

VERIFICATION

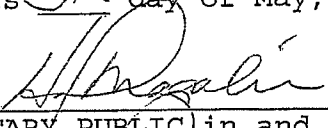
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

ERIC NELSON, being first duly sworn, deposes and says:

That I am the Plaintiff herein; that I have read the foregoing Complaint for Divorce and the same is true of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.


ERIC NELSON

SUBSCRIBED AND SWORN to before me
this 5th day of May, 2009.


NOTARY PUBLIC in and for said
County and State

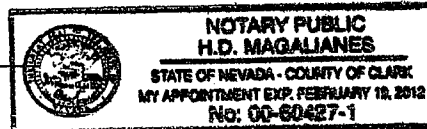


EXHIBIT B

1 ANS
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 DENISE L. GENTILE, ESQ.
6 Nevada Bar No. 004271
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 (702) 388-8600

FILED

JUN 22 3 13 PM '09

Erin D. Smith
CLERK OF THE COURT

10 Attorneys for Defendant, Lynita Sue Nelson

11
12 DISTRICT COURT
13 FAMILY DIVISION

14 CLARK COUNTY, NEVADA

15 ERIC L. NELSON,
16 Plaintiff/Counterdefendant,
17
18 v.
19 LYNITA SUE NELSON,
20 Defendant/Counterclaimant.

CASE NO. D-09-411637-D
DEPT NO. "O"

ANSWER TO COMPLAINT
FOR DIVORCE AND
COUNTERCLAIM FOR
DIVORCE and DECLARATORY
RELIEF

21 ANSWER TO COMPLAINT FOR DIVORCE

22 COMES NOW Defendant, LYNITA SUE NELSON ("LYNITA") or
23 "Defendant"), by and through her attorneys, ROBERT P. DICKERSON, ESQ., and
24 DENISE L. GENTILE, ESQ., of THE DICKERSON LAW GROUP, and as and for her
25 Answer to the Complaint for Divorce (the "Complaint") filed herein by Plaintiff, ERIC
26 L. NELSON ("ERIC" or "Plaintiff"), admits, denies, alleges, and states as follows:

27 1. Defendant denies all allegations of Plaintiff's Complaint not
28 specifically admitted herein.

2. Answering paragraphs 1, 2, 3, 4, 5, 13, and 15 of the Complaint,
Defendant admits each and every allegation contained therein.

1 3. Answering paragraphs 8, 11, and 14 of the Complaint, Defendant
2 generally and specifically denies each and every allegation contained therein.

3 4. Answering paragraph 6 of the Complaint, Defendant admits the
4 allegations contained therein that both parents have an obligation to support said
5 minor children to age of majority, or if attending high school until the age of 19 years
6 whichever occurs first. However, Defendant affirmatively alleges that Plaintiff is well-
7 able to pay, as and for support and maintenance of the parties' minor children, an
8 amount not less than twenty five percent (25%) of his average gross monthly income
9 from all sources, but in no event less than \$100.00 per month, per child. Such child
10 support is necessary in order to allow the children to maintain their present lifestyle
11 and standard of living. LYNITA requires such child support in order to provide and
12 maintain housing, food, clothing, maintenance, necessities, and incidentals for the
13 parties' minor children. ERIC additionally is well-able to provide major medical and
14 health insurance coverage for the children and to pay all the children 's medical,
15 surgical, dental, optical, psychological and orthodontic expenses not otherwise covered
16 by such insurance.

17 5. Answering paragraph 7 of the Complaint, Defendant admits that Plaintiff
18 should continue to provide major medical insurance coverage for the minor children
19 herein. With respect to the remaining allegations contained in paragraph 7 of the
20 Complaint, Defendant generally and specifically denies each and every allegation
21 contained therein; and, Defendant affirmatively alleges that Plaintiff should pay all of
22 the children's medical, surgical, dental, optical, psychological and orthodontic expenses
23 not otherwise covered by such insurance

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1 6. Answering paragraph 9 of the Complaint, Defendant admits that there is
2 community property of the parties herein to be adjudicated by the Court, but denies
3 that the full nature and extent of such community property is unknown to Plaintiff at
4 this time.

5 7. Answering paragraph 10 of the Complaint, Defendant admits that there
6 are community and joint debts of the parties herein to be adjudicated by the Court, but
7 denies that the full nature and extent of such community and joint debts are unknown
8 to Plaintiff at this time.

9 8. Answering paragraph 12 of the Complaint, Defendant is without sufficient
10 knowledge or information upon which to form a belief as to the truth of the allegations
11 contained therein, and, therefore, Defendant respectfully denies the same.

12 COUNTERCLAIM FOR DIVORCE AND FOR A DECLARATORY DECREE

13 COUNTERCLAIM FOR DIVORCE

14 COMES NOW Counterclaimant, LYNITA SUE NELSON ("LYNITA"), and as
15 and for her Counterclaim for Divorce against the Counterdefendant, ERIC L. NELSON
16 ("ERIC"), alleges and states as follows:

17 I.

18 LYNITA is, and for more than six weeks immediately preceding the
19 commencement of this action and the verification and filing of this Counterclaim for
20 Divorce has been, an actual bona fide resident and domiciliary of the County of Clark,
21 State of Nevada, and during all of said period of time LYNITA had and still has the
22 intent to make the State of Nevada her home, residence and domicile for an indefinite
23 period of time.

24 II.

25 LYNITA and ERIC were duly and legally married in St. George, Utah, on or
26 about the 17th day of September, 1983, and ever since said date have been and are now
27 husband and wife.

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III.

There are are two (2) minor children born the issue of the parties' marriage, namely: Garrett Nelson, born September 13, 1994; and Carli Ann Nelson, born October 17, 1997. LYNITA is not pregnant, and the parties have no other children the issue of the parties' relationship, including any adopted children, who have yet to reach the legal age of majority as of the date of the filing of this Counterclaim for Divorce. The parties have three (3) adult children the issue of their marriage to each other, namely: Amanda Stromberg, Aubrey Nelson, and Erica Nelson, all of whom were raised primarily by LYNITA during the parties' lengthy marital relationship.

IV.

All questions relating to custody of the parties minor children have been resolved by that certain Stipulated Parenting Agreement ("Parenting Agreement") entered into by and between LYNITA and ERIC on October 15, 2008. A copy of the parties' Parenting Agreement is attached hereto as Exhibit I. At the time of trial of this divorce matter, the parties' Parenting Agreement, or a copy thereof, will be offered into evidence for the purpose of having the Court ratify, confirm and approve the same, and such Agreement should be incorporated and merged into the Court's Decree of Divorce.

V.

ERIC is a skilled real estate developer, investor, and business entrepreneur and is well-able to pay, as and for support and maintenance of the parties' minor children, an amount not less than twenty five percent (25%) of his average gross monthly income from all sources, but in no event less than \$100.00 per month, per child. Such child support is necessary in order to allow the children to maintain their present lifestyle and standard of living. LYNITA requires such child support in order to provide and maintain housing, food, clothing, maintenance, necessities, and incidentals for the parties' minor children. ERIC additionally is well-able to provide major medical and health insurance coverage for the children and to pay all the children's medical, surgical, dental, optical, psychological and orthodontic expenses not otherwise covered

1 by such insurance. ERIC further is able to maintain one or more life insurance policies
2 insuring his life in an amount sufficient to secure and provide for the payment of such
3 child support should ERIC die prior to the children reaching the age of majority.
4 LYNITA should be the irrevocable beneficiary of such life insurance, with LYNITA to
5 use any life insurance proceeds received therefrom for the benefit of the parties'
6 children .

7 VI.

8 LYNITA is financially dependent upon ERIC for her support. LYNITA is
9 without professional skills with which to support herself, and is financially unable to
10 support herself and the parties' minor children. LYNITA, thus, is entitled to an award
11 of alimony pendente lite, permanent alimony, rehabilitative alimony, and other support
12 and maintenance from ERIC in such amounts that LYNITA is able to live as nearly as
13 possible to the station in life she has enjoyed during the parties' marriage. Moreover,
14 ERIC is financially able, and should be ordered to pay, a sufficient sum necessary to
15 maintain LYNITA and the parties' minor children in the standard to which they have
16 become accustomed. The Court should make a permanent alimony award in such
17 amount as to equalize the income of the parties, as recognized by the Nevada Supreme
18 Court in *Gardner v. Gardner*, 110 Nev. 1053, 881 P.2d 645 (1994). Such alimony
19 payments should continue until the death of LYNITA. ERIC additionally is well-able
20 to provide major medical and health insurance coverage for LYNITA and to pay all
21 medical, surgical, dental, optical, psychological, and orthodontic expenses not otherwise
22 covered by such insurance. ERIC further is able to maintain one or more life insurance
23 policies insuring his life in an amount sufficient to secure and provide for the payment
24 of such support, with LYNITA being the irrevocable beneficiary thereof.

25 VII.

26 There is certain community and jointly owned property of the parties, the full
27 character, nature, and extent of which currently are unknown to LYNITA, and the
28 same should be adjudicated by the Court. Pursuant to NRS 125.150(1), *Putterman v.*

1 *Putterman*, 113 Nev. 606, 939 P.2d 1047 (1997), and *Lofgren v. Lofgren*, 112 Nev. 1282,
2 926 P.2d 296 (1996), compelling circumstances exist which support an award to
3 LYNITA of greater than one-half (½) of the community and jointly owned property of
4 the parties. Such compelling circumstances include, but are not limited to, ERIC 's
5 waste, dissipation, and/or concealment of community and jointly held property,
6 LYNITA's inability to obtain access to information regarding community and jointly
7 held property; LYNITA's inability to actually receive her one-half (½) share of any
8 community and jointly owned property; and the condition in which LYNITA will be
9 left following the divorce.

10 VIII.

11 There may be other assets which are LYNITA's separate property; however,
12 LYNITA currently is unaware of the full character, nature, and extent of such
13 additional separate property. All LYNITA's separate property should be confirmed to
14 LYNITA as her sole and separate property.

15 IX.

16 There are community and joint debts and financial obligations of the parties, the
17 full character, nature, and extent of which currently are unknown to LYNITA, and the
18 same should be adjudicated by the Court.

19 X.

20 The Court should issue its Joint Preliminary Injunction enjoining the parties
21 from transferring, encumbering, concealing, selling or otherwise disposing of any of the
22 joint, common or community property of the parties, or any property which is the
23 subject of a claim of community interest, except in the usual course of business or for
24 the necessities of life, without the written consent of the parties or the permission of
25 the Court.

26 XI.

27 It has been necessary for LYNITA to retain the services of attorneys to represent
28 her in this divorce action. The Court should award LYNITA the reasonable attorneys'

1 fees, expert fees, and costs of suit she has incurred and will continue to incur as a result
2 of this divorce action. Such fees and costs are necessary and essential to afford LYNITA
3 her day in court without destroying her financial position and to allow her to meet
4 ERIC in the courtroom on the equal basis to which she is entitled pursuant to *Sargeant*
5 *v. Sargeant*, 88 Nev. 223, 227, 495 P.2d 618 (1972).

6 XII.

7 LYNITA and ERIC are incompatible in their tastes, natures, views, likes and
8 dislikes, which have become so widely separate and divergent that the parties have been
9 and currently are incompatible to such an extent that it now appears that there is no
10 possibility of reconciliation between LYNITA and ERIC. There currently remains such
11 an incompatible temperament between LYNITA and ERIC that a happy marital
12 relationship can no longer exist.

13 DECLARATORY RELIEF

14 XIII.

15 LYNITA repeats, re-alleges, and incorporates herein by reference each allegation
16 contained in Paragraphs I through XII, of her Counterclaim as though stated in full
17 herein.

18 XIV.

19 On or about April 28, 1993, ERIC induced LYNITA to execute a document
20 titled "Separate Property Agreement" hereinafter ("Agreement").

21 XV.

22 At the time of the execution of such purported agreement, ERIC represented to
23 LYNITA that such Agreement was not intended to fix community property rights of
24 the parties, but was being executed for purposes of asset protection from third party
25 claims.

26 XVI.

27 At that time that ERIC induced LYNITA to execute such purported agreement,
28 ERIC may have known that those representations may have been false when made.

1 XVII.

2 At that time that ERIC induced LYNITA to execute such purported agreement,
3 ERIC may have made those representations with the intent that LYNITA rely upon
4 such representations which may have been false when made.

5 XVIII.

6 At that time that ERIC induced LYNITA to execute such purported agreement,
7 LYNITA fully relied upon such representations which may have been false when made.

8 XIX.

9 ERIC's representations, and each of them, may have been designed to prevent
10 LYNITA from adequately protecting her own interests by preventing LYNITA from
11 among other things, conducting a full investigation into the extent and value of the
12 community property and interests which were then and their stated to be divided, and
13 securing adequate legal representation, amongst other measures, both before and after
14 the execution of such purported Agreement.

15 XX.

16 A full disclosure of the value of the property and debt which was purportedly
17 being transferred under such purported separate property agreement was never made
18 from ERIC to LYNITA.

19 XXI.

20 A full disclosure of the full extent and value of the community property and debt
21 in existence at the time of the execution of the purported Agreement was never made
22 by ERIC to LYNITA.

23 XXII.

24 A full disclosure of the full extent and value of the community property and/or
25 separate property and debt, if any exists, has never made by ERIC to LYNITA.

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1 XXIII.

2 At all times herein mentioned, ERIC has, and has had, full knowledge, control
3 and understanding of the extent and value of the community property and debt of the
4 parties.

5 XXIV.

6 Notwithstanding the purported Agreement, ERIC continued to devote
7 community time, effort, and expertise to the development and growth of the
8 community property which was purported to be allocated to each party as well as both
9 parties' alleged sole and separate property under the purported agreement.

10 XXV.

11 ERIC continued and does continue to exercise total and absolute control over
12 the property of the parties, either individually or through numerous and various trusts
13 which have since been created by him or at his behest, including such property as was
14 purported to be allocated to each party as that parties' sole and separate property,
15 treating all such property as community.

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17 XXVI.

18 No consideration, or insufficient consideration was exchanged for such
19 Agreement.

20 XXVII.

21 The community property of the parties which is purported to be divided by such
22 Agreement has been co-mingled to such a degree that it is impossible to distinguish
23 which property, if any, would be allocated as separate property to each of the parties
24 under the purported agreement, if any.

25 XXVIII.

26 Upon ERIC's decision to seek a divorce from LYNITA, ERIC has indicated his
27 intent to seek enforcement of the parties' alleged Agreement, whereby placing the
28 interpretation, validity, and enforceability of such Agreement at issue.

1 XXIX.

2 A controversy exists as to the interpretation, validity, and enforceability of such
3 Agreement whereby LYNITA seeks a Declaration from this Court as to such
4 Agreement's interpretation and that said Agreement is null and void, of no cause or
5 effect, invalid, and unenforceable.

6 XXX.

7 A controversy exists with regard to whether the Agreement was procured by
8 fraud.

9 XXXI.

10 A controversy exists with regard to whether the Agreement was abandoned
11 whether at its inception or an in the sixteen (16) years that followed.

12 XXXII.

13 In accordance with NRS 30.010 *et seq.*, LYNITA is entitled to a Declaratory
14 Judgment that said Agreement is null and void, of no cause or effect, invalid, and
15 unenforceable.

16 XXXIII.

17 In accordance with NRS 30.010 *et seq.*, LYNITA is entitled to a Declaratory
18 Judgment as to whether the Agreement was procured through fraud.

19 XXXIV.

20 In accordance with NRS 30.010 *et seq.*, LYNITA is entitled to a Declaratory
21 Judgment that the Agreement has been abandoned.

22 XXXV.

23 In accordance with NRCP 57 LYNITA requests a speedy hearing on this request
24 for Declaratory Relief in accordance with NRCP 57.

25 XXXVI.

26 LYNITA has been required to retain the services of attorneys to represent her
27 to prosecute this action, and therefore is entitled to an award of attorneys' fees and
28 costs of suit incurred herein.

1 WHEREFORE, LYNITA respectfully prays that the Court enter judgment as
2 follows:

3 1. That ERIC take nothing by virtue of his Complaint for Divorce filed in
4 this action.

5 2. That the bonds of matrimony now and heretofore existing between
6 LYNITA and ERIC be dissolved, set aside and forever held for naught, and that
7 LYNITA be awarded a Decree of Divorce and the parties hereto and each of them be
8 restored to their status of being a single, unmarried person.

9 3. That the Stipulated Parenting Agreement entered into by and between the
10 parties on or about October 15, 2008, be ratified, confirmed and approved by the
11 Court, and be incorporated and merged into and become a part of the Court's Decree
12 of Divorce to the same extent as if fully set forth therein.

13 4. That LYNITA and ERIC be awarded joint legal custody of the parties'
14 minor children, with LYNITA having primary physical custody of the children, subject
15 to ERIC's right of reasonable specified visitation, with such custodial and timeshare
16 arrangements being as set forth in (the Stipulated Parenting Agreement) Exhibit 1
17 attached hereto.

18 5. That ERIC be ordered to pay to LYNITA, as and for support of the
19 parties' minor children, at least twenty five percent (25%) of his average gross monthly
20 income from all sources.

21 6. That ERIC continue to provide and maintain major medical and health
22 insurance coverage for the parties' minor children and to pay all the children's medical,
23 surgical, dental, orthodontic, optical, and psychological expenses not covered by such
24 insurance.

25 7. That ERIC be ordered to provide one or more life insurance policies
26 insuring his life in an amount sufficient to provide for the child support awarded to
27 LYNITA by this Court, with LYNITA to use any life insurance proceeds received
28 therefrom for the benefit of the parties' children .

1 8. That ERIC be ordered to pay such other sum necessary for the support
2 of the parties' children as the Court determines to be just and reasonable under the
3 circumstances.

4 9. That ERIC be ordered to pay alimony and spousal support to LYNITA
5 as requested in this Counterclaim for Divorce, and in such amounts sufficient to
6 maintain LYNITA and the parties' minor children in the standard to which they have
7 become accustomed.

8 10. That the Court equitably divide the parties' community and jointly owned
9 property by awarding LYNITA with greater than one-half ($\frac{1}{2}$) of all such community
10 and jointly owned property, taking into consideration the condition in which the
11 parties will be left after their divorce and all other compelling circumstances supporting
12 such an unequal division.

13 11. That the Court confirm to LYNITA her separate property.

14 12. That the Court equally equitably divide the community and joint debts
15 of the parties.

16 13. That the Court issue its Joint Preliminary Injunction enjoining the parties
17 from transferring, encumbering, concealing, selling or otherwise disposing of any of the
18 joint, common or community property of the parties, or any property which is the
19 subject of a claim of community interest, except in the usual course of business or for
20 the necessities of life, without the written consent of the parties or the permission of
21 the Court.

22 14. That LYNITA be awarded the reasonable attorneys' fees, expert fees,
23 and costs incurred by LYNITA in this action.

24 15. For a Declaration that the purported Separate Property Agreement
25 executed on or about April 28, 1993, is null and void, not valid, is not enforceable, has
26 been abandoned, and as otherwise pled under Paragraphs XXXII-XXXIV of LYNITA's
27 Counterclaim.

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1 16. For an expedited hearing on her request for Declaratory Relief in
2 accordance with NRCP 57.

17. For such other and further relief as the Court may determine to be just and proper in the premises.

5 DATED this 22nd day of June, 2009.

THE DICKERSON LAW GROUP

By Kenise L. L. L.
ROBERT DICKERSON, ESQ.

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
DENISE L. GENTILE, ESQ.
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Attorneys for Defendant/
Counterclaimant

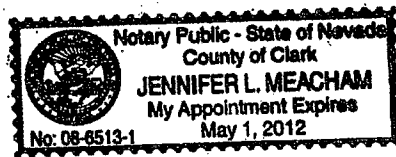
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LYNITA SUE NELSON, being first duly sworn upon oath, deposes and says:
That she is the Defendant/Counterclaimant in the above-entitled action; that she read the foregoing Answer to Complaint for Divorce and Counterclaim for Divorce and knows the contents thereof, and that the same is true of her own knowledge except for those matters therein stated on information and belief, and as for those matters, she believes the same to be true.

Lynita Sue Nelson
LYNITA SUE NELSON

Subscribed and sworn to before me
this 22 day of June, 2009.

Notary Public in and for said
County and State.



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RECEIPT OF COPY

RECEIPT OF COPY of the foregoing Answer and Counterclaim is hereby
acknowledged on this 22 day of June, 2009. 01:12pm.

ECKER & KAINEN, CHTD.

Howard Ecker

By

[Signature]

HOWARD ECKER, ESQ.

Nevada Bar No. 01207

300 S. Fourth Street, Suite 901

Las Vegas, Nevada 89101

Attorneys for Plaintiff

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1 responsibilities and rights insofar as the children are concerned. Each parent agrees to
2 communicate and cooperate with the other parent with respect to all matters relating to
3 their children. The parents understand and agree that the best interests of their children
4 will be served by the parents continuing to openly and freely communicate with each
5 other in a civil manner and to cooperate with each other in raising their children.
6

7 I. LEGAL CUSTODY PROVISIONS:

8 The parents shall have joint legal custody of the minor children, which entails the
9 following:
10

11 Each parent shall consult and cooperate with the other in substantial questions
12 relating to religious upbringing, educational programs, significant changes in social
13 environment, and health care of the children. The parents agree that the children shall
14 continue to be raised in the LDS faith. Further, in raising the children, both parents
15 express their desire and intent to incorporate the principles found in the *Strength of the*
16 *Youth* pamphlet as a guideline for conduct.
17

18 Each parent shall have access to medical and school records pertaining to their
19 children and be permitted to independently consult with any and all professionals
20 involved with the children.
21

22 All schools, day care providers, and counselors for the children shall be selected
23 jointly by the parents.
24

25 All health care providers, including all psychological counselors and mental health
26 providers, for the children shall be selected jointly by the parties.
27

28 ...

1 Each parent shall be empowered to obtain emergency health care for the children
2 without the consent of the other parent. Each parent shall notify the other parent as
3 soon as reasonably possible as to any illness requiring medical attention, or any
4 emergency involving the children.
5

6 Each parent shall provide the other parent, upon receipt, with any information
7 concerning the well-being of the children, including, but not limited to, copies of report
8 cards; school meeting notices; vacation schedules; class programs; requests for
9 conferences; results of standardized or diagnostic tests; notices of activities involving the
10 children; samples of school work; order forms for school pictures; all communications
11 from health care providers, and the names, addresses, and telephone numbers of all
12 schools, health care providers, regular day care providers, and counselors.
13
14

15 Each parent shall advise the other parent of school, athletic, church, and social
16 events in which the children participate, and each agrees to so notify the other parent
17 within a reasonable time after first learning of the future occurrence of any such event
18 so as to allow the other parent to make arrangements to attend the event if he or she
19 chooses to do so. Both parents may participate in all such activities with the children,
20 including, but not limited to, such activities as open house, attendance at all school and
21 church activities and events, athletic events, school plays, graduation ceremonies, school
22 carnivals, and any other events involving the children.
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25 Each parent shall provide the other parent with the address and telephone number
26 at which the minor children reside, and to notify the other parent at least ten (10) days
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1 prior to any change of address and provide the telephone number of such address
2 change as soon as it is assigned.

3 Each parent shall provide the other parent with a travel itinerary and, whenever
4 reasonably possible, telephone numbers at which the children can be reached whenever
5 the children will be away from that parent's home for a period of two (2) nights or more.

7 The parents shall encourage liberal communication between the children and the
8 other parent. Each parent shall be entitled to reasonable telephone communication with
9 the children; and each parent agrees that he or she will not unreasonably interfere with
10 the children's right to privacy during such telephone conversations. Each parent agrees
11 to be restrained, and is restrained, from unreasonably interfering with the children's right
12 to privacy during such telephone conversations.
13

14
15 Should either parent require children care to be provided by someone other than
16 himself or herself for a period of four (4) hours or more while the children are in his or
17 her physical care, the other parent shall be advised and given the opportunity to provide
18 such care for the children before other arrangements are made for such children care.

19
20 Neither parent shall interfere with the right of the children to transport his or her
21 clothing and personal belongings freely between the parents' respective homes.

22
23 Neither parent shall disparage the other in the presence of the children, nor shall
24 either parent make any comment of any kind that would demean the other parent in the
25 eyes of the children. Additionally, each parent agrees to instruct their respective family
26 and friends that no disparaging remarks are to be made regarding the other parent in the
27 presence of the children. The parents shall take all action necessary to prevent such
28

1 disparaging remarks from being made in the presence of the children, and shall report
2 to each other in the event such disparaging remarks are made.

3 The parents further agree to communicate directly with each other regarding the
4 needs and well being of their children and each parent agrees not to use the children to
5 communicate with the other parent regarding parental issues.

7 II. PHYSICAL CUSTODY PROVISIONS:

8 A. LYNITA shall have primary physical custody of the minor children, subject
9 to ERIC's visitation during the following four-week rotating visitation cycle:

11 I. ROTATING BI-WEEKLY VISITATION:

12 (a) WEEK ONE: ERIC shall have visitation commencing on
13 Thursday of each such week at 6:00 p.m., at which time he may pick-up the children
14 from LYNITA. Visitation during Week One shall continue until Monday morning, at
15 which time ERIC shall take the children to school (or drop-off the children to LYNITA
16 at 9:00 a.m. if there is no school).

18 (b) WEEK THREE: ERIC shall have visitation commencing on
19 Thursday of each such third week at 6:00 p.m., at which time he may pick-up the
20 children from LYNITA. Visitation during Week Three shall continue until Monday
21 morning, at which time ERIC shall take the children to school. ERIC's visitation shall
22 resume at 6:00 p.m. on each such Monday, at which time he may pick-up the children
23 from LYNITA. Such visitation shall conclude Tuesday morning, at which time ERIC
24 shall take the children to school (or drop-off the children to LYNITA at 9:00 a.m. if
25 there is no school).

1 2. SUMMER VACATION: Both ERIC and LYNITA shall be entitled
2 to take the children with him or her, for a period not to exceed three weeks, on any
3 vacations either parent may take while the children are out of school for their summer
4 vacation break from school. ERIC and LYNITA agree to cooperate and work with each
5 other for the purpose of scheduling their respective vacations so as to avoid planning
6 their vacations at the same time. Each party shall designate their vacation time by
7 January 15th of each year. Thus, by way of example, each party shall designate their
8 respective 2009 summer vacation time by January 15, 2009.
9

11 3. CHRISTMAS: The parents intend to be flexible in sharing the
12 Christmas holiday together with their children. If the parents are unable to agree as to
13 the manner in which the holiday will be shared, LYNITA will make the final decision as
14 to specific holiday arrangements in even numbered years, and ERIC will make the final
15 decision as to specific holiday arrangements in odd numbered years.
16

17 4. THANKSGIVING VACATION: The parents intend to be flexible
18 in sharing the Thanksgiving holiday together with their children. If the parents are
19 unable to agree as to the manner in which the holiday will be shared, LYNITA will make
20 the final decision as to specific holiday arrangements in odd numbered years, and ERIC
21 will make the final decision as to specific holiday arrangements in even numbered years.
22

23 5. EASTER: The parents intend to be flexible in sharing Easter
24 together with their children. If the parents are unable to agree as to the manner in
25 which the holiday will be shared, LYNITA will make the final decision as to specific
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1 holiday arrangements in even numbered years, and ERIC will make the final decision as
2 to specific holiday arrangements in odd numbered years.

3 6. MARTIN LUTHER KING DAY: ERIC shall have the children the
4 entire three-day Martin Luther King Day holiday-weekend (i.e., that being the Monday
5 in which Martin Luther King's birthday is observed nationally as a holiday, and the
6 weekend immediately preceding the said nationally observed Monday holiday in which
7 the children are out of school in each and every even numbered year, commencing the
8 Friday before said holiday weekend, immediately after the children get out of school, and
9 continuing through the following Monday at 6:00 p.m. LYNITA shall have the children
10 during the entire said vacation period during each odd numbered year.

11 7. PRESIDENTS DAY: ERIC shall have the children the entire three-
12 day Presidents Day holiday-weekend (i.e., that being the Monday in which Presidents
13 Day is observed nationally as a holiday, and the weekend immediately preceding the said
14 nationally observed Monday holiday) in which the children are out of school in each and
15 every odd numbered year, commencing the Friday before said holiday weekend,
16 immediately after the children get out of school, and continuing through the following
17 Monday at 6:00 p.m. LYNITA shall have the children during the entire said vacation
18 period during each even numbered year.

19 8. MEMORIAL DAY: ERIC shall have the children the entire three-
20 day Memorial Day holiday-weekend (i.e., that being the Monday in which Memorial
21 Day is observed nationally as a holiday, and the weekend immediately preceding the said
22 nationally observed Monday holiday) in which the children are out of school in each and
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1 every even numbered year, commencing the Friday before said holiday weekend,
2 immediately after the children get out of school, and continuing through the following
3 Monday at 6:00 p.m. LYNITA shall have the children during the entire said vacation
4 period during each odd numbered year.
5

6 9. INDEPENDENCE DAY: ERIC shall have the children on
7 Independence Day, July 4, of each and every odd numbered year, from at least 6:00 p.m.
8 on July 3, until 10:00 a.m. on July 5. LYNITA shall have the children during the entire
9 said vacation period during each even numbered year.
10

11 10. LABOR DAY: ERIC shall have the children the entire three-day
12 Labor Day holiday-weekend in which the children is out of school in each and every
13 even numbered year, commencing the Friday before said holiday weekend from at least
14 4:00 p.m., and continuing through the following Monday at 6:00 p.m. LYNITA shall
15 have the children during the entire said vacation period during each odd numbered year.
16

17 11. NEVADA ADMISSION DAY: ERIC shall have the children the
18 entire three-day Nevada Admission Day holiday-weekend (i.e., that being the Friday in
19 which Nevada Admission Day is observed as a holiday, and the weekend immediately
20 following the said observed Friday holiday) in which the children are out of school in
21 each and every odd numbered year, commencing the Thursday before said holiday
22 weekend immediately after the children get out of school and continuing through the
23 following Monday morning at 8:00 a.m. LYNITA shall have the children during the
24 entire said vacation period during each even numbered year. If, however, the said
25 Nevada Admission Day holiday is observed on a Monday instead of a Friday, with the
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1 children being out of school on such Monday instead of the preceding Friday, the
2 holiday shall commence on Friday immediately after the children get out of school and
3 continue through the following Tuesday morning at 8:00 a.m. Additionally, if
4 Halloween falls during the Nevada Admission Day holiday period specified above, the
5 party who has the children during such time period shall have the children for the
6 entirety of Halloween. Conversely, if Halloween does not fall during the Nevada
7 Admission Day holiday, then the party who did not have the children during such
8 holiday shall have the children on Halloween from the time the children get out of
9 school on Halloween until the following morning at 8:00 a.m.

12 12. VETERAN'S DAY: ERIC shall have the children from the time the
13 children get out of school on November 10th, and shall continue to have the physical
14 custody of the children until the morning of November 12th, when he takes the children
15 to school, of each and every odd numbered year. However, if the Veteran's Day holiday
16 is celebrated or observed in some other fashion during the years in which the children
17 are to be in the physical custody of ERIC so as to make the same a three-day holiday or
18 vacation period in which the children are not in school, ERIC shall have the children
19 during the entire said three-day period. LYNITA shall have the children during the
20 entire said vacation period during each even numbered year.

24 13. FATHER'S DAY: Regardless of which parent is entitled to have the
25 children on the Sunday which is designated "Father's Day," ERIC shall be entitled to
26 have the children from 4:00 p.m. on the Friday before Father's Day, until 6:00 p.m. on
27 Father's Day.
28

1 14. MOTHER'S DAY: Regardless of which parent is entitled to have the
2 children on the Sunday designated as "Mother's Day," LYNITA shall be entitled to have
3 the children from 4:00 p.m. on the Friday before Mother's Day, until 6:00 p.m. on
4 Mother's Day.
5

6 B. ERIC's specific visitation schedule set forth above in the Weekend Custody
7 provisions set forth in subparagraph A(1), shall be subject to review in the event either
8 party remarries.
9

10 C. The parents hereby acknowledge and agree that the visitation provisions
11 as they apply to both parents as set forth above in subparagraphs A(2) through A(14)
12 shall take precedence over the weekend and weekday visitation provided in subparagraph
13 A(1) of this Section II.
14

15 D. The parents agree that in effectuating and implementing the
16 aforementioned visitation arrangements, the parent to whom the physical custody of the
17 children are to be transferred at any such time that the physical custody of the children
18 are to be changed from one parent to the other shall be responsible for picking up the
19 children at the other parent's residence (i.e., when ERIC is to have the actual physical
20 custody of the children, ERIC shall be responsible for picking up the children at
21 LYNITA's residence; and, conversely, when LYNITA is to have the physical custody of
22 the children, LYNITA shall be responsible for picking up the children at ERIC's
23 residence).
24

25 E. The parents agree that the children shall be picked up, and shall be
26 available to be picked up, at the designated times set forth above. Should a delay
27
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1 become necessary, the parent responsible for such a necessary delay shall immediately
2 notify the other parent to advise him or her of the problem. For example, if the receiving
3 parent is unable to pick up the children at the designated time, such receiving parent
4 shall immediately notify the other parent of that fact. Conversely, if the children are not
5 available for the receiving parent to pick up at the designated time, the receiving parent
6 shall be notified immediately by the other parent. Moreover, in the event any scheduled
7 time cannot be kept due to the illness or other unavailability of the children and/or the
8 receiving parent, the parent unable to comply with the schedule shall notify the other
9 parent and the children as soon as reasonably possible. In the event the time-shared
10 arrangement cannot be kept due to the illness or other unavailability of the children, the
11 receiving parent shall be entitled to comparable time within thirty (30) days after the
12 occurrence of such missed time with the children.
13

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16 F. The parents hereby covenant and agree that should either parent intend to
17 move his or her residence to a place outside the State of Nevada, and take the minor
18 children with him or her, such parent must, as soon as possible, and before the planned
19 move, attempt to obtain the written consent of the other parent to move the minor
20 children. If the other parent refuses to give that consent, the parent planning the move
21 shall, before he or she leaves the State with the minor children, petition the Court for
22 permission to move the children. The failure of the parent planning the move to comply
23 with this provision may be considered as a factor if a change of custody is requested by
24 the other parent. This provision does not apply to vacations planned by either parent.
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1 G. The parties intend that the provisions set forth herein shall be incorporated
2 into their Decree of Divorce and recognized as Orders of the Court. The parents hereby
3 acknowledge and understand that NRS 125.510(6) provides as follows with respect to
4 either parent's violation of such Orders:
5

6 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,
7 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF
8 THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS
9 PROVIDED IN NRS 193.139. NRS 200.359 provides that every person
10 having a limited right of custody to a child or any parent having no right
11 of custody to the child who willfully detains, conceals or removes the child
12 from a parent, guardian or other person having lawful custody or a right of
13 visitation of the child in violation of an order of this court, or removes the
14 child from the jurisdiction of the court without the consent of either the
15 court or all persons who have the right to custody or visitation is subject
16 to being punished for a category D felony as provided in NRS 193.130.

17 H. The parties understand and acknowledge that, pursuant to NRS
18 125.510(7) and (8), the terms of the Hague Convention of October 25, 1980, adopted
19 by the Fourteenth Session of the Hague Conference on Private International Law,
20 applies if a parent abducts or wrongfully retains a child in a foreign country. Further,
21 the parties stipulate and agree that the minor child's habitual residence is located in the
22 County of Clark, State of Nevada, within the United States of America. NRS
23 125.510(7) and (8) specifically provide as follows:

24 Section 7. In addition to the language required pursuant to
25 subsection 6, all orders authorized by this section must specify that the
26 terms of the Hague Convention of October 25, 1980, adopted by the 14th
27 Session of the Hague Conference on Private International Law, apply if a
28 parent abducts or wrongfully retains a child in a foreign country.

Section 8. If a parent of the child lives in a foreign country or has
significant commitments in a foreign country:

1 (a) The parties may agree, and the Court shall include in the
2 Order for custody of the child, that the United States is the country of
3 habitual residence of the child for the purposes of applying the terms of the
Hague Convention as set forth in Subsection 7.

4 (b) Upon motion of the parties, the Court may order the parent
5 to post a bond if the Court determines that the parent poses an imminent
6 risk of wrongfully removing or concealing the child outside the country of
7 habitual residence. The bond must be in an amount determined by the
8 Court and may be used only to pay for the cost of locating the child and
9 returning him to his habitual residence if the child is wrongfully removed
10 from or concealed outside the country of habitual residence. The fact that
a parent has significant commitments in a foreign country does not create
a presumption that the parent poses an imminent risk of wrongfully
removing or concealing the child.

11 * * * * *

12 The above Parenting Agreement reflects the rights and obligations of each parent
13 as they pertain to the legal and physical custody of the parties' minor child. The parties
14 hereby agree to fully comply with the same; and in witness whereof, the parties hereto
15 have hereunto set their hands to this Parenting Agreement the year and date written
below each parties' respective signature.

16 
17 LYNITA NELSON
18 Mother


ERIC NELSON
Father

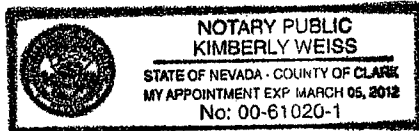
19 DATE 10.15.08
20

DATE 10-15-08

1 STATE OF NEVADA)
2) SS:
3 COUNTY OF CLARK)

4 On this 15th day of October, 2008, personally appeared before me, a notary
5 public, Lynita Nelson, personally known (or proved) to me to be the person whose name
6 is subscribed to the above instrument, and who acknowledged that she executed the
7 instrument.

8 Kimberly Weiss
9 Notary Public in and for said
10 County and State.



12
13
14 STATE OF NEVADA)
15) SS:
16 COUNTY OF CLARK)

17 On this 15th day of October, 2008, personally appeared before me, a notary
18 public, Eric Nelson, personally known (or proved) to me to be the person whose name
19 is subscribed to the above instrument, and who acknowledged that he executed the
20 instrument.

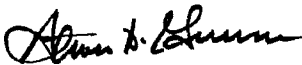
21 Kimberly Weiss
22 Notary Public in and for said
23 County and State.



EXHIBIT C

1 ANS
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8 Attorneys for Lana Martin, Distribution Trustee
of the ERIC L. NELSON NEVADA TRUST
9 dated May 30, 2001

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CLERK OF THE COURT

10
11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 ERIC L. NELSON,) Case No. D-411537
14) Dept. No. O
Plaintiff/Counterdefendant,)
15 vs.)
16 LYNITA SUE NELSON, LANA MARTIN,)
as Distribution Trustee of the ERIC L.)
17 NELSON NEVADA TRUST dated May 30,)
2001)
18 Defendants/Counterclaimants.)
19 LANA MARTIN, Distribution Trustee of the)
20 ERIC L. NELSON NEVADA TRUST dated)
May 30, 2001,)
21 Crossclaimant,)
22 vs.)
23 LYNITA SUE NELSON,)
24 Crossdefendant.)

25
26 **ANSWER TO COMPLAINT FOR DIVORCE AND COUNTERCLAIM AND CROSS-**
CLAIM

27 Lana Martin, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May
28

30, 2001 ("TRUST"), by and through her counsel, Solomon Dwiggins Freer & Morse, Ltd.,
Answers Plaintiff Eric L. Nelson's Complaint for Divorce as follows:

1. The TRUST lacks knowledge or information sufficient to form a belief as to the truth
or falsity of the allegations contained in Paragraphs I, II, III, IV, V, VI, VII, VIII, X, XII, XIII and
XIV.

2. As to Paragraph IX, the TRUST denies that the assets belonging to the TRUST are
the "community property of the parties."

3. As to Paragraph XI, the TRUST denies that the assets belonging to the TRUST are
the "separate property of the parties."

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim on which any relief can be granted against the
TRUST and should therefore be dismissed.

2. The Causes of Action are barred by the statute of limitations.

3. The Causes of Action are barred by the doctrine of laches and/or any other equitable
defense.

4. The Parties have waived any potential claims against the TRUST.

5. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged
herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this
Answer, and therefore, the TRUST reserves his right to amend the Answer to assert additional
affirmative defenses as subsequent investigation warrants.

COUNTERCLAIM AND CROSS-CLAIM

Lana Martin, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May
30, 2001 ("TRUST"), by and through her counsel, Solomon Dwiggins Freer & Morse, Ltd., hereby
complains against Eric L. Nelson and Lynita S. Nelson as follows:

1. Upon information and belief, Counterdefendant Eric L. Nelson, is a resident of
Clark County, Nevada.

2. Upon information and belief, Crossdefendant Lynita S. Nelson, is a resident of Clark
County, Nevada.

1 3. Counterclaimant/Cross-Claimant, Lana Martin, Distribution Trustee of the TRUST,
2 is a resident of Clark County, Nevada.

3 4. On May 30, 2001, the TRUST was established by Eric L. Nelson. The Eric L.
4 Nelson Trust is a single-settlor spendthrift trust established pursuant to NRS 166 for the benefit of
5 Eric L. Nelson and his five children.

6 5. The TRUST is irrevocable and "may not be altered, amended or revoked." The
7 TRUST was funded, in part, by assets that were wholly owned by the ERIC L. NELSON
8 SEPARATE PROPERTY TRUST dated July 13, 1993.

9 6. The TRUST is a separate and distinct legal entity, and neither Eric L. Nelson nor
10 Lynita S. Nelson have a legal estate in the capital, principal or corpus of the TRUST.

11 **FIRST CLAIM FOR RELIEF**

12 7. Counterclaimant/Cross-Claimant repeats and realleges each and every allegation
13 contained in the preceding paragraphs of this Counterclaim/Cross-Claim, incorporates them by
14 reference, and further alleges as follows:

15 8. Upon information and belief, Eric L. Nelson and/or Lynita S. Nelson contend that
16 some or all of the assets owned by the TRUST are community property and/or separate property,
17 and as such, are subject to division in the instant divorce proceeding.

18 9. A ripe case in controversy exists between Counterclaimant/Cross-Claimant and Eric
19 L. Nelson and Lynita S. Nelson regarding their community property and/or separate property
20 interest, if any, in the TRUST.

21 10. Pursuant to NRS 30.040, Counterclaimant/Cross-Claimant seeks a declaratory
22 judgment that the TRUST is a valid self-settled spendthrift trust duly established pursuant to NRS
23 166, and that neither Eric L. Nelson nor Lynita S. Nelson have a community property and/or
24 separate property interest therein.

25 11. As a result of the allegations herein, Counterclaimant/Cross-Claimant has been
26 compelled to retain the services of counsel in order to institute and prosecute these proceedings, and
27 to retain expert consultants and witnesses as reasonably necessary to prove its case, thus entitling
28 Counterclaimant/Cross-Claimant to an award of attorneys' fees and costs in amounts to be

1 established at the time of trial.

2 12. Counterclaimant/Cross-Claimant is entitled to recover damages, including but not
3 limited to, attorneys' fees, statutory interest, and any costs expended in pursuit of this
4 Counterclaim/Cross-Claim.

5 **WHEREFORE**, Counterclaimant/Cross-Claimant pray for judgment as follows:

6 1. For a declaratory judgment that the ERIC L. NELSON NEVADA TRUST dated May
7 30, 2001, is a valid self-settled spendthrift trust duly established pursuant to NRS 166, and that
8 neither Eric L. Nelson nor Lynita S. Nelson have a community property and/or separate property
9 interest therein;

10 2. For reasonable attorneys' fees and costs incurred in the prosecution of this matter;
11 and

12 3. For such order and further relief as this Court deems just and proper.

13 DATED this 19th day of August, 2011.

14 SOLOMON DWIGGINS FREER & MORSE, LTD.

15 By: 

16 MARK A. SOLOMON, ESQ.

17 Nevada State Bar No. 0418

18 JEFFREY P. LUSZECK

19 Nevada State Bar No. 9619

20 Cheyenne West Professional Centre'

21 9060 West Cheyenne Avenue

22 Las Vegas, Nevada 89129

23 Attorneys for Lana Martin, Distribution Trustee
24 of the ERIC L. NELSON NEVADA TRUST
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EXHIBIT D


CLERK OF THE COURT

AANS
THE DICKERSON LAW GROUP
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Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,
v.
LYNITA SUE NELSON
Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST
dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

LYNITA SUE NELSON'S:
(1) FIRST AMENDED ANSWER
TO CLAIMS OF THE ERIC L.
NELSON NEVADA TRUST; AND

1 LANA MARTIN, as Distribution Trustee
2 of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

3 Necessary Party (joined in this
4 action pursuant to Stipulation and
5 Order entered on August 9, 2011)/
Purported Counterclaimant and
Crossclaimant,

6 v.

7 LYNITA SUE NELSON and ERIC
8 NELSON,

9 Purported Cross-Defendant and
Counterdefendant,

10
11 LYNITA SUE NELSON,

12 Counterclaimant, Cross-Claimant,
and/or Third Party Plaintiff,

13 v.

14 ERIC L. NELSON, individually, and as
15 the Investment Trustee of the ERIC L.
NELSON NEVADA TRUST dated May
16 30, 2001; the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001;
17 LANA MARTIN, individually, and as the
current and/or former Distribution
Trustee of the ERIC L. NELSON
18 NEVADA TRUST dated May 30, 2001,
and as the former Distribution Trustee of
19 the LSN NEVADA TRUST dated May
30, 2001; NOLA HARBER, individually,
20 and as the current and/or former
Distribution Trustee of the ERIC L.
21 NELSON NEVADA TRUST dated May
30, 2001, and as the current and/or
22 former Distribution Trustee of the LSN
NEVADA TRUST dated May 30, 2001;
23 ROCHELLE McGOWAN, individually;
24 JOAN B. RAMOS, individually; and
DOES I through X,

25 Counterdefendants, and/or
26 Cross-Defendants, and/or
Third Party Defendants.

(2) FIRST AMENDED CLAIMS
FOR RELIEF AGAINST ERIC L.
NELSON, ERIC L. NELSON
NEVADA TRUST dated May 30,
2001, LANA MARTIN, NOLA
HARBER, ROCHELLE McGOWAN,
JOAN B. RAMOS, and DOES I
through X (WHETHER
DESIGNATED AS A
COUNTERCLAIM, CROSS-CLAIM,
AND/OR THIRD PARTY
COMPLAINT)

1 LYNITA SUE NELSON'S FIRST AMENDED ANSWER
2 TO CLAIMS OF THE ERIC L. NELSON NEVADA TRUST

3 COMES NOW LYNITA SUE NELSON ("LYNITA"), by and through her
4 attorneys, ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and
5 JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, and as and for
6 her First Amended Answer to the Claims for Relief filed against her by LANA
7 MARTIN, as the purported Distribution Trustee of the ERIC L. NELSON NEVADA
8 TRUST dated May 30, 2011 ("ERIC NELSON'S ALTER EGO TRUST"), by way of
9 the pleading filed in this action by ERIC NELSON'S ALTER EGO TRUST on or about
10 August 19, 2011, entitled "Answer to Complaint for Divorce and Counterclaim and
11 Cross-Claim" ("the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO
12 TRUST"), admits, denies, alleges, and states as follows:

13 1. LYNITA admits the allegations of paragraphs 1 and 2 of the Fugitive
14 Pleading filed by ERIC NELSON'S ALTER EGO TRUST. In this regard, LYNITA
15 specifically admits that both she and her husband, Eric L. Nelson, are residents of
16 Clark County, Nevada.

17 2. Answering paragraphs 3, 4, and 5 of the Fugitive Pleading filed by ERIC
18 NELSON'S ALTER EGO TRUST, LYNITA is without sufficient knowledge or
19 information to form a belief as to the truth of the allegations contained in said
20 paragraphs, and on that basis generally and specifically denies each and every allegation
21 contained therein.

22 3. LYNITA generally and specifically denies the allegations of paragraph 6
23 of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST.

24 4. Answering paragraph 7 of the Fugitive Pleading filed by ERIC NELSON'S
25 ALTER EGO TRUST, LYNITA repeats her above answers to paragraphs 1 through 6
26 of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST to the same
27 extent as if the same were set forth herein in full.

28 ...

1 5. Answering paragraph 8 of the Fugitive Pleading filed by ERIC NELSON'S
2 ALTER EGO TRUST, LYNITA admits that all of the assets owned by ERIC
3 NELSON'S ALTER EGO TRUST are community property and as such, are subject to
4 division by the Court in the instant divorce action, Case No. D-09-411537-D, entitled
5 "ERIC L. NELSON, Plaintiff/Counterdefendant v. LYNITA SUE NELSON, Defendant/
6 Counterclaimant" (the "Instant Divorce Action"). LYNITA further admits that
7 throughout the pretrial and trial proceedings in the Instant Divorce Action, Eric L.
8 Nelson has admitted and acknowledged that all of the assets owned by ERIC
9 NELSON'S ALTER EGO TRUST are his and LYNITA's community property, and that
10 the same are subject to division by the Court in the Instant Divorce Action. In this
11 regard, Eric L. Nelson has admitted and acknowledged, both tacitly, actively, and
12 otherwise, that he has treated ERIC NELSON'S ALTER EGO TRUST as his alter ego,
13 and that his and LYNITA's intent throughout their marriage has always been that all
14 of the assets owned by ERIC NELSON'S ALTER EGO TRUST are their community
15 property.

16 6. LYNITA generally and specifically denies the allegations of paragraphs 9,
17 10, 11, and 12 of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO
18 TRUST.

19 In addition to the above answers, based upon information and belief and
20 pending further investigation and discovery, LYNITA alleges the affirmative defenses
21 set forth below in this FIRST AMENDED ANSWER TO CLAIMS OF THE ERIC L.
22 NELSON NEVADA TRUST. LYNITA reserves the right to further amend this FIRST
23 AMENDED ANSWER TO CLAIMS OF THE ERIC L. NELSON NEVADA TRUST
24 to identify any and all statutory and/or decisional authorities supporting some or all of

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1 the Affirmative Defenses referenced below. LYNITA does not otherwise waive and
2 specifically reserves the right to assert additional Affirmative Defenses based on
3 statutory and decisional authorities, and equitable doctrines, and further reserves the
4 right to amend, correct, or add to these Affirmative Defenses based upon subsequent
5 investigation and discovery.

6
7 **FIRST AFFIRMATIVE DEFENSE**
(Failure to State a Cause of Action)

8 The Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST fails to
9 state facts sufficient to constitute a cause of action against LYNITA.

10
11 **SECOND AFFIRMATIVE DEFENSE**
(Wrongful Acts of ERIC NELSON'S ALTER EGO TRUST)

12 To the extent that any or all occurrences, happenings, injuries, and/or damages
13 alleged in the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST were
14 proximately caused and/or contributed to by the wrongful acts and/or omissions of
15 ERIC NELSON'S ALTER EGO TRUST, ERIC NELSON'S ALTER EGO TRUST is
16 precluded from obtaining judgment against LYNITA.

17
18 **THIRD AFFIRMATIVE DEFENSE**
(Authority)

19 Based upon information and belief, and subject to discovery in this action,
20 LYNITA alleges that ERIC NELSON'S ALTER EGO TRUST is barred from any
21 recovery based upon the lack of authority for LANA MARTIN to assert any claims on
22 behalf of ERIC NELSON'S ALTER EGO TRUST.

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2 **FOURTH AFFIRMATIVE DEFENSE**
 (Consent)

3 To the extent ERIC NELSON'S ALTER EGO TRUST failed to object to the
4 litigation of this divorce action, and based on the actions of Eric L. Nelson, ERIC
5 NELSON'S ALTER EGO TRUST has assented, accepted, and acquiesced to the
6 Instant Divorce Action as litigated, and by such consent is precluded from obtaining
7 any relief against LYNITA.

8 **FIFTH AFFIRMATIVE DEFENSE**
9 **(Waiver, Estoppel, Laches and Unclean Hands)**

10 Based upon information and belief, and subject to discovery in this action,
11 LYNITA alleges that ERIC NELSON'S ALTER EGO TRUST is barred from any
12 recovery on the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST
13 based upon the doctrines of waiver, estoppel, laches, and unclean hands.

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1 LYNITA SUE NELSON'S FIRST AMENDED CLAIMS FOR RELIEF AGAINST
2 ERIC L. NELSON, ERIC L. NELSON NEVADA TRUST dated May 30, 2001,
3 LANA MARTIN, NOLA HARBER,
4 ROCHELLE McGOWAN, JOAN B. RAMOS,
5 and DOES I through X
6 (WHETHER DESIGNATED AS A COUNTERCLAIM, CROSS-CLAIM, AND/OR
7 THIRD PARTY COMPLAINT)

8 COMES NOW LYNITA SUE NELSON ("LYNITA"), by and through her
9 attorneys, ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and
10 JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, and as and for
11 her claims for relief against ERIC L. NELSON, ERIC L. NELSON NEVADA TRUST
12 dated May 30, 2001, LANA MARTIN, NOLA HARBER, ROCHELLE McGOWAN,
13 JOAN B. RAMOS, and DOES I through X, and whether designated as a Counterclaim,
14 Cross-claim, and/or Third Party Complaint, respectfully alleges and states as follows:

15 INTRODUCTION AND NATURE OF THE ACTION
16 BEING FILED BY LYNITA SUE NELSON

17 1. On or about August 9, 2011, the Court in this action, Case No. D-09-
18 411537-D, entitled "ERIC L. NELSON, Plaintiff/Counterdefendant v. LYNITA SUE
19 NELSON, Defendant/Counterclaimant" (the "Instant Divorce Action"), entered an
20 Order pursuant to the Stipulation of ERIC L. NELSON and LYNITA SUE NELSON,
21 joining the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ERIC
22 NELSON'S ALTER EGO TRUST"), and the LSN NEVADA TRUST dated May 30,
23 2001 (the "LSN TRUST"), as necessary parties to this action.

24 2. On or about August 19, 2011, a fugitive pleading entitled "Answer to
25 Complaint for Divorce and Counterclaim and Cross-Claim" was filed in this Instant
26 Divorce Action by LANA MARTIN, purporting to be the Distribution Trustee of ERIC
27 NELSON'S ALTER EGO TRUST ("the Fugitive Pleading filed by ERIC NELSON'S
28 ALTER EGO TRUST").

3. This Pleading is being filed by LYNITA SUE NELSON pursuant to NRCP
13 and/or NRCP 14. The claims for relief alleged in this Pleading being filed by
LYNITA SUE NELSON are being filed, and have become necessary, because of the

1 filing of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST.

2 Regardless of whether it is considered and/or designated as a Counterclaim, Cross-
3 Claim, and/or Third Party Complaint, this Pleading is intended to allege claims for
4 relief against the following individuals and trusts:

5 A. ERIC L. NELSON, individually, and as the Investment Trustee of
6 ERIC NELSON'S ALTER EGO TRUST ("ERIC");

7 B. ERIC NELSON'S ALTER EGO TRUST;

8 C. LANA MARTIN, individually, and as the current and/or former
9 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST,
10 and as the former Distribution Trustee of the LSN TRUST
11 ("LANA");

12 D. NOLA HARBER, individually, and as the current and/or former
13 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST,
14 and as the current and/or former Distribution Trustee of the LSN
15 TRUST ("NOLA");

16 E. ROCHELLE McGOWAN, individually ("ROCHELLE");

17 F. JOAN B. RAMOS, individually ("JOAN"); and

18 G. DOES I through X.

19 4. As a result of the filing of the Fugitive Pleading filed by ERIC NELSON'S
20 ALTER EGO TRUST in this Instant Divorce Action, a ripe case in controversy exists
21 between LYNITA and ERIC regarding their community property, and between
22 LYNITA and ERIC NELSON'S ALTER EGO TRUST regarding LYNITA's and ERIC's
23 community property being held in ERIC NELSON'S ALTER EGO TRUST. Further,
24 LYNITA has now had to assert claims against ERIC L. NELSON, individually, and as
25 the Investment Trustee of ERIC NELSON'S ALTER EGO TRUST; ERIC NELSON'S
26 ALTER EGO TRUST; LANA MARTIN, individually, and as the current and/or former
27 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and as the former
28 Distribution Trustee of the LSN TRUST; NOLA HARBER, individually, and as the

1 current and/or former Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST,
2 and as the current and/or former Distribution Trustee of the LSN TRUST;
3 ROCHELLE McGOWAN, individually; JOAN B. RAMOS, individually; and DOES
4 I through X, to ensure all claims and controversies are resolved in one action.

5 5. Approximately twenty-seven (27) months after ERIC filed his Complaint
6 for Divorce in the Instant Divorce Action, ERIC has caused ERIC NELSON'S ALTER
7 EGO TRUST to file the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO
8 TRUST in this action denying the existence of ERIC's and LYNITA's community
9 property interest in all the assets held in ERIC NELSON'S ALTER EGO TRUST.

10 6. ERIC has asserted his management and control over ERIC NELSON'S
11 ALTER EGO TRUST, and the LSN TRUST in his sworn testimony before this Court
12 on multiple occasions. ERIC has confirmed the existence of ERIC's and LYNITA's
13 community property and/or separate property interest in both trusts through his sworn
14 testimony before this Court. From May 30, 2001 until at least early 2011, ERIC has
15 influenced, directed, and controlled all aspects of both ERIC NELSON'S ALTER EGO
16 TRUST, and the LSN TRUST.

17 7. LYNITA respectfully files this Pleading and asserts the claims for relief in
18 this Pleading to hold ERIC, and those parties aiding and abetting, conspiring with,
19 and/or acting in concert with ERIC accountable for their abusive conduct designed to
20 deprive LYNITA of her rightful access to community assets. ERIC's newly devised
21 effort to attempt to shield community assets from distribution by this Court in the
22 Instant Divorce Action, by now claiming that all such community assets are held in,
23 and belong to, his illusory, sham ERIC NELSON'S ALTER EGO TRUST that he has
24 dominated and controlled at all times, should be recognized for its true nature and
25 wholly disregarded by this Court.

26 8. LYNITA asserts the claims for relief in this Pleading to establish that both
27 ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, are ERIC's alter egos

28 ...

1 and that ERIC has used the trusts to improperly shield community assets from
2 distribution by this Court as part of this Instant Divorce Action.

3 9. As a matter of law and equity, ERIC's abusive conduct compels piercing
4 the veil of ERIC NELSON'S ALTER EGO TRUST, and determining that all of the
5 assets, profits, gains, and interests titled in the name of ERIC NELSON'S ALTER EGO
6 TRUST, and the LSN TRUST, are the community property of ERIC and LYNITA, and
7 that the same are subject to division by this Court in this Instant Divorce Action.

8 10. ERIC did not engage in this attempted, massive abuse of Nevada's trust
9 laws alone. LANA MARTIN, ERIC's employee, close friend, and co-conspirator, served
10 as the Distribution Trustee for ERIC NELSON'S ALTER EGO TRUST, and the LSN
11 TRUST, for approximately six (6) years. Likewise, NOLA HARBER, ERIC's sister and
12 co-conspirator, served as the Distribution Trustee for ERIC NELSON'S ALTER EGO
13 TRUST, and the LSN TRUST, for approximately four (4) years. In their capacity as
14 the Distribution Trustee for ERIC NELSON'S ALTER EGO TRUST, and the LSN
15 TRUST, both LANA and NOLA individually, under ERIC's direction and control,
16 abused the protections afforded by Nevada's trust laws, and their fiduciary duties to
17 ERIC NELSON'S ALTER EGO TRUST, the LSN TRUST, and LYNITA, to the benefit
18 of ERIC, and to the detriment of LYNITA and the community. Similarly, ROCHELLE
19 McGOWAN, ERIC's employee and close friend, and JOAN B. RAMOS, ERIC's
20 employee and close friend, conspired with ERIC, LANA, and NOLA to violate Nevada's
21 trust laws to the benefit of ERIC and detriment of LYNITA and the community.

22 11. ERIC controlled and directed LANA's and NOLA's conduct as
23 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST.
24 For example, and as more fully set forth below, ERIC directed the release of tens of
25 thousands of dollars of trust income and property to ERIC, and other third parties,
26 including, but not necessarily limited to, ERIC's family members (Cal Nelson, Paul
27 Nelson, Chad Ramos, Ryan Nelson and others) during the time period October 1, 2001
28 through the present, to fund ERIC's and ERIC's family members' personal

1 expenditures. ERIC further directed the creation of Distribution Authorization forms
2 purporting to distribute trust income from the LSN TRUST to LYNITA, which was
3 never actually received by LYNITA. ERIC's directives were never scrutinized or
4 questioned by either LANA or NOLA; rather, both LANA and NOLA, at all times while
5 acting in the capacity of Distribution Trustee of ERIC NELSON'S ALTER EGO
6 TRUST, and the LSN TRUST, performed exactly as ERIC directed.

7 12. ERIC directed and controlled all of the co-conspirators' actions with
8 respect to ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, and all the
9 purported assets of such trusts, since the creation of ERIC NELSON'S ALTER EGO
10 TRUST, and the LSN TRUST. For example, ERIC dictated or handwrote notes of the
11 asset transfers, and loans he desired to be performed by ERIC NELSON'S ALTER EGO
12 TRUST, and the LSN TRUST, and would pass his dictation and/or notes of such
13 actions to one or more of the named co-conspirators, who would create the necessary
14 deeds, loan documents, promissory notes, agreements or other documents necessary to
15 effectuate ERIC's directives, create written documents confirming ERIC's directives,
16 and draft and sign all checks required to perform as directed by ERIC. ERIC's
17 directives were never scrutinized or questioned by any of the named co-conspirators;
18 rather all named co-conspirators performed exactly as ERIC directed.

19 13. LANA, ROCHELLE, and JOAN, at all times relevant hereto have served
20 as ERIC's "right hand" persons with respect to ERIC's entities, ERIC NELSON'S
21 ALTER EGO TRUST, and the LSN TRUST. In their individual capacities, as
22 employees of any one of ERIC's entities, they each handled ERIC's books and records
23 and day to day operations (under ERIC's direction and control), acted as the registered
24 agent for any one of ERIC's entities (under ERIC's direction and control), and/or acted
25 as the notary public for ERIC's entities, including notarizing documents related to
26 ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST.

27 14. Upon information and belief, and following a period of discovery focused
28 on ERIC NELSON'S ALTER EGO TRUST, the LSN TRUST, and the actions of ERIC

1 and his co-conspirators related to ERIC NELSON'S ALTER EGO TRUST, and the
2 LSN TRUST, LYNITA will be able to demonstrate that ERIC is controlling both trusts
3 as illusory, sham trusts to shield assets from distribution by this Court as part of this
4 Instant Divorce Action. For example, ERIC purchased assets with community funds,
5 and directed title to such assets be held in the name of ERIC NELSON'S ALTER EGO
6 TRUST, or an entity wholly controlled by ERIC NELSON'S ALTER EGO TRUST,
7 rather than in ERIC's personal name, to shield the assets from third-party creditors,
8 and now asserts the claims made in the Fugitive Pleading filed by ERIC NELSON'S
9 ALTER EGO TRUST to attempt to avoid the distribution of such assets by this Court
10 as part of this Instant Divorce Action. One such transaction being the transaction
11 involving the Russell Road property which has been discussed throughout this Instant
12 Divorce Action. ERIC further directed the transfer of assets from and/or between ERIC
13 NELSON'S ALTER EGO TRUST, and the LSN TRUST, without compensation or for
14 less than fair market value compensation to avoid the reach of third-party creditors,
15 and to now assert the claims made in the Fugitive Pleading filed by ERIC NELSON'S
16 ALTER EGO TRUST to attempt to avoid the distribution of such assets by this Court
17 as part of this Instant Divorce Action. Such transfers include the transfer of certain
18 real property parcels in Mississippi, the transfer of the real property located on Harbor
19 Hills Avenue from the LSN TRUST to ERIC NELSON'S ALTER EGO TRUST, which
20 ERIC thereafter sold for less than fair market value during the litigation of this Instant
21 Divorce Action, and the transfer of the commercial building located on Lindell Avenue
22 from the LSN TRUST, to the LSN TRUST and ERIC NELSON'S ALTER EGO
23 TRUST as equal, fifty-percent (50%) owners, without authority and consideration.
24 While a period of discovery has already been performed in this Instant Divorce Action,
25 such discovery did not focus on ERIC NELSON'S ALTER EGO TRUST, the LSN
26 TRUST, and ERIC's and his co-conspirators' actions related to ERIC NELSON'S
27 ALTER EGO TRUST, and the LSN TRUST; the reason being because for the first
28 twenty-seven (27) months that this Instant Divorce Action has been pending, ERIC did

1 not assert any claims other than that all of the assets created or obtained during the
2 parties' marriage were community assets subject to equal division by this Court in this
3 Instant Divorce Action.

4 15. Upon information and belief, and following a period of discovery focused
5 on ERIC NELSON'S ALTER EGO TRUST, and ERIC's and his co-conspirators'
6 actions related to ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
7 LYNITA will be able to demonstrate that ERIC designed transfers from ERIC
8 NELSON'S ALTER EGO TRUST to drain ERIC NELSON'S ALTER EGO TRUST of
9 liquidity, and from the LSN TRUST to ERIC NELSON'S ALTER EGO TRUST to
10 deprive LYNITA and the community of income and property in this Instant Divorce
11 Action. ERIC's dissipation of assets in both Trusts so as to hinder distribution by this
12 Court as part of this Instant Divorce Action include ERIC's drain of the Mellon Bank
13 account and Mellon line of credit of approximately 1.4 million dollars to improve the
14 Bella Kathryn property.

15 16. As early as June 2003, ERIC and/or LANA recognized issues existed with
16 ERIC's and LANA's actions with respect to ERIC NELSON'S ALTER EGO TRUST,
17 and sent an email to Jeffrey Burr, Esq., the attorney who originally drafted ERIC
18 NELSON'S ALTER EGO TRUST, addressing some of these issues. Specifically LANA
19 admitted to holding "special meetings" concerning ERIC NELSON'S ALTER EGO
20 TRUST, and questioned the propriety of these meetings and the appropriateness of her
21 acting as the Distribution Trustee for both ERIC NELSON'S ALTER EGO TRUST,
22 and the LSN TRUST.

23 17. In order to prevent manifest injustice, the veil surrounding ERIC
24 NELSON'S ALTER EGO TRUST and its financial relationships with other entities
25 controlled and directed by ERIC must be lifted. LYNITA brings this action to pierce
26 the veil of ERIC NELSON'S ALTER EGO TRUST because ERIC NELSON'S ALTER
27 EGO TRUST, as well as the LSN TRUST, are ERIC's alter egos; thus, LYNITA seeks
28 a declaration from this Court that ERIC NELSON'S ALTER EGO TRUST, and the

1 LSN TRUST, are illusory, sham trusts whose assets belong to ERIC, LYNITA, and the
2 community estate and are subject to division as part of these divorce proceedings.
3 LYNITA also requests that this Court ensure that ERIC's co-conspirators (LANA
4 MARTIN, NOLA HARBER, ROCHELLE McGOWAN, and JOAN B. RAMOS),
5 without whom ERIC could not have instituted and maintained his scheme to attempt
6 to deny LYNITA her lawful share of the parties' community assets, be held liable for
7 their wrongful conduct.

8 PARTIES

9 18. ERIC L. NELSON and LYNITA SUE NELSON are residents of Clark
10 County, Nevada. ERIC and LYNITA are husband and wife, as alleged in ERIC's
11 Complaint for Divorce, and LYNITA's Answer and Counterclaim filed months ago in
12 this Instant Divorce Action. ERIC is the Investment Trustee of ERIC NELSON'S
13 ALTER EGO TRUST.

14 19. LANAMARTIN ("LANA") is a resident of Clark County, Nevada. LANA
15 is an employee of ERIC. Upon information and belief, LANA is the former
16 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST; however, LANA
17 claims to be the current Distribution Trustee of ERIC NELSON'S ALTER EGO
18 TRUST. LANA is also the former Distribution Trustee of the LSN TRUST. LANA
19 is intricately involved in many of ERIC's entities serving both as bookkeeper, and upon
20 information and belief, the notary public on several documents for ERIC, ERIC
21 NELSON'S ALTER EGO TRUST, and the LSN TRUST. LANA assisted ERIC in
22 creating and maintaining his intricate web of entities, including ERIC NELSON'S
23 ALTER EGO TRUST. When being referred to jointly along with the other co-
24 conspirators, which shall specifically include LANA, NOLA, ROCHELLE, and JOAN,
25 LANA is intended to be included in as one of the co-conspirators when the term "co-
26 conspirators" is used in this Pleading.

27 20. NOLA HARBER ("NOLA") is a resident of Clark County, Nevada,
28 presently absent from the state while serving a voluntary mission for the Church of

1 Jesus Christ of Latter Day Saints in Laie, Hawaii. NOLA is the sister of ERIC. Upon
2 information and belief, NOLA is the current Distribution Trustee of ERIC NELSON'S
3 ALTER EGO TRUST. If NOLA is not the current Distribution Trustee of ERIC
4 NELSON'S ALTER EGO TRUST, she is the former Distribution Trustee of ERIC
5 NELSON'S ALTER EGO TRUST. NOLA also is either the current, one of the current,
6 or the former Distribution Trustee of the LSN TRUST. NOLA assisted ERIC in
7 maintaining his intricate web of entities, including ERIC NELSON'S ALTER EGO
8 TRUST. When being referred to jointly along with the other co-conspirators, which
9 shall specifically include LANA, NOLA, ROCHELLE, and JOAN, NOLA is intended
10 to be included in as one of the co-conspirators when the term "co-conspirators" is used
11 in this Pleading.

12 21. ROCHELLE MCGOWAN ("ROCHELLE") is a resident of Clark County,
13 Nevada. ROCHELLE is an employee of ERIC. ROCHELLE is intricately involved in
14 many of ERIC's entities serving as bookkeeper, and upon information and belief, the
15 notary public on several documents for ERIC, ERIC NELSON'S ALTER EGO TRUST,
16 and the LSN TRUST, and she is the registered agent for several of ERIC's entities.
17 ROCHELLE assisted ERIC in creating and maintaining his intricate web of entities,
18 including ERIC NELSON'S ALTER EGO TRUST. When being referred to jointly
19 along with the other co-conspirators, which shall specifically include LANA, NOLA,
20 ROCHELLE, and JOAN, ROCHELLE is intended to be included in as one of the co-
21 conspirators when the term "co-conspirators" is used in this Pleading.

22 22. JOAN B. RAMOS ("JOAN") is a resident of Clark County, Nevada.
23 JOAN is an employee of ERIC. JOAN is intricately involved in many of ERIC's entities
24 serving both as bookkeeper, and upon information and belief, the notary public on
25 several documents for ERIC, ERIC NELSON'S ALTER EGO TRUST, and the LSN
26 TRUST. JOAN assisted ERIC in creating and maintaining his intricate web of entities,
27 including ERIC NELSON'S ALTER EGO TRUST. When being referred to jointly
28 along with the other co-conspirators, which shall specifically include LANA, NOLA,

1 ROCHELLE, and JOAN, JOAN is intended to be included in as one of the co-
2 conspirators when the term "co-conspirators" is used in this Pleading.

3 23. The ERIC L. NELSON NEVADA TRUST dated May 30, 2001 is referred
4 to in this pleading as "ERIC NELSON'S ALTER EGO TRUST." The LSN NEVADA
5 TRUST dated May 30, 2001 is referred to in this pleading as the "LSN TRUST."
6 When both trusts are being jointly referred to they may be referred to as "the Trusts"
7 or "both Trusts."

8 JURISDICTION AND VENUE

9 24. All named parties are subject to the jurisdiction and venue of this Court.

10 25. This Court has jurisdiction, and LYNITA has standing, pursuant to
11 Chapters 125, 153, and 166 of the Nevada Revised Statutes.

12 26. ERIC NELSON'S ALTER EGO TRUST, by its entry to this case and
13 failure to assert any jurisdictional challenge, has assented to this Court's entry of final
14 orders in this proceeding.

15 27. This Court may enter a final judgment herein pursuant to NRS 125.130,
16 subject to review by the Nevada Supreme Court. Also, ERIC's wrongful conduct has
17 caused and will cause irreparable injury to LYNITA and the community estate, and
18 given ERIC's continued wrongdoing with respect to ERIC NELSON'S ALTER EGO
19 TRUST, LYNITA lacks adequate remedies at law to address ERIC's wrongful conduct.
20 As such, LYNITA seeks the entry of a temporary restraining order, preliminary
21 injunction, and permanent injunction.

22 ADDITIONAL FACTS

23 28. On or about May 30, 2001, ERIC caused ERIC NELSON'S ALTER EGO
24 TRUST to be formed. At that time, ERIC named himself as the Investment Trustee
25 of ERIC NELSON'S ALTER EGO TRUST, and named LANA as the Distribution
26 Trustee of ERIC NELSON'S ALTER EGO TRUST.

27 29. On or about May 30, 2001, ERIC caused the LSN TRUST to be formed.
28 At that time, ERIC instructed LYNITA to name LYNITA as the Investment Trustee

1 of the LSN TRUST, and ERIC named LANA as the Distribution Trustee of the LSN
2 TRUST. Trusting her husband to protect her and the community as he had repeatedly
3 promised to do, LYNITA signed all paperwork presented to her to create the LSN
4 TRUST.

5 30. ERIC NELSON'S ALTER EGO TRUST and the LSN TRUST are
6 purportedly Nevada spendthrift trusts. In reality, at all times, ERIC NELSON'S
7 ALTER EGO TRUST, as well as the LSN TRUST, were the alter egos of ERIC. ERIC's
8 unity of interest with ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
9 is such that their separate personalities ceased to exist. ERIC used ERIC NELSON'S
10 ALTER EGO TRUST's, and the LSN TRUST's assets as his own, and recognizing the
11 separate existence of the ERIC NELSON'S ALTER EGO TRUST, or the LSN TRUST
12 would result in a manifest fraud and injustice.

13 31. ERIC has provided sworn testimony before this Court that ERIC
14 NELSON'S ALTER EGO TRUST, and the LSN TRUST were created for asset
15 protection purposes. Specifically, in the event something happened to ERIC, ERIC did
16 not have to carry life insurance. ERIC would put safe assets into the LSN TRUST for
17 LYNITA and the parties' children, and the much more volatile assets into ERIC
18 NELSON'S ALTER EGO TRUST. Both Trusts were created by Jeffrey Burr, Esq., and
19 maintained to provide ERIC flexibility in his management of the assets and of tax
20 implications. ERIC admits to managing both Trusts, and further admits that the intent
21 was to level off ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
22 annually by putting assets in ERIC NELSON'S ALTER EGO TRUST, or the LSN
23 TRUST depending on the transaction and to bottom line – protect LYNITA. At no
24 time did ERIC state that the creation of ERIC NELSON'S ALTER EGO TRUST, or
25 the LSN TRUST were to limit either his or LYNITA's rights to receive at least an equal
26 division of assets upon a dissolution of their marriage, or to remove any asset from the
27 realm of community property created during the parties' marriage. In fact, Jeffrey Burr,
28 Esq. testified in the Instant Divorce Action on November 22, 2010, and by his

1 testimony confirmed that the sole intent of both ERIC and LYNITA at the time of the
2 creation of the Trusts was to protect their community assets from third-party creditors;
3 the Trusts were not intended to create separate property for either ERIC or LYNITA.
4 Mr. Burr further confirmed that it was the intent of both ERIC and LYNITA for the
5 assets held in both Trusts to continue to be the parties' community property.

6 32. LYNITA, upon information and belief, and on that basis alleges, that all
7 of the acts set forth in this Pleading alleged to have been done by ERIC and/or one or
8 more of the co-conspirators, were, where applicable, authorized, approved, and/or
9 ratified by one another in breach of each individual's fiduciary duties to another and
10 to the detriment of LYNITA.

11 33. LYNITA, upon information and belief, and on that basis alleges, that
12 where applicable, ERIC and/or one or more of the co-conspirators, have been, at all
13 material times, acting with the full knowledge, consent, authority, ratification and/or
14 permission of the other named persons.

15 34. LYNITA, upon information and belief, and on that basis alleges, that
16 where applicable, ERIC, and/or one or more of the co-conspirators, knowingly and
17 substantially assisted, encouraged, conspired with, authorized, requested, commanded,
18 ratified, and/or recklessly tolerated the statements and actions of each other in order
19 to engage in a scheme to defraud LYNITA of her interest in community assets and the
20 community estate.

21 35. Pursuant to the terms of Section 2.1 of ERIC NELSON'S ALTER EGO
22 TRUST, ERIC and ERIC's five (5) living children are named as beneficiaries of ERIC
23 NELSON'S ALTER EGO TRUST. Pursuant to Article IV of ERIC NELSON'S ALTER
24 EGO TRUST, LYNITA is named as a beneficiary of ERIC NELSON'S ALTER EGO
25 TRUST.

26 36. Pursuant to the terms of Section 2.1 of the LSN TRUST, LYNITA and
27 LYNITA's five (5) living children are named as beneficiaries of the LSN TRUST.

28 ...

1 37. Both Trusts have identical language concerning the use of trust income,
2 veto rights of the Trustor, powers of the Investment Trustee, and powers of the
3 Distribution Trustee.

4 38. Pursuant to the terms of Section 3.1 of both Trusts, the income of each
5 Trust is to be used as follows:

6 [T]o manage, invest and reinvest same, to collect the income thereof, and
7 to pay over or apply the net income and/or principal thereof, and in such
8 amounts and proportions, including all to the exclusion of the others, and
9 at such time or times as the Trustees, in their sole and absolute
10 discretion, shall determine, to or for the benefit of such one or more
11 members of the class consisting of the Trustor, the Trustor's issue and
12 other beneficiaries named herein or as described in Section 2.1 above,
13 until the death of Trustor.

14 39. Pursuant to the terms of Section 3.3 of both Trusts, the Trustor, during
15 the Trustor's lifetime, retains a veto right over "any payment or application of income
16 or principal to any beneficiary other than the Trustor . . .," and may direct that the
17 Distribution Trustee "shall not make and/or authorize the intended payment or
18 application to the intended beneficiary."

19 40. Pursuant to the terms of Section 3.3 of both Trusts,

20 [A]ny decision to make a distribution to the Trustor may not be made by
21 the Trustor, even though the Trustor may be serving as a Trustee
22 hereunder. Prior to any distribution to the Trustor of either income or
23 principal of Trust estate, a meeting of the majority of the Trustees, which
24 majority must also include the Distribution Trustee, shall be held. At
25 such meeting the Trustees shall discuss the advisability of making a
26 distribution of the Trust estate to the Trustor. Upon vote of the
27 Distribution Trustee and a majority of the other Trustees in attendance
28 at such meeting, which vote must in all events include the affirmative
vote of the Distribution Trustee, the Trustee may authorize and carry out
the distribution of Trust income and/or principal to the Trustors.

41. Pursuant to the terms of Section 3.4 of both Trusts,

In the event any distribution of any of the Trust estate shall be made to
the Trustor, and if such distribution is not previously authorized by the
Trustees in the manner as required pursuant to Section 3.3 above, then
such distribution made to the Trustor shall be void and the Distribution
Trustee shall have a lien against the Trust estate distributed to the
Trustor and such lien shall also extend if necessary to make the Trust
estate whole, to any and all other assets of the Trustor.

...

1 42. The powers afforded to the Investment Trustee by the Trusts are as set
2 forth in Section 12.1 of both Trusts. The Investment Trustee has no other powers over
3 the Trusts' assets other than as specifically set forth in Section 12.1 of the Trusts.

4 43. Pursuant to the terms of Section 12.2 of both Trusts, the "Distribution
5 Trustee shall have the power to authorize distribution of principal and/or income to the
6 beneficiaries hereunder at times and in amounts as determined in the sole discretion
7 of the Distribution Trustee, subject only to the veto power vested in the Trustor,
8 according to the standards set forth in Section 3.1 above."

9 44. LYNITA, upon information and belief, and on that basis alleges, that
10 LANA is intertwined with ERIC and ERIC's entities, including being ERIC's employee,
11 an investor in at least one of ERIC's entities, and a close friend and confidant of ERIC.
12 LANA's legal bills incurred in this action are presently being paid by assets held in
13 ERIC NELSON'S ALTER EGO TRUST, in violation of the terms of ERIC NELSON'S
14 ALTER EGO TRUST.

15 45. LYNITA, upon information and belief, and on that basis alleges, that
16 LANA, in her capacity as Distribution Trustee of ERIC NELSON'S ALTER EGO
17 TRUST, has made repeated distributions of trust assets in violation of the specific
18 terms of the Trust.

19 46. LYNITA, upon information and belief, and on that basis alleges, that
20 ERIC has controlled LANA's actions as Distribution Trustee of ERIC NELSON'S
21 ALTER EGO TRUST since its creation, that LANA has breached her duties as
22 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and that LANA has
23 had no independent authority to exercise the powers afforded to the Distribution
24 Trustee by ERIC NELSON'S ALTER EGO TRUST, but has performed exactly as ERIC
25 instructed.

26 ...

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1 47. On February 22, 2007, LANA was replaced by NOLA as the Distribution
2 Trustee for ERIC NELSON'S ALTER EGO TRUST at ERIC's request. NOLA is
3 ERIC's sister and is intertwined with ERIC and ERIC's entities. NOLA is not an
4 independent trustee as defined by Section 672(c) of the Internal Revenue Code, as she
5 is related by blood to ERIC.

6 48. LYNITA, upon information and belief, and on that basis alleges, that
7 ERIC has controlled NOLA's actions as Distribution Trustee of ERIC NELSON'S
8 ALTER EGO TRUST since its creation, that NOLA has breached her duties as
9 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and that NOLA has
10 had no independent authority to exercise the powers afforded to the Distribution
11 Trustee by ERIC NELSON'S ALTER EGO TRUST, but has performed exactly as ERIC
12 instructed.

13 49. LYNITA, upon information and belief, and on that basis alleges, that
14 NOLA is the current Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST.

15 50. LYNITA, upon information and belief, and on that basis alleges, that
16 ERIC has controlled LANA's actions as Distribution Trustee of the LSN TRUST since
17 its creation, that LANA has breached her duties as Distribution Trustee of the LSN
18 TRUST, and that LANA has had no independent authority to exercise the powers
19 afforded to the Distribution Trustee by the LSN TRUST, but has performed exactly
20 as ERIC instructed.

21 51. On February 22, 2007, LANA was replaced by NOLA as the Distribution
22 Trustee for the LSN TRUST at ERIC's request. NOLA is ERIC's sister and is
23 intertwined with ERIC and ERIC's entities. NOLA is not an independent trustee as
24 defined by Section 672(c) of the Internal Revenue Code, as she is related by marriage
25 to LYNITA.

26 52. LYNITA, upon information and belief, and on that basis alleges, that
27 ERIC has controlled NOLA's actions as Distribution Trustee of the LSN TRUST since
28 her appointment as Distribution Trustee of the LSN TRUST, that NOLA has breached

1 her duties as Distribution Trustee of the LSN TRUST, and that NOLA has had no
2 independent authority to exercise the powers afforded to the Distribution Trustee by
3 the LSN TRUST, but has performed exactly as ERIC instructed.

4 53. LYNITA, upon information and belief, and on that basis alleges, that
5 since the creation of ERIC NELSON'S ALTER EGO TRUST, without adequate
6 consideration, trust assets have been inappropriately distributed to ERIC and third
7 parties in violation of the terms of ERIC NELSON'S ALTER EGO TRUST; without
8 adequate consideration, trust assets have been sold in violation of the terms of ERIC
9 NELSON'S ALTER EGO TRUST; and without adequate consideration, trust assets
10 have been transferred to other entities in violation of the terms of ERIC NELSON'S
11 ALTER EGO TRUST.

12 54. LYNITA, upon information and belief, and on that basis alleges, that
13 since the creation of the LSN TRUST, without adequate consideration, trust assets
14 have been inappropriately distributed to ERIC and third parties in violation of the
15 terms of the LSN TRUST; without adequate consideration, trust assets have been sold
16 in violation of the terms of the LSN TRUST; and without adequate consideration, trust
17 assets have been transferred to other entities in violation of the terms of the LSN
18 TRUST.

19 55. LYNITA, upon information and belief, and on that basis alleges, that
20 since the creation of the LSN TRUST, trust assets have been inappropriately
21 distributed to ERIC and third parties in violation of the terms of the LSN TRUST;
22 trust assets have been sold in violation of the terms of the LSN TRUST; and trust
23 assets have been transferred to other entities in violation of the terms of the LSN
24 TRUST.

25 56. LYNITA, upon information and belief, and on that basis alleges, that
26 since the creation of ERIC NELSON'S ALTER EGO TRUST, trust assets have been
27 inappropriately distributed to ERIC and third parties in violation of the terms of the

28 ...

1 Trust; trust assets have been sold in violation of the terms of the Trust; and trust assets
2 have been transferred to other entities in violation of the terms of the Trust.

3 57. On December 8, 2011, Larry L. Bertsch, CPA, CFF, and Nicholas S.
4 Miller, CFE, of the accounting firm of Larry L. Bertsch, CPA & Associates, the Court
5 appointed forensic accountants, filed a report entitled "Source and Application of
6 Funds for Eric L. Nelson Nevada Trust" ("Mr. Bertsch's Report") documenting some
7 of the inappropriate distributions to ERIC and third parties from ERIC NELSON'S
8 ALTER EGO TRUST during the period January 1, 2009 through May 31, 2011.

9 58. Mr. Bertsch's Report outlines the following payments to ERIC, ERIC's
10 family members, and other third parties during the time period audited, all of which,
11 upon information and belief, are in direct contravention of the terms of ERIC
12 NELSON'S ALTER EGO TRUST:

- 13 A. \$56,000.00 paid to Element Iron & Design, LLC and ERIC's
14 Nephew, Brock Nelson;
- 15 B. \$1,304,368.17 paid to ERIC's brother, Clarence Nelson, or Cal's
16 Blue Water Marine, a company owned by Clarence Nelson;
- 17 C. \$30,000.00 paid to ERIC's sister, Carlene Gutierrez, and/or The
18 Grotta Group, LLC, a company for which Carlene Gutierrez is a
19 member;
- 20 D. \$3,000.00 paid to ERIC's nephew, and NOLA's son, Chad Ramos;
- 21 E. \$5,000.00 paid to ERIC's nephew, Eric T. Nelson;
- 22 F. \$25,025.00 paid to ERIC's nephew, and NOLA's son, Jesse
23 Harber;
- 24 G. \$13,318.83 paid to ERIC's brother-in-law, and NOLA's husband,
25 Paul Harber;
- 26 H. \$19,975.00 paid to ERIC's brother, Paul Nelson; and
- 27 I. \$3,000.00 paid to ERIC's nephew, Ryan Nelson.

28 ...

1 59. Mr. Bertsch's Report also documents \$90,607.89 in personal expenditures
2 paid for ERIC from ERIC NELSON'S ALTER EGO TRUST for legal services,
3 automobile purchases, charitable contributions, "expenses designated by [ERIC] to be
4 personal," gifts, gym memberships, Las Vegas hotels, music service, restaurants,
5 sporting event tickets, and vacations.

6 60. Mr. Bertsch's Report also indicates that ERIC took \$1,243,623.47 in
7 payments to himself and "distributions" from ERIC NELSON'S ALTER EGO TRUST
8 between January 2009, and May 2011.

9 61. Upon information and belief, there were countless other inappropriate
10 distributions to ERIC and third parties from ERIC NELSON'S ALTER EGO TRUST
11 during the period preceding Mr. Bertsch's Report, including, but not limited to,
12 \$23,675.00 paid to Chad Ramos in June and July 2007, \$12,500.00 paid to Paul
13 Harber in June 2007, and \$4,900.00 in Christmas gifts from ERIC to Briana Ramos,
14 Joseph Lawson, Chad Ramos, ROCHELLE and JOAN in December 2007.

15 62. On May 6, 2009, ERIC filed his Complaint for Divorce against LYNITA.
16 However, ERIC has engaged in "divorce planning" since at least 2003.

17 63. On multiple dates between August 30, 2011 and present, ERIC testified
18 before this Court and repeatedly asserted that all assets held by ERIC NELSON'S
19 ALTER EGO TRUST, and the LSN TRUST, are community assets owned by ERIC
20 and LYNITA, and merely titled in the name of such trusts.

21 64. On multiple dates between August 30, 2011 and present, ERIC testified
22 before this Court and repeatedly asserted he has managed all assets in ERIC
23 NELSON'S ALTER EGO TRUST, and all assets held in the LSN TRUST.

24 65. Until early 2009, LYNITA has never directed or managed any aspect of
25 the LSN TRUST. Rather, LYNITA relied upon ERIC to direct and manage all assets
26 held by the LSN TRUST.

27 66. LYNITA, upon information and belief, and on that basis alleges, that
28 there exists, and at all times mentioned herein existed, a unity of interest and effective

1 ownership between ERIC and ERIC NELSON'S ALTER EGO TRUST, and ERIC and
2 the LSN TRUST, such that any individuality or separateness between ERIC and ERIC
3 NELSON'S ALTER EGO TRUST, and ERIC and the LSN TRUST, ceased to exist.

4 67. LYNITA, upon information and belief, and on that basis alleges, that
5 ERIC invested trust assets of both Trusts with third parties that ERIC controlled and
6 directed, or in which ERIC held a direct financial interest, for ERIC's own benefit.

7 68. LYNITA, upon information and belief, and on that basis alleges, that
8 ERIC directed one or more of the co-conspirators to distribute trust assets from both
9 Trusts to individuals and entities who were not beneficiaries of either trust, for ERIC's
10 own benefit.

11 69. ERIC, in his capacity as Investment Trustee of ERIC NELSON'S ALTER
12 EGO TRUST, has over funded and ignored the formalities of ERIC NELSON'S ALTER
13 EGO TRUST, and with the assistance of one or more of the co-conspirators, has
14 operated both Trusts as his own personal piggy bank.

15 70. ERIC and one or more of ERIC's co-conspirators, have also transferred
16 assets between ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, or
17 ERIC's and LYNITA's community assets to both Trusts, without authority from
18 LYNITA, forging LYNITA's signature at times to accomplish such transfers.

19 71. Adherence to the fiction of a separate existence between ERIC and ERIC
20 NELSON'S ALTER EGO TRUST, and the LSN TRUST would sanction fraud and
21 permit injustice as it would inhibit LYNITA from receiving her equal share of the
22 community assets created during the parties' lengthy marriage.

23 72. Since the initiation of this divorce litigation, ERIC has continuously
24 asserted that the assets of ERIC NELSON'S ALTER EGO TRUST are his personal
25 assets and are subject to division in this Instant Divorce Action.

26 73. Since the initiation of this divorce litigation, ERIC has continuously
27 asserted that the assets of the LSN TRUST are LYNITA's assets and are subject to
28 division in this Instant Divorce Action.

1 74. ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST are
2 illusory, sham trusts as they are being used by ERIC to secrete community property
3 from LYNITA in an effort to minimize the assets LYNITA will receive upon conclusion
4 of this Instant Divorce Action.

5 75. LYNITA, upon information and belief, and on that basis alleges, that
6 ERIC's actions since the start of this Instant Divorce Action have drained ERIC
7 NELSON'S ALTER EGO TRUST, and the LSN TRUST of nearly all liquidity, in an
8 effort to entice LYNITA to settle this action. ERIC's actions further demonstrate his
9 game playing, and establish that proper trust formalities have not been followed with
10 respect to ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, justifying
11 piercing the veil of ERIC NELSON'S ALTER EGO TRUST.

12 76. LYNITA, upon information and belief, and on that basis alleges, that
13 separate ledgers and business records have not been maintained for ERIC NELSON'S
14 ALTER EGO TRUST, and the LSN TRUST, or have been maintained on the same
15 accounting software used and maintained by ERIC's other entities. ERIC's
16 commingling of the ledgers for ERIC NELSON'S ALTER EGO TRUST, and the LSN
17 TRUST, and ERIC's personal entities and assets, further support LYNITA's allegations
18 that ERIC has exerted influence and control over the co-conspirators, and ERIC
19 NELSON'S ALTER EGO TRUST's, and the LSN TRUST's business affairs, and the
20 lack of a separate identity of both Trusts.

21 77. The above referenced activities all demonstrate that (1) ERIC is directing
22 and controlling the activities of ERIC NELSON'S ALTER EGO TRUST, and the LSN
23 TRUST; (2) ERIC NELSON'S ALTER EGO TRUST's, and the LSN TRUST's
24 operational formalities are not being followed, and in fact are being directly
25 contravened; (3) ERIC broke the sanctity of ERIC NELSON'S ALTER EGO TRUST
26 and the LSN TRUST by withdrawing or directing trust assets for his own benefit; (4)
27 ERIC NELSON'S ALTER EGO TRUST and the LSN TRUST are nothing more than

28 ...

1 sham, illusory trusts and ERIC's alter egos used in an attempt to minimize the assets
2 LYNITA will receive upon the conclusion of this Instant Divorce Action.

3 **FIRST CLAIM FOR RELIEF**
4 **(VEIL-PIERCING AGAINST ERIC, LANA, NOLA, AND**
5 **ERIC NELSON'S ALTER EGO TRUST)**

6 78. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
7 through 77 of this Pleading as if fully set forth herein.

8 79. ERIC's actions demonstrate that ERIC NELSON'S ALTER EGO TRUST,
9 and the former and/or current Distribution Trustees of ERIC NELSON'S ALTER EGO
10 TRUST, LANA and NOLA, were influenced, directed, controlled and governed by
11 ERIC in all respects as though no trust actually existed.

12 80. There has been such unity of interest and ownership between ERIC and
13 ERIC NELSON'S ALTER EGO TRUST that one is inseparable from the other.

14 81. The facts show that adherence to the fiction of ERIC NELSON'S ALTER
15 EGO TRUST as a separate trust entity would, under the circumstances, sanction fraud
16 and promote injustice.

17 82. Pursuant to NRS 78.747, and/or NRS 163.418, LYNITA seeks a
18 declaratory judgment piercing the veil of ERIC NELSON'S ALTER EGO TRUST, and
19 declaring that the assets held in ERIC NELSON'S ALTER EGO TRUST are the
20 community assets of ERIC and LYNITA, subject to division in the Instant Divorce
21 Action.

22 83. LYNITA has been required to employ the services of her attorneys to
23 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
24 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
25 attorneys' fees and costs of suit she has incurred and will continue to incur in this
26 action.

27 ...

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...

1 **SECOND CLAIM FOR RELIEF**
2 **(REVERSE VEIL-PIERCING AGAINST ERIC, LANA, NOLA, AND**
 ERIC NELSON'S ALTER EGO TRUST)

3 84. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
4 through 83 of this Pleading as if fully set forth herein.

5 85. ERIC's actions demonstrate that ERIC NELSON'S ALTER EGO TRUST,
6 and the former and/or current Distribution Trustees of ERIC NELSON'S ALTER EGO
7 TRUST, LANA and NOLA, were influenced, directed, controlled and governed by
8 ERIC in all respects as though no trust actually existed.

9 86. There has been such unity of interest and ownership between ERIC and
10 ERIC NELSON'S ALTER EGO TRUST that one is inseparable from the other.

11 87. The facts show that adherence to the fiction of ERIC NELSON'S ALTER
12 EGO TRUST as a separate trust entity would, under the circumstances, sanction fraud
13 and promote injustice.

14 88. Pursuant to NRS 78.747, and/or NRS 163.418, LYNITA seeks a
15 declaratory judgment piercing the veil of ERIC NELSON'S ALTER EGO TRUST, and
16 declaring that the assets held in ERIC NELSON'S ALTER EGO TRUST are the
17 community assets of ERIC and LYNITA, subject to division in the Instant Divorce
18 Action.

19 89. LYNITA has been required to employ the services of her attorneys to
20 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
21 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
22 attorneys' fees and costs of suit she has incurred and will continue to incur in this
23 action.

24 **THIRD CLAIM FOR RELIEF**
25 **(BREACH OF FIDUCIARY DUTY AGAINST ERIC)**

26 90. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
27 through 89 of this Pleading as if fully set forth herein.

28 ...

1 91. A fiduciary duty arises from the existence of the marital relationship,
2 precipitating a duty to create and sustain community assets and disclose factors which
3 may effect community assets.

4 92. A fiduciary relationship existed between ERIC and LYNITA when ERIC
5 NELSON'S ALTER EGO TRUST was created, and at all time relevant hereto.

6 93. As a result of this fiduciary relationship, ERIC was bound to act in good
7 faith and with due regard to the interests of LYNITA who remained his wife and the
8 mother of his five (5) children. ERIC had an obligation to not act in any manner so
9 as to destroy or injure the parties' community assets, or to injure LYNITA's ability to
10 receive at least her one-half (1/2) share, if not more, of the parties' community
11 property.

12 94. As a direct and proximate result of ERIC's breach of his fiduciary duty to
13 LYNITA, LYNITA has sustained actual damages in excess of \$10,000.00.

14 95. Moreover, in breaching his fiduciary duties to LYNITA, ERIC acted with
15 oppression, fraud, and malice, and LYNITA is entitled to punitive damages in an
16 amount in excess of \$10,000.00.

17 96. LYNITA has been required to employ the services of her attorneys to
18 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
19 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
20 attorneys' fees and costs of suit she has incurred and will continue to incur in this
21 action.

22 **FOURTH CLAIM FOR RELIEF**
23 **(BREACH OF FIDUCIARY DUTY AGAINST**
 LANA AND NOLA)

24 97. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
25 through 96 of this Pleading as if fully set forth herein.

26 98. A fiduciary duty is deemed to exist when one party is bound to act for
27 the benefit of the other party. Such a relationship imposes a duty of utmost good faith
28 and loyalty.

99. A fiduciary relationship existed between LYNITA and LANA when LANA assumed the position of Distribution Trustee for the LSN TRUST.

100. A fiduciary relationship existed between LYNITA and NOLA when NOLA assumed the position of Distribution Trustee for the LSN TRUST.

101. As a result of this fiduciary relationship, LANA and NOLA were individually bound to act in good faith and with due regard to the interests of LYNITA, who was a beneficiary of the LSN TRUST. LANA and NOLA individually had an obligation to not act in any manner adverse to LYNITA, or in any way which would destroy or injure LYNITA, or LYNITA's ability to benefit from the existence of the LSN TRUST.

102. LANA and NOLA each individually breached their fiduciary duty to LYNITA by aligning themselves with ERIC, and acting as ERIC directed, even when such actions were to the detriment of LYNITA and the LSN TRUST.

103. As a direct and proximate result of LANA's and NOLA's breach of fiduciary duty to LYNITA, LYNITA has sustained actual damages in excess of \$10,000.00.

104. Moreover, in breaching their fiduciary duties to LYNITA, LANA and NOLA acted with oppression, fraud, and malice, and LYNITA is entitled to punitive damages in an amount in excess of \$10,000.00.

105. LYNITA has been required to employ the services of her attorneys to protect her interests as set forth in this Pleading, and to file and prosecute this Pleading on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable attorneys' fees and costs of suit she has incurred and will continue to incur in this action.

FIFTH CLAIM FOR RELIEF
(FRAUD, DECEIT AND INTENTIONAL MISREPRESENTATION
AGAINST ERIC)

106. LYNITA repeats and re-alleges all matters asserted in paragraphs 1 through 105 of this Pleading as if fully set forth herein.

1 107. As alleged above, at all times relevant hereto ERIC represented to
2 LYNITA that all assets transferred to, and held in the names of the LSN TRUST, and
3 ERIC NELSON'S ALTER EGO TRUST, were the parties' community property assets.

4 108. ERIC now contends that the parties have no interest in the assets held by
5 the LSN TRUST, and ERIC NELSON'S ALTER EGO TRUST.

6 109. As further alleged above, while representing to LYNITA that the assets
7 transferred to, and held in the names of the LSN TRUST, and ERIC NELSON'S
8 ALTER EGO TRUST were the parties' community property, ERIC engaged in a course
9 of conduct intended to diminish, minimize and destroy such property interests to
10 prevent LYNITA from recovering her community interest in such property in the
11 Instant Divorce Action.

12 110. As a direct and proximate result of the aforementioned wrongful conduct
13 of ERIC, LYNITA has sustained actual damages in excess of \$10,000.00.

14 111. In committing the acts alleged above, ERIC acted with oppression, fraud,
15 and malice, and LYNITA is entitled to punitive damages in an amount in excess of
16 \$10,000.00.

17 112. LYNITA has been required to employ the services of her attorneys to
18 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
19 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
20 attorneys' fees and costs of suit she has incurred and will continue to incur in this
21 action.

22 **SIXTH CLAIM FOR RELIEF**
23 **(CONVERSION AGAINST ERIC, LANA, NOLA, AND**
 ERIC NELSON'S ALTER EGO TRUST)

24 113. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
25 through 112 of this Pleading as if fully set forth herein.

26 114. As alleged above, throughout ERIC's and LYNITA's marriage, and the
27 first twenty-seven (27) months of this Instant Divorce Action, ERIC asserted that the

28 ...

1 property held by ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, were
2 the parties' community property.

3 115. ERIC has suddenly changed positions, causing ERIC NELSON'S ALTER
4 EGO TRUST to wrongfully exert dominion over ERIC's and LYNITA's community
5 property, in denial of, and inconsistent with the parties' community property rights.

6 116. As a direct and proximate result of the aforementioned conversion of
7 community property assets by ERIC and ERIC NELSON'S ALTER EGO TRUST,
8 LYNITA has sustained actual damages in excess of \$10,000.00.

9 117. LYNITA has been required to employ the services of her attorneys to
10 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
11 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
12 attorneys' fees and costs of suit she has incurred and will continue to incur in this
13 action.

14 **SEVENTH CLAIM FOR RELIEF**
15 **(MONEY HAD AND RECEIVED AGAINST ERIC, LANA, NOLA, AND**
16 **ERIC NELSON'S ALTER EGO TRUST)**

17 118. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
18 through 117 of this Pleading as if fully set forth herein.

19 119. As alleged above, throughout ERIC's and LYNITA's marriage, and the
20 first twenty-seven (27) months of this Instant Divorce Action, ERIC asserted that the
21 property held by ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, were
22 the parties' community property.

23 120. As a result, ERIC and ERIC NELSON'S ALTER EGO TRUST received
24 possession of money and property belonging to ERIC and LYNITA as community
25 property, which ERIC and ERIC NELSON'S ALTER EGO TRUST ought to, in equity
26 and good conscience, pay over to ERIC and LYNITA.

27 121. LYNITA has been required to employ the services of her attorneys to
28 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable

1 attorneys' fees and costs of suit she has incurred and will continue to incur in this
2 action.

3
4 **EIGHTH CLAIM FOR RELIEF**
(FRAUD IN THE INDUCEMENT AGAINST ERIC)

5 122. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
6 through 121 of this Pleading as if fully set forth herein.

7 123. On or about May 30, 2001, ERIC caused ERIC NELSON'S ALTER EGO
8 TRUST, and the LSN TRUST to be formed.

9 124. From May 30, 2001, to August 2011, ERIC represented to LYNITA that
10 all properties held by ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST
11 were the parties' community properties.

12 125. ERIC knew and believed that such representations were made without
13 sufficient basis, if the LSN TRUST and ERIC NELSON'S ALTER EGO TRUST were
14 valid, spendthrift trusts.

15 126. Trusting her husband to protect her and the community as he had
16 repeatedly promised to do, LYNITA justifiably relied on ERIC's representations and
17 signed documents presented to her to create the LSN TRUST, and to transfer assets
18 to and from the LSN TRUST, and ERIC NELSON'S ALTER EGO TRUST.

19 127. As a direct and proximate result of the aforementioned wrongful conduct
20 of ERIC, LYNITA has sustained actual damages in excess of \$10,000.00.

21 128. In committing the acts alleged above, ERIC acted with oppression, fraud,
22 and malice, and LYNITA is entitled to punitive damages in an amount in excess of
23 \$10,000.00.

24 129. LYNITA has been required to employ the services of her attorneys to
25 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
26 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
27 attorneys' fees and costs of suit she has incurred and will continue to incur in this
28 action.

1 **NINTH CLAIM FOR RELIEF**
2 **(UNJUST ENRICHMENT AGAINST ERIC, LANA, NOLA, AND**
3 **ERIC NELSON'S ALTER EGO TRUST)**

4 130. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
5 through 129 of this Pleading as if fully set forth herein.

6 131. As alleged above, ERIC and ERIC NELSON'S ALTER EGO TRUST
7 received, and/or accepted possession of money and property belonging to ERIC and
8 LYNITA as community property.

9 132. ERIC's and ERIC NELSON'S ALTER EGO TRUST'S retention of such
10 money and property is against the fundamental principles of justice or equity and good
11 conscience.

12 133. As a direct and proximate result of the aforementioned acts, ERIC and
13 ERIC NELSON'S ALTER EGO TRUST have been unjustly enriched, to the detriment
14 of LYNITA, causing LYNITA actual damages in excess of \$10,000.00.

15 134. LYNITA has been required to employ the services of her attorneys to
16 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
17 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
18 attorneys' fees and costs of suit she has incurred and will continue to incur in this
19 action.

20 **TENTH CLAIM FOR RELIEF**
21 **(BREACH OF ORAL CONTRACT AGAINST ERIC)**

22 135. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
23 through 134 of this Pleading as if fully set forth herein.

24 136. On or about May 30, 2001, ERIC caused ERIC NELSON'S ALTER EGO
25 TRUST, and the LSN TRUST to be formed.

26 137. From May 30, 2001, to August 2011, ERIC represented to LYNITA and
27 agreed that all properties held by ERIC NELSON'S ALTER EGO TRUST, and the
28 LSN TRUST were the parties' community properties. Trusting her husband to protect
her and the community as he had repeatedly promised to do, LYNITA signed

1 documents presented to her to create the LSN TRUST, and to transfer assets to and
2 from the LSN TRUST, and ERIC NELSON'S ALTER EGO TRUST.

3 138. ERIC has attempted to breach, or has in fact breached the oral agreement
4 with LYNITA to maintain the parties' rights to community property assets despite
5 titling same in the name of ERIC NELSON'S ALTER EGO TRUST, by causing ERIC
6 NELSON'S ALTER EGO TRUST to assert that LYNITA and ERIC have no interest
7 in the assets held by ERIC NELSON'S ALTER EGO TRUST in the Instant Divorce
8 Action.

9 139. As a direct and proximate result of the aforementioned breach, LYNITA
10 has sustained actual damages in excess of \$10,000.00.

11 140. LYNITA has been required to employ the services of her attorneys to
12 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
13 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
14 attorneys' fees and costs of suit she has incurred and will continue to incur in this
15 action.

16 **ELEVENTH CLAIM FOR RELIEF**
17 **(CONSPIRACY AGAINST ERIC, LANA, NOLA,**
18 **ROCHELLE, AND JOAN)**

19 141. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
20 through 140 of this Pleading as if fully set forth herein.

21 142. ERIC directed and controlled the distribution of income and assets to and
22 from ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, from May 30,
23 2001, through at least early 2011. ERIC's actions were committed to the detriment
24 of LYNITA, the LSN TRUST, and the community estate. Such acts include, but are
25 not limited to, the release of tens of thousands of dollars of trust income to ERIC and
26 other third parties, including ERIC's family members, during the time period October
27 1, 2001 through the present. Further, ERIC directed and controlled the release of trust
28 assets to fund ERIC's personal expenditures; directed and controlled the purchase of
assets with community funds only to later direct that title to such assets be held in the

1 name of ERIC NELSON'S ALTER EGO TRUST, or an entity wholly controlled by
2 ERIC NELSON'S ALTER EGO TRUST, rather than in ERIC's personal name, to
3 shield the assets from creditors and from distribution by this Court as part of this
4 Instant Divorce Action, inclusive of the transaction involving the Russell Road property
5 which has been discussed throughout this Instant Divorce Action; and directed and
6 controlled the transfer of assets between ERIC NELSON'S ALTER EGO TRUST, and
7 the LSN TRUST without compensation or for less than fair market value
8 compensation.

9 143. ERIC and one or more of ERIC's named co-conspirators, LANA, NOLA,
10 ROCHELLE, and JOAN, conspired with ERIC, knowingly agreed and consented to
11 ERIC's actions, and assisted ERIC to take such actions.

12 144. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
13 ROCHELLE, and JOAN, knowingly and substantially assisted ERIC in fraudulently
14 conveying assets out of ERIC NELSON'S ALTER EGO TRUST and the LSN TRUST,
15 ignoring the provisions of ERIC NELSON'S ALTER EGO TRUST and the LSN
16 TRUST, and provisions of Nevada law, to the detriment of LYNITA, the LSN TRUST,
17 and the community estate. LYNITA, upon information and belief, and on that basis
18 alleges, that while the co-conspirators actions were directed and controlled by ERIC,
19 each co-conspirator was aware of her role in assisting ERIC to the detriment of
20 LYNITA, the LSN TRUST, and the community estate.

21 145. As a direct and proximate result of such actions by ERIC, LANA, NOLA,
22 ROCHELLE, and JOAN, LYNITA has sustained actual damages in excess of
23 \$10,000.00.

24 146. In committing the acts alleged above, ERIC, LANA, NOLA, ROCHELLE,
25 and JOAN acted with oppression, fraud, and malice, and LYNITA is entitled to
26 punitive damages in an amount in excess of \$10,000.00.

27 147. LYNITA has been required to employ the services of her attorneys to
28 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading

1 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
2 attorneys' fees and costs of suit she has incurred and will continue to incur in this
3 action.

4 **TWELFTH CLAIM FOR RELIEF**
5 **(CONCERT OF ACTION FOR BREACH OF FIDUCIARY DUTY, FRAUD,**
6 **AND CONVERSION AGAINST ERIC, LANA, NOLA, ROCHELLE, AND**
7 **JOAN)**

8 148. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
9 through 147 of this Pleading as if fully set forth herein.

10 149. ERIC directed and controlled the distribution of income and assets to and
11 from ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, from May 30,
12 2001, through at least early 2011. ERIC's actions were committed to the detriment
13 of LYNITA, the LSN TRUST, and the community estate. Such acts include, but are
14 not limited to, the release of tens of thousands of dollars of trust income to ERIC and
15 other third parties, including ERIC's family members, during the time period October
16 1, 2001 through the present. Further, ERIC directed and controlled the release of trust
17 assets to fund ERIC's personal expenditures; directed and controlled the purchase of
18 assets with community funds only to later direct that title to such assets be held in the
19 name of ERIC NELSON'S ALTER EGO TRUST, or an entity wholly controlled by
20 ERIC NELSON'S ALTER EGO TRUST, rather than in ERIC's personal name; and
21 directed and controlled the transfer of assets between ERIC NELSON'S ALTER EGO
22 TRUST, and the LSN TRUST without compensation or for less than fair market value
23 compensation.

24 150. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
25 ROCHELLE, and JOAN, acted in concert with, knowingly agreed and allowed, and
26 substantially assisted ERIC to take the actions alleged above and throughout this
27 Pleading.

28 151. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
ROCHELLE, and JOAN, knowingly and substantially assisted ERIC in fraudulently

1 conveying assets out of ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
2 in breaching fiduciary duties owed to LYNITA, and in converting community assets to
3 ERIC NELSON'S ALTER EGO TRUST, to the detriment of LYNITA, the LSN
4 TRUST, and the community estate. LYNITA, upon information and belief, and on
5 that basis alleges, that while the co-conspirators actions were directed and controlled
6 by ERIC, each of the co-conspirators was aware of her role in assisting ERIC to the
7 detriment of LYNITA, the LSN TRUST, and the community estate.

8 152. As a direct and proximate result of such actions by ERIC, LANA, NOLA,
9 ROCHELLE, and JOAN, LYNITA has sustained actual damages in excess of
10 \$10,000.00.

11 153. In committing the acts alleged above, ERIC, LANA, NOLA, ROCHELLE,
12 and JOAN acted with oppression, fraud, and malice, and LYNITA is entitled to
13 punitive damages in an amount in excess of \$10,000.00.

14 154. LYNITA has been required to employ the services of her attorneys to
15 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
16 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
17 attorneys' fees and costs of suit she has incurred and will continue to incur in this
18 action.

19 **THIRTEENTH CLAIM FOR RELIEF**
20 **(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY, FRAUD, AND**
CONVERSION AGAINST ERIC, LANA, NOLA, ROCHELLE, AND JOAN)

21 155. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
22 through 154 of this Pleading as if fully set forth herein.

23 156. ERIC directed and controlled the distribution of income and assets to and
24 from ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, from May 30,
25 2001, through at least early 2011. ERIC's actions were committed to the detriment
26 of LYNITA, the LSN TRUST, and the community estate. Such acts include, but are
27 not limited to, the release of tens of thousands of dollars of trust income to ERIC and
28 other third parties, including ERIC's family members, during the time period October

1 1, 2001 through the present. Further, ERIC directed and controlled the release of trust
2 assets to fund ERIC's personal expenditures; directed and controlled the purchase of
3 assets with community funds only to later direct that title to such assets be held in the
4 name of ERIC NELSON'S ALTER EGO TRUST, or an entity wholly controlled by
5 ERIC NELSON'S ALTER EGO TRUST, rather than in ERIC's personal name; and
6 directed and controlled the transfer of assets between ERIC NELSON'S ALTER EGO
7 TRUST, and the LSN TRUST without compensation or for less than fair market value
8 compensation.

9 157. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
10 ROCHELLE, and JOAN, aided and abetted ERIC, and knowingly agreed and allowed
11 and substantially assisted ERIC to take the actions alleged above and throughout this
12 Pleading.

13 158. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
14 ROCHELLE, and JOAN, knowingly and substantially assisted ERIC in fraudulently
15 conveying assets out of ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
16 in breaching fiduciary duties owed to LYNITA, and in converting community assets to
17 ERIC NELSON'S ALTER EGO TRUST, to the detriment of LYNITA, the LSN
18 TRUST, and the community estate. LYNITA, upon information and belief, and on
19 that basis alleges, that while the co-conspirators actions were directed and controlled
20 by ERIC, each of the co-conspirators was aware of her role in assisting ERIC to the
21 detriment of LYNITA, the LSN TRUST, and the community estate.

22 159. As a direct and proximate result of such actions by ERIC, LANA, NOLA,
23 ROCHELLE, and JOAN, LYNITA has sustained actual damage in excess of
24 \$10,000.00.

25 160. In committing the acts alleged above, ERIC, LANA, NOLA, ROCHELLE,
26 and JOAN acted with oppression, fraud, and malice, and LYNITA is entitled to
27 punitive damages in an amount in excess of \$10,000.00.

28 ...

1 161. LYNITA has been required to employ the services of her attorneys to
2 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
3 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
4 attorneys' fees and costs of suit she has incurred and will continue to incur in this
5 action.

6 **FOURTEENTH CLAIM FOR RELIEF**
7 **(CONSTRUCTIVE TRUST AGAINST ERIC, LANA, NOLA, AND**
8 **ERIC NELSON'S ALTER EGO TRUST)**

9 162. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
through 161 of this Pleading as if fully set forth herein.

10 163. For the reasons set forth above, the assets, income, profits, rents, and fees
11 received by ERIC, or any of ERIC's intricate web of entities, including ERIC
12 NELSON'S ALTER EGO TRUST, belong, in good conscious, to ERIC and LYNITA
13 and are subject to division by this Court in this Instant Divorce Action.

14 164. For the reasons set forth above, all of ERIC NELSON'S ALTER EGO
15 TRUST's assets, including its interest in any third-party entity and real property,
16 belong, in good conscious, to ERIC and LYNITA and are subject to division by this
17 Court in this Instant Divorce Action.

18 165. ERIC NELSON'S ALTER EGO TRUST has wrongfully asserted
19 ownership and dominion over ERIC's and LYNITA's assets, and ERIC has retained
20 control of such assets, their revenues, or other proceeds for himself to the detriment of
21 LYNITA and the community estate.

22 166. In equity, a constructive trust in favor of LYNITA and the community
23 estate should be imposed over all assets in the possession or control of ERIC, and ERIC
24 NELSON'S ALTER EGO TRUST, and over all assets in the possession or control of
25 other entities or instrumentalities which are owned or controlled, directly or indirectly,
26 by ERIC and/or ERIC NELSON'S ALTER EGO TRUST.

27 167. LYNITA has been required to employ the services of her attorneys to
28 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading

1 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
2 attorneys' fees and costs of suit she has incurred and will continue to incur in this
3 action.

4 **FIFTEENTH CLAIM FOR RELIEF**
5 **(INJUNCTIVE RELIEF AGAINST ERIC, LANA, NOLA AND**
6 **ERIC NELSON'S ALTER EGO TRUST)**

7 168. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
8 through 167 of this pleading as if fully set forth herein.

9 169. The above referenced allegations demonstrate that ERIC and the co-
10 conspirators are ready, willing, and able to dissipate the assets of ERIC NELSON'S
11 ALTER EGO TRUST for improper expenditures on ERIC's behalf, and for excessive
12 and extravagant personal expenditures on behalf of ERIC NELSON'S ALTER EGO
13 TRUST (such as continued funding of improvements to the Bella Kathryn property,
14 and ERIC's personal vendetta through litigation against Paul Alanis, Jess Ravitch, the
15 Manesses and any other third person whom ERIC believes has wronged him) all to the
16 detriment of LYNITA and the community estate.

17 170. LYNITA and the community estate face the prospect of immediate,
18 severe, and irreparable injury should ERIC be allowed to continue his current course
19 of conduct with respect to ERIC NELSON'S ALTER EGO TRUST. By way of example
20 only, the injuries include the threat of complete dissipation of the Mellon bank account
21 and line of credit to fund litigation, assets which rightfully belong to LYNITA and the
22 community estate. Given ERIC's continuing conduct with respect to ERIC NELSON'S
23 ALTER EGO TRUST, LYNITA and the community estate lack adequate remedies at
24 law to address ERIC's wrongful conduct. As such, LYNITA seeks the entry of a
25 temporary restraining order, preliminary injunction, and permanent injunction.

26 171. LYNITA has been required to employ the services of her attorneys to
27 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
28 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable

...

1 attorneys' fees and costs of suit she has incurred and will continue to incur in this
2 action.

3 WHEREFORE, LYNITA SUE NELSON requests judgment as follows:

4 1. That ERIC NELSON'S ALTER EGO TRUST take nothing by way of the
5 Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST;

6 2. That the veil between ERIC and ERIC NELSON'S ALTER EGO TRUST
7 be pierced, and that ERIC NELSON'S ALTER EGO TRUST be declared to be ERIC's
8 alter ego;

9 3. Declaring that ERIC NELSON'S ALTER EGO TRUST is an illusory,
10 sham trust and not a valid, self-settled, Nevada spendthrift trust, and that the assets
11 of ERIC NELSON'S ALTER EGO TRUST are LYNITA's and ERIC's community
12 property, subject to division by this Court in the Instant Divorce Action;

13 4. Imposing a constructive trust on any property titled in the name of ERIC
14 NELSON'S ALTER EGO TRUST, and all other properties which are in the possession
15 or control of ERIC, and ERIC NELSON'S ALTER EGO TRUST, or in the possession
16 or control of other entities or instrumentalities which are owned or controlled, directly
17 or indirectly, by ERIC or ERIC NELSON'S ALTER EGO TRUST;

18 5. Entering a temporary restraining order, preliminary injunction, and
19 permanent injunction barring ERIC and ERIC NELSON'S ALTER EGO TRUST from
20 disposing of any assets held in ERIC NELSON'S ALTER EGO TRUST, or the LSN
21 TRUST;

22 6. Awarding judgment against ERIC, ERIC NELSON'S ALTER EGO
23 TRUST, LANA MARTIN, NOLA HARBER, ROCHELLE McGOWAN, and JOAN B.
24 RAMOS, jointly and severally, for all damages sustained by LYNITA and the
25 community estate by the conduct described herein in an amount in excess of
26 \$10,000.00, the exact amount of which to be proven at trial;

27 7. Awarding LYNITA punitive damages in an amount in excess of
28 \$10,000.00, the exact amount of which to be proven at trial;

1 8. For an award to LYNITA of the reasonable attorneys' fees and costs of
2 suit she has incurred and will continue to incur in this action; and

3 9. For such other and further relief as the Court deems just, equitable and
4 proper in the premises.

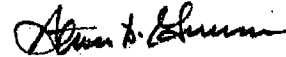
5 DATED this 20th day of December, 2011.

6 THE DICKERSON LAW GROUP

7
8 By Robert P. Dickerson
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EXHIBIT E

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CLERK OF THE COURT

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2 RHONDA K. FORSBERG, CHARTERED
3 RHONDA K. FORSBERG, ESQ.
4 Nevada State Bar No. 009557
5 1070 W. Horizon Ridge Parkway #100
6 Henderson, Nevada 89012
7 T: 702-800-3588
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9 Rhonda@jilllaw.com

10 *Attorneys for Counterdefendants/
11 Crossdefendants/Third-Party Defendants,
12 Eric Nelson, Individually*

13 EIGHTH JUDICIAL DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 ERIC L. NELSON,

16 Plaintiff/Counterdefendant,

17 vs.

18 LYNITA SUE NELSON,

19 Defendant/Counterclaimant.

20 ERIC L. NELSON NEVADA TRUST
21 Dated May 30, 2001, and LSN NEVADA
22 TRUST date May 30, 2001.

23 Necessary Parties (joined in this action
24 Pursuant to Stipulation and Order
25 entered August 9, 2011)

CASE NO: D-09-411537-D
DEPT NO: O

FAMILY DIVISION

1 LANA MARTIN, as Distribution Trustee
2 Of the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

3
4 Necessary Parties (joined in this action
5 Pursuant to Stipulation and Order
entered August 9, 2011)/Purported
6 Counterclaimant and Crossclaimant,

7 vs.

8 LYNITA SUE NELSON and ERIC NELSON,

9 Purported Cross-Defendant and
10 Counterdefendant.

11 LYNITA SUE NELSON,

12 Counterclaimant, Cross-Claimant,

13 vs.

14 ERIC L. NELSON, individually and as the
15 Investment Trustee of the ERIC L. NELSON
16 NEVADA TRUST dated May 30, 2001; the
ERIC L. NELSON NEVADA TRUST dated
17 May 30, 2001; LANA MARTIN, individually,
and as the current and/or former Distribution
18 Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001, and as the former
19 Distribution Trustee of the LSN NEVADA
20 TRUST date May 30, 2001); NOLA HARBER,
individually, and as the current and /or former
21 Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001, and as
22 the current and or former Distribution Trustee
23 of the LSN NEVADA TRUST dated May 30,
2001; Rochelle McGowan, individually; JOAN
24 B. RAMOS, individually; and DOES I through
25 X,

26 Counterdefendant, and/or Cross-
27 Defendants, and/or Third Party Defendants.
28

1 **ANSWER AND COUNTERCLAIM TO LYNITA SUE NELSON'S FIRST AMENDED CLAIMS**
2 **FOR RELIEF AGAINST ERIC L. NELSON INDIVIDUALLY AND AS INVESTMENT**
3 **TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST dated MAY 30, 2001**

4 Eric L. Nelson individually by and through his Counsel of Record, RHONDA K. FORSBERG,
5 ESQ., hereby files his Answer to Lynita Sue Nelson's ("Lynita") First Amended Claims for Relief as
6 follows:
7

8 **INTRODUCTION AND NATURE OF THE ACTION BEING FILED BY**
9 **LYNITA SUE NELSON**

10 1. Eric L. Nelson admits the allegations set forth in paragraphs 1.

11 2. In Paragraph 2, Eric admits that Lana Martin filed a document in the
12 aforementioned action entitled "Answer to Complaint for Divorce and Counterclaim and Cross-Claim"
13 on or around August 19, 2011. Eric denies the remaining allegations contained therein.
14

15 3. Eric L. Nelson denies the allegations set forth in paragraphs 8, 9 and 17.

16 4. In Paragraphs No.'s 3(A) - (G), 4, 7, Eric is without sufficient knowledge or
17 information to form a belief as to the truth of the allegation contained in said Paragraphs, and on that
18 basis denies each and every allegation contained therein.
19

20 5. In Paragraph 5, Eric admits that the Distribution Trustee filed the "Answer to
21 Complaint for Divorce and Counterclaim and Cross-Claim" approximately 27 months after the
22 Complaint for Divorce was filed. Eric denies the remaining allegations contained therein.
23

24 6. In Paragraph 6, Eric admits he has acted as investment trustee to the ELN Trust
25 and been an advisor to Lynita Sue Nelson in her capacity as investment trustee to the LSN Trust. Eric
26 denies the remaining allegations contained therein.

27 7. In Paragraph 10, Eric admits that Lana Martin and Nola Harber have served as the
28 Distribution Trustee of both the ELN Trust and the LSN Trust, and that Lana Martin currently serves as

1 the Distribution Trustee of the ELN Trust. Eric further admits that Joan B. Ramos and Rochelle
2 McGowan are employees of the ELN Trust and/or an entity owned by the ELN Trust. Eric Denies the
3 remaining allegations contained therein.
4

5 8. In Paragraph 11, Eric admits that distributions were made to Eric L. Nelson in
6 accordance with the terms of the ELN Trust. Eric denies the remaining allegations contained therein.

7 9. In Paragraph 12, Eric admits that Eric L. Nelson serves as the Investment Trustee
8 of the ELN Trust and has acted in accordance with the terms of the same. Eric denies the remaining
9 allegations contained therein.
10

11 10. In Paragraph 13, Eric admits that Joan B. Ramos and/or Rochelle McGowan are
12 employees of the ELN Trust and/or an entity owned by the ELN Trust. Eric denies the remaining
13 allegations contained therein.
14

15 11. In Paragraph 14, Eric admits he has acted as investment trustee to the ELN Trust
16 and been an advisor to Lynita Sue Nelson in her capacity as investment trustee to the LSN Trust. Eric
17 denies the remaining allegations contained therein.

18 12. In Paragraph 15, Eric admits he has acted as investment trustee to the ELN Trust
19 and been an advisor to Lynita Sue Nelson in her capacity as investment trustee to the LSN Trust. Eric
20 denies the remaining allegations contained therein.
21

22 13. In Paragraph 16, Eric admits that Lana e-mailed the law office of Jeffrey Burr in
23 or around June 2003, and that said e-mail speaks for itself. Eric denies the remaining allegations
24 contained therein.
25

26 PARTIES

27 14. Eric L. Nelson individually admits the allegations set forth in paragraphs 18.
28

1 15. In Paragraph 19, Eric admits that Lana Martin is a resident of Clark County,
2 Nevada and is the Distribution Trustee of the ELN Trust. Eric further admits that Lana Martin is a
3 former Distribution Trustee of the LSN Trust. Eric denies the remaining allegations contained therein.
4

5 16. In Paragraph 20, Eric admits that Nola Harber 1) was serving a voluntary mission
6 for The Church of Jesus Christ of Latter Day Saints in Hawaii; 2) is the sister of Eric L. Nelson; 3) is a
7 former Distribution Trustee of the ELN Trust; and 4) a former Distribution Trustee of the LSN Trust.
8 Eric denies the remaining allegations contained therein.
9

10 17. In Paragraph 21, Eric admits that Rochelle McGowan is a resident of Clark
11 County, Nevada and an employee of the ELN Trust or an entity owned y the ELN Trust. Eric denies
12 the remaining allegations contained therein.

13 18. In Paragraph 22, Eric admits that Joan B. Ramos is a resident of Clark County,
14 Nevada and an employee of the ELN Trust or an entity owned by the ELN Trust. Eric denies the
15 remaining allegations contained therein.
16

17 19. The allegations contained within paragraph 23 of the Cross-Claim state
18 conclusions to which no response is required. To the extent a response is required, the Trustee is
19 without sufficient knowledge or information to form a belief as to the truth of the allegations contained
20 in said Paragraph, and on that basis denies each and every allegation contained therein.
21

22 **JURISDICTION AND VENUE**

23 20. Eric L. Nelson denies the allegations set forth in paragraphs 24, 25, 26, and 27 of
24 the Cross Claim.

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ADDITIONAL FACTS

21. In Paragraph 28, Eric admits that the ELN Trust was created on or around May 30, 2001, and that Lana Martin was named as the Distribution Trustee and Eric L. Nelson was named as the Investment Trustee. Eric denies the remaining allegations contained therein.

22. In Paragraph 29, Eric admits that the LSN Trust was created on or around May 30, 2001, and that Lana Martin was named as the Distribution Trustee and Lynita Sue Nelson was named as the Investment Trustee. Eric denies the remaining allegations contained therein.

23. In Paragraph 30, Eric admits that the ELN Trust and LSN Trust are Nevada self-settled spendthrift trusts. Eric denies the remaining allegations contained therein.

24. In Paragraph 31, Eric admits that the ELN Trust and LSN Trust were drafted by the law offices of Jeffrey Burr. Eric denies the remaining allegations contained therein.

25. Eric L. Nelson denies the allegations set forth in paragraphs 32, 33, and 34 of the Cross Claim.

26. In Paragraph 35, 36, 38, 39, 40, 41, 42, and 43 of the Cross-Claim, Eric admits that the terms of the ELN Trust and LSN Trust speak for themselves. Eric denies the remaining allegations contained therein.

27. In Paragraph 37, of the Cross-Claim, Eric is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said Paragraph, and on that basis denies each and every allegation contained therein.

28. In regards to Paragraph 44 of the Cross-Claim, Eric admits that the legal fees incurred by the ELN Trust in this Divorce Proceeding are being paid from the ELN Trust pursuant to its terms. Eric denies the remaining allegations contained therein.

1 29. Eric L. Nelson denies the allegations set forth in paragraphs 45, 46, 48, 49, 50, 53,
2 54, 55, 56, 61, 63, 64, 65, 66, 67, 68, 69 70, 72, 73, 74, 75, 76, and 77 of the Cross Claim.

3 30. In regards to Paragraphs 47 of the Cross-Claim, Eric admits that on or about
4 February 22, 2007, Lana was replaced by Nola as Distribution Trustee for ELN Trust and that Nola is
5 Eric's sister. Eric denies the remaining allegations contained therein.

6 31. In regards to Paragraphs 51, and 52, of the Cross-Claim, Eric admits that on or
7 about February 22, 2007, Lana was replaced by Nola as Distribution Trustee for LSN Trust and that
8 Nola is Eric's sister. Eric denies the remaining allegations contained therein.

9 32. In regards to Paragraphs 57, 58 (A) – (I), 59 and 60 of the Cross-Claim, Eric
10 admits that the report entitled "Source and Application of Funds for Eric L. Nelson Nevada Trust"
11 speaks for itself. Eric Denies the remaining allegations contained therein.

12 33. In regards to Paragraph 62 of the Cross-Claim, Eric admits that he filed his
13 Complaint for Divorce against Lynita. Eric denies the remaining allegations contained therein.

14 34. In regards to Paragraph 71, Eric is without sufficient knowledge or information to
15 form a belief as to the truth of the allegations contained in said Paragraphs, and on that basis denies
16 each and every allegation contained therein.

17
18 **FIRST CLAIM FOR RELIEF (VEIL-PIERCING AGAINST THE ELN TRUST)**¹
19

20 35. The allegations contained within Paragraph No. 78 of the Cross-Claim state
21 conclusions to which no response is required. To the extent a response is required, Eric is without
22 sufficient knowledge or information to form a belief as to the truth of the allegations contained in said
23 Paragraph, and on that basis denies each and every allegation contained therein.

24
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27
28 ¹ Lynita S. Nelson's Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth,
Thirteenth and Fifteenth Claims for Relief have been dismissed, and as such, no response is necessary
for said claims.

1 36. Eric L. Nelson denies the allegations set forth in paragraphs 79, 80, 81, and 83 of
2 the Cross-Claim.

3 37. In answering paragraph 82², Eric is without sufficient knowledge or information
4 to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies
5 each and every allegation contained therein.
6

7 **SECOND CLAIM FOR RELIEF (REVERSE VEIL-PIERCING AGAINST THE ELN TRUST)**

8 38. The allegations contained within Paragraph No. 84 of the Cross-Claim state
9 conclusions to which no response is required. To the extent a response is required, Eric is without
10 sufficient knowledge or information to form a belief as to the truth of the allegations contained in said
11 Paragraph, and on that basis denies each and every allegation contained therein.
12

13 39. Eric L. Nelson denies the allegations set forth in paragraphs 85, 86, 87, and 89 of
14 the Cross-Claim.

15 40. In answering paragraph 88³, Eric is without sufficient knowledge or information
16 to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies
17 each and every allegation contained therein.
18

19 **FOURTEENTH CLAIM FOR RELIEF**
20 **(CONSTRUCTIVE TRUST AGAINST THE ELN TRUST)**

21 41. The allegations contained within Paragraph No. 162 of the Cross-Claim state
22 conclusions to which no response is required. To the extent a response is required, Eric is without
23 sufficient knowledge or information to form a belief as to the truth of the allegations contained in said
24 Paragraph, and on that basis denies each and every allegation contained therein.
25

26
27 ² Lynita S. Nelson's claim for Veil-Piercing under NR 78.487 has been dismissed, and as such, no
28 response is necessary for said claim.

³ Lynita S. Nelson's claim for Veil-Piercing under NR 78.487 has been dismissed, and as such, no
response is necessary for said claim.

1 42. Eric L. Nelson denies the allegations set forth in paragraphs 163, 164, 165, 166
2 and 167 of the Cross-Claim.

3 **FIFTEENTH CLAIM FOR RELIEF**
4 **(INJUNCTIVE RELIEF AGAINST THE ELN TRUST)**

5 43. The allegations contained within Paragraph No. 168 of the Cross-Claim state
6 conclusions to which no response is required. To the extent a response is required, Eric is without
7 sufficient knowledge or information to form a belief as to the truth of the allegations contained in said
8 Paragraph, and on that basis denies each and every allegation contained therein.

9
10 44. Eric L. Nelson denies the allegations set forth in paragraphs 169, 170 and 171 of
11 the Cross-Claim.

12 **AFFIRMATIVE DEFENSES**

13
14 In addition to the defenses set forth above, Eric interposes the following affirmative defenses:

15 45. This Court lacks jurisdiction to hear matters arising under Title 12 and 13 of the
16 Nevada Revised Statutes as NRS 164.015(1) specifically provides that the probate “court has exclusive
17 jurisdiction of proceedings initiated by the petition of an interested person concerning the internal
18 affairs of a nontestamentary trust....”

19
20 46. Lynita S. Nelson’s claims are barred due to her failure to comply with NRS
21 164.015.

22 47. This Court lacks jurisdiction to enter the injunction against the ELN Trust because
23 an injunction pertains to “the internal affairs of a nontestamentary trust....,” and is therefore subject to
24 the Probate Court’s exclusive jurisdiction under Title 12 and Title 13 of the Nevada Revised Statutes.

25
26 48. Lynita S. Nelson failed to comply with NRS 30.060, which mandates that “[a]ny
27 action for declaratory relief under this section may only be made in a proceeding commenced pursuant
28 to the provisions of title 12 or 13 of NRS, as appropriate.”

1 49. Lynita S. Nelson's allegations pertaining to the ELN Trust cannot and should not
2 be considered in alter ego claims under NRS 163.418.

3 50. Lynita S. Nelson's Cross-Claims are time-barred by NRS 166.170 and/or other
4 applicable statute of limitations.

5 51. Lynita S. Nelson's Cross-Claims fail to state facts sufficient to constitute a cause
6 of action against the ELN Trust.

7 52. To the extent that any or all occurrences, happenings, injuries, and/or damages
8 alleged in Lynita S. Nelson's Cross-Claim were proximately caused and/contributed to by the wrongful
9 acts and/or omissions of Lynita S. Nelson, Lynita S. Nelson is precluded from obtaining judgment
10 against the ELN Trust.

11 53. Lynita S. Nelson is barred from any recovery against the ELN Trust based upon
12 the doctrines of waiver, estoppel, laches and unclean hands.

13 54. Eric Nelson may have other affirmative defenses that are not currently known but
14 which may become known through the course of discovery, and reserves the right to allege such
15 affirmative defenses as they become known.

16
17
18
19 COUNTERCLAIM

20 1. On or about August 9, 2011, the Court in this action, Case No. D-09-411537-D,
21 entitled "ERIC L. NELSON, Plaintiff/Counterdefendant v. LYNITA SUE NELSON,
22 Defendant/Counterclaimant" (the "Instant Divorce Action"), entered an Order joining the ERIC L.
23 NELSON NEVADA TRUST Dated May 30, 2001 ("ELN Trust"), and the LYNITA SUE NELSON
24 Nevada Trust dated May 30, 2001 ("LSN Trust"), as necessary parties to this action.
25
26
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1 2. On or about 1993, the parties entered into a valid separate property agreement and
2 placed their separate assets into Separate property trusts in order to comply with Lynita's request that
3 she did not want to be involved in any gaming ventures that Eric chose to be involved in.
4

5 3. On or about May 30, 2001, the ELN Trust and the LSN Trust were created to
6 enhance the protection afforded the assets in each of the parties 1993 separate property trusts.

7 4. The ELN Trust should be declared valid by this Court.

8 5. Should the Court find the ELN Trust invalid and/or the Alter Ego of Eric L.
9 Nelson, this Court should handle in like manner and declare the LSN Trust invalid.
10

11 Dated this 10th day of July, 2012.

12 RHONDA K. FORSBERG, CHARTERED

13 
14 RHONDA K. FORSBERG, ESQ.

15 Nevada Bar No. 009557

16 1070 W. Horizon Ridge Pkwy. #100

17 Henderson, Nevada 89012

18 *Attorneys for Counterdefendants/
19 Crossdefendants/Third-Party Defendants,
Eric Nelson, Individually*

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Rhonda K. Forsberg, Chartered ("the Firm"). I am over the age of 18 and not a party to the within action. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "ANSWER AND COUNTERCLAIM TO LYNITA SUE NELSON'S FIRST AMENDED CLAIMS FOR RELIEF AGAINST ERIC L. NELSON INDIVIDUALLY AND AS INVESTMENT TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST dated MAY 30, 2001" on this 18th day of June 2012, to all interested parties as follows:

☒ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows;

☒ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below;

☒ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return receipt requested, addressed as follows:

Robert P. Dickerson, Esq.
The Dickerson Law Group
1745 Village Center Circle
Facsimile: (702) 388-0210
Las Vegas, Nevada 89134

Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq.
Solomon Dwiggin Freer & Morse, LTD
Cheyenne West Professional Centre
9060 W. Cheyenne Avenue
Facsimile: (702) 853-5485
Las Vegas, Nevada 89129

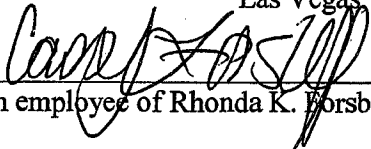

An employee of Rhonda K. Forsberg, Chartered

EXHIBIT F


CLERK OF THE COURT

1 NEO
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 KATHERINE L. PROVOST, ESQ.
6 Nevada Bar No. 008414
7 JOSEF M. KARACSONYI, ESQ.
8 Nevada Bar No. 010634
9 1745 Village Center Circle
10 Las Vegas, Nevada 89134
11 Telephone: (702) 388-8600
12 Facsimile: (702) 388-0210
13 Email: info@dickersonlawgroup.com
14 Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

11 ERIC L. NELSON,
12 Plaintiff/Counterdefendant,
13 v.
14 LYNITA SUE NELSON
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

16 ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001, and LSN NEVADA
18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

22 NOTICE OF ENTRY OF ORDER
23 FROM FEBRUARY 23, 2012
24 HEARING PARTIALLY
25 GRANTING ELN TRUST'S
26 MOTION TO DISMISS THIRD-
27 PARTY COMPLAINT WITHOUT
28 PREJUDICE

1
2 LANA MARTIN, as Distribution Trustee)
3 of the ERIC L. NELSON NEVADA)
4 TRUST dated May 30, 2001,)

5 Necessary Party (joined in this)
6 action pursuant to Stipulation and)
7 Order entered on August 9, 2011)/)
8 Purported Counterclaimant and)
9 Crossclaimant,)

10 v.

11 LYNITA SUE NELSON and ERIC)
12 NELSON,)

13 Purported Cross-Defendant and)
14 Counterdefendant,)

15
16 LYNITA SUE NELSON,)

17 Counterclaimant, Cross-Claimant,)
18 and/or Third Party Plaintiff,)

19 v.

20 ERIC L. NELSON, individually, and as)
21 the Investment Trustee of the ERIC L.)
22 NELSON NEVADA TRUST dated May)
23 30, 2001; the ERIC L. NELSON)
24 NEVADA TRUST dated May 30, 2001;)
25 LANA MARTIN, individually, and as the)
26 current and/or former Distribution)
27 Trustee of the ERIC L. NELSON)
28 NEVADA TRUST dated May 30, 2001,)
and as the former Distribution Trustee of)
the LSN NEVADA TRUST dated May)
30, 2001; NOLA HARBER, individually,)
and as the current and/or former)
Distribution Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
30, 2001, and as the current and/or)
former Distribution Trustee of the LSN)
NEVADA TRUST dated May 30, 2001;)
ROCHELLE McGOWAN, individually;)
JOAN B. RAMOS, individually; and)
DOES I through X,

Counterdefendants, and/or)
Cross-Defendants, and/or)
Third Party Defendants.)

1 NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012 HEARING
2 PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS THIRD-
3 PARTY COMPLAINT WITHOUT PREJUDICE

4 TO: ERIC L. NELSON, Plaintiff; and

5 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for
6 Plaintiff;

7 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
8 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
9 Nevada Trust:

10 PLEASE TAKE NOTICE that an ORDER FROM FEBRUARY 23, 2012
11 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS
12 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE was entered in the above-
13 entitled matter on August 29, 2012, a copy of which is attached hereto.

14 DATED this 30 day of August, 2012.

15 THE DICKERSON LAW GROUP

16 By

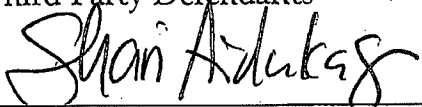
17 Robert R. Dickerson
18 ROBERT R. DICKERSON, ESQ.
19 Nevada Bar No. 000945
20 KATHERINE L. PROVOST, ESQ.
21 Nevada Bar No. 008414
22 JOSEF M. KARACSONYI, ESQ.
23 Nevada Bar No. 10634
24 1745 Village Center Circle
25 Las Vegas, Nevada 89134
26 Attorneys for Defendant
27
28

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am this date depositing a true and correct copy of
3 the attached NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012
4 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS
5 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE, in the U.S. Mail, postage
6 prepaid to the following at their last known addresses, on the 31st day of August,
7 2012:

8
9 RHONDA K. FORSBERG, ESQ.
10 FORSBERG & DOUGLAS
11 1070 W. Horizon Ridge Pkwy., Ste. 100
Henderson, Nevada 89012
Attorneys for Plaintiff

12 MARK A. SOLOMON, ESQ.
13 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
14 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants

15 
16 An employee of The Dickerson Law Group
17
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Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

1 LANA MARTIN, as Distribution Trustee of)
2 the ERIC L. NELSON NEVADA TRUST)
3 dated May 30, 2001,)

4 Necessary Party (joined in this action)
5 pursuant to Stipulation and Order)
6 entered on August 9, 2011)/ Purported)
Counterclaimant and Crossclaimant,)

7 v.)
8)
9)

10 LYNITA SUE NELSON and ERIC)
NELSON,)

11 Purported Cross-Defendant and)
12 Counterdefendant,)

13 LYNITA SUE NELSON,)
14)

15 Counterclaimant, Cross-Claimant,)
16 and/or Third Party Plaintiff,)

17 v.)
18)

19 ERIC L. NELSON, individually and as the)
20 Investment Trustee of the ERIC L. NELSON)
21 NEVADA TRUST dated May 30, 2001; the)
22 ERIC L. NELSON NEVADA TRUST dated)
23 May 30, 2001; LANA MARTIN, individually,)
24 and as the current and/or former Distribution)
25 Trustee of the ERIC L. NELSON NEVADA)
26 TRUST dated May 30, 2001, and as the)
27 former Distribution Trustee of the LSN)
28 NEVADA TRUST dated May 30, 2001);)
NOLA HARBER, individually, and as the)
current and/or former Distribution Trustee)
of the ERIC L. NELSON NEVADA TRUST)
dated May 30, 2001, and as the current)
and/or former Distribution Trustee of the)
LSN NEVADA TRUST dated May 30, 2001;)
ROCHELLE MCGOWAN, individually;)

1 JOAN B. RAMOS, individually; and DOES I)
2 through X,)
3 Counterdefendant, and/or)
4 Cross-Defendants, and/or)
5 Third Party Defendants.)
6

7 ORDER FROM FEBRUARY 23, 2012 HEARING PARTIALLY GRANTING
8 ELN TRUST'S MOTION TO DISMISS THIRD-PARTY COMPLAINT
9 WITHOUT PREJUDICE

10 This matter coming on for hearing on this 23rd day of February, 2012, before the
11 Honorable Frank P. Sullivan, for a Decision on Third-Party Defendants' Motion to
12 Dismiss, filed November 7, 2011, Plaintiff's Motion to Dismiss and Countermotion
13 for Attorneys Fees and Costs, filed November 4, 2011, Defendant's Opposition to
14 Motions to Dismiss, and Countermotion for an Award of Attorneys Fees and Costs,
15 filed December 1, 2011, and the various supplements to the aforementioned papers
16 filed by the parties; ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST,
17 ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP,
18 appearing on behalf of Defendant, LYNITA NELSON, and Defendant being present;
19 RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, appearing on behalf
20 of Plaintiff, ERIC NELSON, and Plaintiff being present; and MARK P. SOLOMON,
21 ESQ., and JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS & FREER ,
22 LTD., appearing on behalf of Third-Party Defendants. The Court having reviewed and
23 analyzed the pleadings and papers on file herein, having researched the issues presently
24 before the Court, and having heard the arguments of counsel and the parties, and good
25 cause appearing therefore,

26 THE COURT HEREBY FINDS that the Court has reviewed Part IV of the
27 Eighth Judicial District Court Rules with respect to probate, trust, administration of
28 estates, the rules that apply under Chapter 164 of Title 13 of the Nevada Revised
Statutes, and the various Nevada Supreme Court decisions cited by the parties in

1 analyzing whether this Court has jurisdiction to hear the various claims asserted by
2 Defendant in her First Amended Claims for Relief Against Eric L. Nelson, et. al, filed
3 December 20, 2011, and whether the Court would be inclined to exercise such
4 jurisdiction. EDCR 4.16(a) provides:

5 (a) The probate judge may hear whichever contested matters the judge
6 shall select, and schedule them at the convenience of the judge's calendar.
7 The judge alone may refer contested matters pertaining to the probate
8 calendar to a master appointed by the judge for hearing and report. All
9 other contested matters pertaining to the probate calendar will be
10 assigned on a random basis to a civil trial judge, other than a trial judge
serving in the family division. The judge to whom a matter is assigned
may, upon resolution of the contested matter, return the case to the
probate calendar, or continue with the case if further contested matters
are expected.

11 However, in *Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (2011), the
12 Nevada Supreme Court held that a Family Court does not lack authority to resolve
13 cases solely because such cases involve subject matter outside of those matters
14 specifically delineated in NRS 3.223 setting forth the original and exclusive jurisdiction
15 of the Family Court. *Landreth* was very clear in holding that Article 6, Section 6 of the
16 Nevada Constitution, provides the district courts with jurisdiction that cannot be
17 limited by the Nevada Legislature by legislative order or rule. *Landreth* further made
18 it clear that NRS 3.223 does not limit the Constitutional power and authority provided
19 under Article 6, Section 6(1) of the Nevada Constitution, to a district court judge
20 sitting in the family division. The Court further notes that EDCR 4.16(a), and its
21 language providing for contested probate matters to be assigned to a "civil trial judge,
22 other than a trial judge serving in the family division," was enacted in May, 2004, and
23 *Landreth* was decided seven (7) years later. Accordingly, this Court finds that it has
24 jurisdiction to entertain actions concerning trusts and administration of estates if it so
25 chooses, or where it would be appropriate. NRS 3.223, and the EDCRs, cannot limit
26 this Court's powers under the Nevada Constitution.

27 THE COURT FURTHER FINDS that NRS 164.015(1) provides, in pertinent
28 part: "The court has exclusive jurisdiction of proceedings initiated by the petition of

1 an interested person concerning the internal affairs of a nontestamentary trust . . . ”
2 Under NRS 132.116, “‘District court’ or ‘court’ means a district court of this State
3 sitting in probate or otherwise adjudicating matters pursuant to this title.”
4 Accordingly, the reference to a court in NRS 164.015(1) is not limited to district
5 courts sitting in probate only.

6 THE COURT FURTHER FINDS that in *Barelli v Barelli*, 11 Nev. 873, 944 P.2d
7 246 (1997), the Nevada Supreme Court held that a family court has jurisdiction to
8 resolve issues falling outside of its original and exclusive jurisdiction that are necessary
9 to the resolution of claims within its original and exclusive jurisdiction. This Court is
10 only inclined to hear such claims concerning the parties’ trusts as it believes necessary
11 to resolve the property issues surrounding the parties’ divorce, and to distribute
12 property between the parties as the Court deems appropriate.

13 THE COURT FURTHER FINDS that it has examined the causes of action
14 asserted by Defendant in her First Amended Claims for Relief Against Eric L. Nelson,
15 et. al, filed December 20, 2011. The Court finds that Defendant has stated a cause of
16 action for alter ego under the First (Veil-Piercing), and Second (Reverse Veil-Piercing)
17 claims for relief, and has further stated a cause of action under the Fourteenth
18 (Constructive Trust), and Fifteenth (Injunctive Relief) claims for relief, which the
19 Court is inclined and believes it needs to hear and resolve. Although the Court has
20 jurisdiction over Defendant’s other claims in the First Amended Claims for Relief
21 Against Eric L. Nelson, et. al, filed December 20, 2011, the Court declines to hear such
22 other claims (which are tort claims), without ruling on the merits of whether such
23 causes of action state a claim for relief (which the Court has not analyzed).
24 Consequently, claims against Joan Ramos, Lana Martin, individually and as former
25 distribution trustee of the ELN Trust and LSN Trust (but not as current distribution
26 trustee of the ELN Trust), Nola Harber, individually, and as former distribution trustee
27 of the ELN Trust and LSN Trust, and Rochelle McGowan, should be dismissed,
28 without prejudice.

1 NOW, THEREFORE,

2 IT IS HEREBY ORDERED the ELN Trust's Motion to Dismiss Third-Party
3 Complaint is GRANTED IN PART WITHOUT PREJUDICE..

4 IT IS FURTHER ORDERED that the requests to dismiss the First, Second,
5 Fourteenth, and Fifteenth claims for relief in Defendant's First Amended Claims for
6 Relief Against Eric L. Nelson, et. al, filed December 20, 2011, are DENIED. Such
7 claims shall remain as to the ELN Trust, Eric Nelson, individually and as investment
8 trustee of the ELN Trust, and Lana Martin, as current distribution trustee of the ELN
9 Trust.

10 IT IS FURTHER ORDERED that the provisions contained in NRS 78 are not
11 the appropriate standards to be applied to Lynita Nelson's veil-piercing claims against
12 the ELN Trust.

13 IT IS FURTHER ORDERED that the Court DECLINES to exercise its
14 jurisdiction over the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth,
15 Eleventh, Twelfth, and Thirteenth claims for relief in Defendant's First Amended
16 Claims for Relief Against Eric L. Nelson, et. al, filed December 20, 2011, without
17 making any specific findings or orders regarding the merits of such claims, and whether
18 such claims state a cause of action, which issues the Court has not analyzed or
19 addressed, and as such, said claims are hereby DISMISSED WITHOUT PREJUDICE
20 so that same can be brought in another tribunal.

21 IT IS FURTHER ORDERED that Joan Ramos, Lana Martin, individually and
22 as former distribution trustee of the ELN Trust and LSN Trust, Nola Harber,
23 individually and as former distribution trustee of the ELN Trust and LSN Trust, and
24 Rochelle McGowan are hereby DISMISSED WITHOUT PREJUDICE from this
25 action.

26 IT IS FURTHER ORDERED that the previously set trial dates in May, 2012,
27 are hereby VACATED, and the trial in this matter shall continue on July 16, 17, 18,
28 19, 23, and 24, 2012, at 9:00 a.m. each day.

1 IT IS FURTHER ORDERED that the parties' attorneys shall confer and attempt
2 to reach an agreement regarding discovery deadlines.

3 IT IS SO ORDERED.

4 DATED this 28 day of August, 2012.

5
6 Jack B. Amma
DISTRICT COURT JUDGE JA

7
8 Submitted by:

9 THE DICKERSON LAW GROUP

10
11 By Joe Karacsonyi

12 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
13 JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
14 1745 Village Center Circle
Las Vegas, Nevada 89134
15 Attorneys for Defendant

Approved as to Form and Content:

IVEY, FORSBERG & DOUGLAS

16
17 By Rhonda K. Forsberg

18 RHONDA K. FORSBERG, ESQ.
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Attorneys for Plaintiff

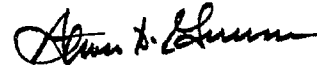
16 Approved as to Form and Content:

17 SOLOMON, DWIGGINS & FREER, LTD

18
19 By Mark A. Solomon

20 MARK A. SOLOMON, ESQ.
Nevada Bar No. 000418
21 JEFFREY P. LUSZECK, ESQ.
Nevada Bar No. 009619
22 9060 W. Cheyenne Avenue
23 Las Vegas, Nevada 89129
24 Attorneys for Third-Party Defendants

EXHIBIT G



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

CASE NO.: D-09-411537-D
DEPT. NO.: O

NOTICE OF ENTRY OF ORDER

Non-Trial Dispositions:

- ☐ Other
- ☐ Dismissed - Want of Prosecution
- ☐ Involuntary (Statutory) Dismissal
- ☐ Default Judgment
- ☐ Transferred
- ☐ Disposed After Trial Start

Settled/Withdrawn:

- ☐ Without Judicial Conf/Hrg
- ☐ With Judicial Conf/Hrg
- ☐ By ADR

Trial Dispositions:

- ☒ Judgment Reached by Trial

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

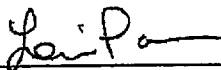
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TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.

PLEASE TAKE NOTICE that DECREE OF DIVORCE was duly entered in the above-referenced case on the 3rd day of June, 2013.

DATED this 3 day of June, 2013.


Lori Parr
Judicial Executive Assistant
Dept. O

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,
Defendant/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,
Crossdefendant.

CASE NO.: D-09-411537-D
DEPT. NO.: 0
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CLERK OF THE COURT

DECREE OF DIVORCE

This matter having come before this Honorable Court for a Non-Jury Trial in October 2010, November 2010, July 2012 and August 2012, with Plaintiff, Eric Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson, appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq., and Josef Karacsonyi, Esq., and Counter-defendant, Cross-defendant, Third Party Defendant Lana Martin, Distribution

FRANK R SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1
2 Trustee of the Eric L. Nelson Nevada Trust, being represented by Mark Solomon, Esq., and
3 Jeffrey Luszeck, Esq., good cause being shown:

4 THE COURT HEREBY FINDS that it has jurisdiction in the premises, both as to the
5 subject matter thereof and as the parties thereto, pursuant to NRS 125.010 et seq.

6 THE COURT FURTHER FINDS the Eric Nelson, Plaintiff, has been, and is now, an
7 actual and bona fide resident of the County of Clark, State of Nevada, and has been actually
8 domiciled therein for more than six (6) weeks immediately preceding to the commencement of
9 this action.
10

11 THE COURT FURTHER FINDS that the parties were married September 17, 1983.

12 THE COURT FURTHER FINDS that 5 children were born the issue of this marriage;
13 two of which are minors, namely, Garrett Nelson born on September 13, 1994, and Carli
14 Nelson born on October 17, 1997; and to the best of her knowledge, Lynita Nelson, is not now
15 pregnant.
16

17 THE COURT FURTHER FINDS that the Plaintiff filed for divorce on May 6, 2009.

18 THE COURT FURTHER FINDS that the parties entered into a Stipulated Parenting
19 Agreement as to the care and custody of said minor children on October 15, 2008, which was
20 affirmed, ratified and made an Order of this Court on February 8, 2010.

21 THE COURT FURTHER FINDS that on August 9, 2011, both parties stipulated and
22 agreed that the Eric L. Nelson Nevada (ELN) Trust should be joined as a necessary party to this
23 matter.
24

25 THE COURT FURTHER FINDS that Eric Nelson is entitled to an absolute Decree of
26 Divorce on the grounds of incompatibility.
27
28

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1
2 THE COURT FURTHER FINDS that during the couple's nearly thirty (30) years of
3 marriage, the parties have amassed a substantial amount of wealth.

4 THE COURT FURTHER FINDS that the parties entered into a Separate Property
5 Agreement on July 13, 1993, with Mr. Nelson being advised and counseled with respect to the
6 legal effects of the Agreement by attorney Jeffrey L. Burr and Mrs. Nelson being advised and
7 counseled as its legal effects by attorney Richard Koch.
8

9 THE COURT FURTHER FINDS that, pursuant to NRS 123.080 and NRS 123.220(1),
10 the Separate Property Agreement entered into by the parties on July 13, 1993, was a valid
11 Agreement.

12 THE COURT FURTHER FINDS that Schedule A of the Separate Property Agreement
13 contemporaneously established the Eric L. Nelson Separate Property Trust and named Mr.
14 Nelson as trustor. The trust included interest in:
15

16 A First Interstate Bank account;
17 A Bank of America account;
18 4021 East Portland Street, Phoenix, Arizona;
19 304 Ramsey Street, Las Vegas, Nevada;
20 Twelve (12) acres located on Cheyenne Avenue, Las Vegas, Nevada;
21 Ten (10) acres located on Cheyenne Avenue, Las Vegas, Nevada;
22 1098 Evergreen Street, Phoenix, Arizona;
23 Forty nine (49) lots, notes and vacant land in Queens Creek, Arizona;
24 Forty one (41) lots, notes and vacant land in Sunland Park, New Mexico;
25 Sport of Kings located at 365 Convention Center Drive, Las Vegas, Nevada;
26 A 1988 Mercedes;
27 Forty percent (40%) interest in Eric Nelson Auctioneering, 4285 South Polaris Avenue,
28 Las Vegas, Nevada;
One hundred percent (100%) interest in Casino Gaming International, LTD., 4285
South Polaris Avenue, Las Vegas, Nevada; and
Twenty five percent (25%) interest in Polk Landing.

THE COURT FURTHER FINDS that Schedule B of the Separate Property Agreement
contemporaneously established the Lynita S. Nelson Separate Property Trust and named Mrs.
Nelson as trustor. The trust included interest in:

1
2 A Continental National Bank account;
3 Six (6) Silver State Schools Federal Credit Union accounts;
4 An American Bank of Commerce account;
5 7065 Palmyra Avenue, Las Vegas, Nevada;
6 8558 East Indian School Road, Number J, Scottsdale, Arizona;
7 Ten (10) acres on West Flamingo Road, Las Vegas, Nevada;
8 1167 Pine Ridge Drive, Panguitch, Utah;
9 749 West Main Street, Mesa, Arizona;
10 1618 East Bell Road, Phoenix, Arizona;
11 727 Hartford Avenue, Number 178, Phoenix, Arizona;
12 4285 Polaris Avenue, Las Vegas, Nevada;
13 Metropolitan Mortgage & Security Co., Inc., West 929 Sprague Avenue Spokane,
14 Washington;
15 Apirade Bumpus, 5215 South 39th Street, Phoenix, Arizona;
16 Pool Hall Sycamore, 749 West Main Street, Mesa, Arizona;
17 A Beneficial Life Insurance policy; and
18 A 1992 van

19 THE COURT FURTHER FINDS that on May 30, 2001, the Eric L. Nelson Nevada
20 Trust (hereinafter "ELN Trust") was created under the advice and counsel of Jeffrey L. Burr,
21 Esq., who prepared the trust documents.

22 THE COURT FURTHER FINDS that the ELN Trust was established as a self-settled
23 spendthrift trust in accordance with NRS 166.020.¹

24 THE COURT FURTHER FINDS that all of the assets and interest held by the Eric L.
25 Nelson Separate Property Trust were transferred or assigned to the ELN Trust.

26 THE COURT FURTHER FINDS that on May 30, 2001, the Lynita S. Nelson Nevada
27 Trust (hereinafter "LSN Trust") was created under the advice and counsel of Jeffrey L. Burr,
28 Esq., who prepared the trust documents.

THE COURT FURTHER FINDS that the LSN Trust was established as a self-settled
spendthrift trust in accordance with NRS 166.020.

¹ NRS 166.020 defines a spendthrift trust as "at trust in which by the terms thereof a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed. See, NRS 166.020.

1
2 THE COURT FURTHER FINDS that all of the assets and interest held by the Lynita S.
3 Nelson Separate Property Trust were transferred or assigned to the LSN Trust.

4 THE COURT FURTHER FINDS that while the parties may differ as to the reason why
5 the trusts were created, the effect of a spendthrift trust is to prevent creditors from reaching the
6 principle or corpus of the trust unless said creditor is known at the time in which an asset is
7 transferred to the trust and the creditor brings an action no more than two years after the
8 transfer occurs or no more than 6 months after the creditor discovers or reasonably should have
9 discovered the transfer, whichever occurs latest.²

10
11 THE COURT FURTHER FINDS that while spendthrift trusts have been utilized for
12 decades; Nevada is one of the few states that recognize self-settled spendthrift trusts. The
13 legislature approved the creation of spendthrift trusts in 1999 and it is certainly not the purpose
14 of this Court to challenge the merits of spendthrift trusts.

15
16 THE COURT FURTHER FINDS that the testimony of the parties clearly established
17 that the intent of creating the spendthrift trusts was to provide maximum protection from
18 creditors and was not intended to be a property settlement in the event that the parties divorced.

19 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were
20 significant transfers of property and loans primarily from the LSN Trust to the ELN Trust. Such
21 evidence corroborates Mrs. Nelson's testimony that the purpose of the two Trusts was to allow
22 for the ELN Trust to invest in gaming and other risky ventures, while the LSN Trust would
23 maintain the unencumbered assets free and clear from the reach of creditors in order to provide
24 the family with stable and reliable support should the risky ventures fail.

25
26 ...
27

28

2 NRS 166.170(1)

1
2 THE COURT FURTHER FINDS that, due to Mrs. Nelson's complete faith in and total
3 support of her husband, Mr. Nelson had unfettered access to the LSN Trust to regularly transfer
4 assets from the LSN Trust to the ELN Trust to infuse cash and other assets to fund its gaming
5 and other risky investment ventures.

6
7 THE COURT FURTHER FINDS that on numerous occasions during these proceedings,
8 Mr. Nelson indicated that the ELN Trust and LSN Trust both held assets that were indeed
9 considered by the parties to be community property.

10 THE COURT FURTHER FINDS that during the first phase of trial held in August
11 2010, Mr. Nelson was questioned ad nauseam by both his former attorney, Mr. James
12 Jimmerson, and by Mrs. Nelson's attorney, Mr. Dickerson, about his role as the primary wage
13 earner for the family.

14
15 THE COURT FURTHER FINDS that on direct examination, when asked what he had
16 done to earn a living following obtaining his real estate license in 1990, Mr. Nelson's lengthy
17 response included:

18 "So that's my primary focus is managing all my assets and Lynita's assets so we
19 manage our *community assets*, and that's where our primary revenue is driven
(emphasis added)."

20 THE COURT FURTHER FINDS that upon further direct examination, when asked why
21 the ELN and LSN Trusts were created, Mr. Nelson responded:

22
23 "In the event that something happened to me, I didn't have to carry life insurance. I
24 would put safe assets into her property in her assets for her and the kids. My assets
25 were much more volatile, much more -- I would say daring; casino properties, zoning
26 properties, partners properties, so we maintained this and these — all these trusts
27 were designed and set up by Jeff Burr. Jeff Burr is an excellent attorney and so I felt
28 comfortable. This protected Lynita and her children and it gave me the flexibility
because I do a lot of tax scenarios, to protect her and the kids and me and we could
level off yearly by putting assets in her trust or my trust depending on the
transaction and protect -- the basic bottom line is to protect her (emphasis added)."

1
2 THE COURT FURTHER FINDS that upon further examination by Attorney Jimmerson
3 inquiring about the status of a rental property located on Lindell Road, Mr. Nelson's response
4 was:

5 "Well, we don't pay rent because we're managing all the assets, so I don't pay
6 myself to pay Lynita because we — it's all *community* (emphasis added)."

7 THE COURT FURTHER FINDS that during cross-examination on October 19, 2010,
8 Mr. Nelson was questioned as to why he closed his auctioning company and his response was:

9 "I was under water these businesses. And for business purposes and to -- to set -- to
10 save as much in our *community* estate, I was forced to lay people off, generate cash flow so
11 Lynita would have the cash flow from these properties in the future (emphasis added)."

12 THE COURT FURTHER FINDS that throughout Mr. Nelson's aforementioned
13 testimony, he either expressly stated that his actions were intended to benefit his and Mrs.
14 Nelson's community estate or made reference to the community.

15 THE COURT FURTHER FINDS that it heard testimony from Mr. Nelson over several
16 days during the months of August 2010, September 2010 and October 2010, in which Mr.
17 Nelson's testimony clearly categorized the ELN Trust and LSN Trust's property as community
18 property.

19 THE COURT FURTHER FINDS that Mr. Nelson's sworn testimony corroborates Mrs.
20 Nelson's claim that Mr. Nelson informed her throughout the marriage that the assets
21 accumulated in both the ELN Trust and LSN Trust were for the betterment of their family unit,
22 and, thus, the community.

23 THE COURT FURTHER FINDS Attorney Burr's testimony corroborated the fact that
24 the purpose of creating the spendthrift trusts was to "supercharge" the protection afforded
25 against creditors and was not intended to be a property settlement.
26
27
28 ...

1 THE COURT FURTHER FINDS that Attorney Burr testified that he discussed and
2 suggested that the Nelsons periodically transfer properties between the two trusts to ensure that
3 their respective values remained equal.
4

5 THE COURT FURTHER FINDS that Attorney Burr further testified that the values of
6 the respective trust could be equalized through gifting and even created a gifting form for the
7 parties to use to make gifts between the trusts.
8

9 THE COURT FURTHER FINDS that the Minutes from a Trust Meeting, dated
10 November 20, 2004, reflected that all Mississippi property and Las Vegas property owned by
11 the ELN Trust was transferred to the LSN trust as final payment on the 2002 loans from the
12 LSN to the ELN Trust and to "*level off the trusts*" (emphasis added).
13

14 THE COURT FURTHER FINDS that the evidence adduced at trial clearly established
15 the parties intended to maintain an equitable allocation of the assets between the ELN Trust and
16 the LSN Trust.
17

18 ***Fiduciary Duty***

19 THE COURT FURTHER FINDS that the Nevada Supreme Court has articulated that a
20 fiduciary relationship exists between husbands and wives, and that includes a duty to "disclose
21 pertinent assets and factors relating to those assets." *Williams v. Waldman*, 108 Nev. 466, 472
(1992).
22

23 THE COURT FURTHER FINDS that Mr. Nelson owed a duty to his spouse, Mrs.
24 Nelson, to disclose all pertinent factors relating to the numerous transfers of the assets from the
25 LSN Trust to the ELN Trust.
26 ...
27 ...
28

1
2 THE COURT FURTHER FINDS that Mrs. Nelson credibly testified that on numerous
3 occasions, Mr. Nelson requested that she sign documentation relating to the transfer of LSN
4 Trust assets to the ELN Trust. Mrs. Nelson further stated that she rarely questioned Mr. Nelson
5 regarding these matters for two reasons: (1) Mr. Nelson would become upset if she asked
6 questions due to his controlling nature concerning business and property transactions; and (2)
7 she trusted him as her husband and adviser.
8

9 THE COURT FURTHER FINDS that Mr. Nelson's behavior during the course of these
10 extended proceedings, as discussed in detail hereinafter, corroborates Mrs. Nelson's assertions
11 that Mr. Nelson exercises unquestioned authority over property and other business ventures and
12 loses control of his emotions when someone questions his authority.
13

14 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson
15 did not regularly discuss the factors relating to the numerous transfers of the assets from the
16 LSN Trust to the ELN Trust with Mrs. Nelson, and, therefore, violated his fiduciary duty to his
17 spouse.
18

19 THE COURT FURTHER FINDS that NRS 163.554 defines a fiduciary as a trustee...or
20 any other person, including an investment trust adviser, which is acting in a *fiduciary capacity*
21 for any person, trust or estate. See, NRS 163.554 (emphasis added).
22

23 THE COURT FURTHER FINDS that NRS 163.5557 defines an investment trust
24 adviser as a person, appointed by an instrument, to act in regard to investment decisions. NRS
25 163.5557 further states:

26 2. An investment trust adviser may exercise the powers provided
27 to the investment trust adviser in the instrument in the best interests of the
28 trust. **The powers exercised by an investment trust adviser are at the
sole discretion of the investment trust adviser and are binding on all other
persons.** The powers granted to an investment trust adviser may include,
without limitation, the power to:

- 1
- 2 (a) Direct the trustee with respect to the retention, purchase,
3 sale or encumbrance of trust property and the investment and
4 reinvestment of principal and income of the trust.
5 (b) Vote proxies for securities held in trust.
6 (c) Select one or more investment advisers, managers or counselors,
7 including the trustee, and delegate to such persons any of the powers
8 of the investment trust adviser.

9 See NRS 163.5557 (emphasis added).

10 THE COURT FURTHER FINDS that Mr. Nelson continuously testified as to his role
11 as the investment trustee for both trusts, specifically testifying during cross examination on
12 September 1, 2010, as follows:

13 Q. Now you're the one that put title to those parcels
14 that we've talked about in the name of Dynasty, Bal Harbor,
15 Emerald Bay, Bay Harbor Beach Resorts and (indiscernible)
16 Financial Partnerships. Is that correct?

17 A. I believe so, yes.

18 Q. And you're the one that also put title in the name
19 of -- all the remaining lots in the name of LSN Nevada Trust.
20 Is that true?

21 A. Yes, sir.

22 THE COURT FURTHER FINDS that during his September 1st cross-examination, Mr.
23 Nelson also testified as to the assets located in Mississippi as follows:

24 Q. The height of the market was 18 months ago according
25 to your testimony?

26 A. No, no. But I'm just saying we could have -- the
27 this lawsuit's been pending for a while, sir. We did these
28 deeds mistake -- if you can -- if you reference back to it, it
shows -- shows Dynas -- it's my --

Q. Exhibit -- the Exhibit for the --

A. -- company. It shows Eric Nelson. That's my
company. We put them into Lynita's for community protection,
and she would not cooperate.

1
2
3 Q. You put them --

4 A. Yes, sir.

5 Q. -- into Lynita's?

6 A. Yes, sir --

7 Q. All right. Sir --

8 A. -- for *co -- unity wealth* (emphasis added).

9
10 THE COURT FURTHER FINDS that while the LSN Trust documents expressly named
11 Mrs. Nelson as investment trust adviser, the evidence clearly established that Mr. Nelson
12 exercised a pattern of continuous, unchallenged investment and property-transfer decisions for
13 both the ELN and the LSN Trusts, thereby illustrating that Mr. Nelson acted as the investment
14 trust adviser of the LSN Trust from its inception.

15 THE COURT FURTHER FINDS that the testimony of both parties clearly shows that,
16 pursuant to NRS 163.5557(2)(c), Mrs. Nelson delegated the duties of investment trustee to her
17 husband, Mr. Nelson.

18
19 THE COURT FURTHER FINDS that as the delegated investment trustee for the LSN
20 Trust, Mr. Nelson acted in a fiduciary capacity for Mrs. Nelson.³ Therefore, Mr. Nelson had a
21 duty to "disclose pertinent assets and factors relating to those assets".⁴

22 THE COURT FURTHER FINDS that, despite serving as the delegated investment
23 trustee for the LSN Trust, Mr. Nelson did not regularly discuss the pertinent factors relating to
24 the transfer of the assets from the LSN Trust to the ELN Trust, and, as such, violated the
25 fiduciary duty he owed to Mrs. Nelson and to the LSN Trust as the delegated investment trustee
26 to the LSN Trust.
27

28 ³ NRS 163.554.

⁴ *Williams v. Waldman*, 108 Nev. 466, 472 (1992).

1
2 THE COURT FURTHER FINDS that Mr. Nelson, in his dual role as a spouse and as
3 the delegated investment trustee for the LSN Trust, violated the fiduciary duties owed to Mrs.
4 Nelson and the LSN Trust.

5 *Constructive Trust*

6
7 THE COURT FURTHER FINDS that Mr. Nelson's activities as the delegated
8 investment trustee for the LSN Trust in which he transferred numerous properties and assets
9 from the LSN Trust to the ELN Trust, unjustly resulted in the ELN Trust obtaining title to
10 certain properties that the LSN Trust formerly held.

11 THE COURT FURTHER FINDS that a legal remedy available to rectify this unjust
12 result is the Court's imposition of a constructive trust. The basic objective of a constructive
13 trust is to recognize and protect an innocent party's property rights. Constructive trusts are
14 grounded in the concept of equity. *Cummings v. Tinkle*, 91 Nev. 548, 550 (1975).

15
16 THE COURT FURTHER FINDS that the Nevada Supreme Court has held that a
17 constructive trust is proper when "(1) a confidential relationship exists between the parties; (2)
18 retention of legal title by the holder thereof against another would be inequitable; and (3) the
19 existence of such a trust is essential to the effectuation of justice." *Locken v. Locken*, 98 Nev.
20 369, 372 (1982).

21 THE COURT FURTHER FINDS that in *Locken*, the Nevada Supreme Court found that
22 an oral agreement bound a son to convey land to his father, as the father was to make certain
23 improvements to the land. The Court found that even though the father completed an affidavit
24 claiming no interest in the land, this act did not preclude him from enforcing the oral
25 agreement. *Id.*, at 373.
26
27
28

1
2 THE COURT FURTHER FINDS that the *Locken* court found that the imposition of a
3 constructive trust does not violate the statute of frauds as NRS 111.025 states:

4 1. No estate or interest in lands...nor any trust or power over or
5 concerning lands, or in any manner relating thereto, shall be created,
6 granted, assigned, surrendered or declared after December 2, 1861,
7 unless by act or operation of law, or by deed or conveyance, in writing, subscribed by
8 the party creating, granting, assigning, surrendering or
9 declaring the same, or by the party's lawful agent thereunto authorized
10 in writing.

11 2. Subsection 1 shall not be construed to affect in any manner the power
12 of a testator in the disposition of the testator's real property by a last will
13 and testament, **nor to prevent any trust from arising or being extinguished**
14 **by implication or operation of law.**

15 See, NRS 111.025 (Emphasis added).

16 THE COURT FURTHER FINDS that NRS 111.025(2) creates an exception to the
17 statute of frauds that allows for the creation of a constructive trust to remedy or prevent the
18 type of injustice that the statute seeks to prevent.

19 THE COURT FURTHER FINDS that in this case, we clearly have a confidential
20 relationship as the two parties were married at the time of the transfers. In addition, Mr. Nelson
21 acted as the investment trustee for the LSN Trust, which effectively created another
22 confidential relationship between him and Mrs. Nelson as she is the beneficiary of the LSN
23 Trust.

24 THE COURT FURTHER FINDS that while Mr. Nelson argues that no confidential
25 relationship existed between Mrs. Nelson and the ELN Trust, a confidential relationship clearly
26 existed between Mrs. Nelson and Mr. Nelson, who, as the beneficiary of the ELN Trust,
27 benefits greatly from the ELN Trust's acquisition and accumulation of properties.
28 ...

1
2 THE COURT FURTHER FINDS that the ELN Trust's retention of title to properties
3 that the LSN Trust previously held would be inequitable and would result in an unjust
4 enrichment of the ELN Trust to the financial benefit of Mr. Nelson and to the financial
5 detriment of the LSN Trust and Mrs. Nelson.

6 THE COURT FURTHER FINDS that Mrs. Nelson, as a faithful and supporting spouse
7 of thirty years, had no reason to question Mr. Nelson regarding the true nature of the assets that
8 he transferred from the LSN Trust to the ELN Trust.

9
10 THE COURT FURTHER FINDS that Mr. Nelson argues that the imposition of a
11 constructive trust is barred in this instance because Mrs. Nelson benefitted from the creation
12 and implementation of the trust and cites the Nevada Supreme Court ruling in *DeLee v.*
13 *Roggen*, to support his argument. 111 Nev. 1453 (1995).

14 THE COURT FURTHER FINDS that in *DeLee*, the party seeking the imposition of the
15 constructive trust made no immediate demands because he knew that his debtors would lay
16 claim to the property. The court found that a constructive trust was not warranted because the
17 creation of the trust was not necessary to effectuate justice. *Id.*, at 1457.

18
19 THE COURT FURTHER FINDS that unlike *DeLee*, Mrs. Nelson made no demand for
20 the property because Mr. Nelson assured her that he managed the assets in the trusts for the
21 benefit of the community. Consequently, Mrs. Nelson did not have notice that the LSN Trust
22 should reclaim the property.

23 THE COURT FURTHER FINDS that while Mr. Nelson acted as the investment trustee
24 for both the ELN and LSN Trust respectively, the properties never effectively left the
25 community. Consequently, Mrs. Nelson never thought that she needed to recover the
26 properties on behalf of the LSN Trust. Mrs. Nelson was not advised that she was not entitled to
27

1
2 the benefit of the assets transferred from the LSN Trust to the ELN Trust under the direction of
3 Mr. Nelson until the ELN Trust joined the case as a necessary party.

4 THE COURT FURTHER FINDS that allowing the ELN Trust to acquire property from
5 the LSN Trust under the guise that these property transfers benefitted the community,
6 effectively deprives Mrs. Nelson of the benefit of those assets as beneficiary under the LSN
7 Trust, and will ultimately result in Mr. Nelson, as beneficiary of the ELN Trust, being unjustly
8 enriched at the expense of Mrs. Nelson.
9

10 THE COURT FURTHER FINDS that, as addressed in detail below, the Court will
11 impose a constructive trust on the following assets: (1) 5220 East Russell Road Property; (2)
12 3611 Lindell Road.

13 THE COURT FURTHER FINDS that as to the Russell Road property, according to the
14 report prepared by Larry Bertsch, the court-appointed forensic accountant, Mr. Nelson, as the
15 investment trustee for the LSN Trust, purchased the property at 5220 E. Russell Road on
16 November 11, 1999, for \$855,945. Mr. Nelson's brother, Cal Nelson, made a down payment of
17 \$20,000 and became a 50% owner of the Russell Road Property despite this paltry
18 contribution.⁵ Cal Nelson and Mrs. Nelson later formed CJE&L, LLC, which rented this
19 property to Cal's Blue Water Marine. Shortly thereafter, CJE&L, LLC obtained a \$3,100,000
20 loan for the purpose of constructing a building for Cal's Blue Water Marine.⁶
21
22

23 THE COURT FURTHER FINDS that in 2004, Mrs. Nelson signed a guarantee on the
24 flooring contract for Cal's Blue Water Marine. She subsequently withdrew her guarantee and
25 the LSN Trust forfeited its interest in the property to Cal Nelson. While Mr. Nelson argues that
26 the release of Mrs. Nelson as guarantor could be consideration, the flooring contract was never
27

28 ⁵ Mr. Nelson testified that Cal Nelson also assumed a \$160,000 liability arising from a transaction by Mr. Nelson involving a Las Vegas Casino.

⁶ Defendant's Exhibit GGGGG

1
2 produced at trial and no value was ever assigned as to Mrs. Nelson's liability. Furthermore, the
3 Declaration of Value for Tax Purposes indicates that it was exempted from taxation due to
4 being a "transfer without consideration for being transferred to or from a trust."⁷ As such, the
5 alleged consideration was never established and appears to be illusory, and, accordingly, the
6 LSN Trust received no compensation from the Russell Road transaction.⁸

7 THE COURT FURTHER FINDS that in February 2010, Mr. Nelson purchased a 65%
8 interest in the Russell Road property, with Cal Nelson retaining a 35% interest in the property.
9

10 THE COURT FURTHER FINDS that on May 27, 2011, the Russell Road property was
11 sold for \$6,500,000. As part of the sale, Mr. Nelson testified that the ELN Trust made a
12 \$300,000 loan to the purchaser for improvements to the property, however, a first note/deed
13 was placed in the name of Julie Brown in the amount \$300,000 for such property improvement
14 loan. Due to the ambiguity as to who is entitled to repayment of the \$300,000 loan (ELN Trust
15 or Julie Brown), the Court is not inclined at this time to include such loan into the calculation
16 as to the ELN Trust's interest in the property.
17

18 THE COURT FURTHER FINDS that a second note/deed was placed on the Russell
19 Road property in the amount of \$295,000 to recapture all back rents and taxes.

20 THE COURT FURTHER FINDS that through a series of notes/deeds, the ELN Trust is
21 currently entitled to 66.67% of the \$6,500,000 purchase price and 66.67% of the \$295,000
22 note/deed for rents and taxes. Therefore, the ELN Trust and Mr. Nelson are entitled to
23 proceeds in the amount of \$4,530,227 (\$4,333,550 + \$196,677) from the Russell Road property
24 transaction.⁹
25

26 ...

27 ⁷ Defendant's Exhibit UUUU

28 ⁸ Id.

⁹ Defendant's Exhibit GGGG.

1
2 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for
3 transferring its interest in Russell Road, under the advice and direction of Mr. Nelson, it would
4 be inequitable to allow the ELN Trust to retain its full 66.67% interest in the property to the
5 detriment of the LSN Trust. Therefore, the Court hereby imposes a constructive trust over half
6 of the ELN Trust 66.67% ownership interest in the Russell Road property on behalf of the LSN
7 Trust. As such, the LSN Trust is entitled to a 50% interest of the ELN Trust's 66.67%
8 ownership interest, resulting in the LSN Trust effectively receiving an overall one-third interest
9 in the Russell Road property with a value of \$2,265,113.50 (\$4,333,550 + \$196,677 x 1/2).
10

11 THE COURT FURTHER FINDS that as to the 3611 Lindell property, on August 22,
12 2001, the entire interest in the property was transferred to the LSN trust from Mrs. Nelson's
13 1993 revocable trust.

14 THE COURT FURTHER FINDS that on March 22, 2007, a 50% interest in the Lindell
15 property was transferred to the ELN Trust at the direction of Mr. Nelson without any
16 compensation to the LSN Trust. Review of the Grant, Bargain, Sale Deed allegedly executed
17 by Mrs. Nelson on said date clearly reflects a signature not consistent with Mrs. Nelson's
18 signature when compared to the numerous documents signed by Mrs. Nelson and submitted to
19 this Court. As such, the validity of the transfer of the 50% interest of the LSN Trust to the ELN
20 Trust is seriously questioned.¹⁰
21

22 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for
23 the 50% interest being transferred to the ELN Trust was the transfer of the Mississippi property
24 to the LSN, the court did not find such testimony credible as it appears that the transfer of the
25 Mississippi property occurred in 2004, whereas, the Lindell transfer to the ELN Trust was in
26 2007. In addition, the testimony was not clear as to which Mississippi properties were involved
27

28 ¹⁰ Defendant's Exhibit PPPP.

1
2 in the alleged transfer and no credible testimony as to the value of the Mississippi property was
3 presented. Accordingly, any alleged consideration for the transfer of the 50% interest in the
4 Lindell property from the LSN Trust to the ELN Trust is illusory.

5 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for
6 transferring a 50% interest in the Lindell property to the ELN Trust, under the advice and
7 direction of Mr. Nelson, it would inequitable to allow the ELN Trust to retain a 50% interest in
8 the property.
9

10 THE COURT FURTHER FINDS that the Court imposes a constructive trust over the
11 ELN Trust's 50% interest in the Lindell property; therefore, the LSN Trust is entitled to 100%
12 interest in the Lindell property, with an appraised value of \$1,145,000.
13

14 *Unjust Enrichment*

15 THE COURT FURTHER FINDS that to allow the ELN Trust to retain the benefits
16 from the sale of the High Country Inn, which will be addressed hereinafter, to the detriment of
17 the LSN Trust, would result in the unjust enrichment of the ELN Trust at the expense of the
18 LSN Trust.

19 THE COURT FURTHER FINDS that on January 11, 2000, the High Country Inn was
20 initially purchased by Mrs. Nelson's Revocable 1993 Trust.¹¹ While multiple transfer deeds
21 were executed with related parties (e.g. Grotta Financial Partnership, Frank Soris) at the
22 direction of Mr. Nelson, the LSN Trust owned the High Country Inn. On January 18, 2007, Mr.
23 Nelson, as investment trustee for both the ELN Trust and the LSN Trust, was the sole
24 orchestrator of the transfer of the High Country Inn from the LSN Trust to the ELN Trust.
25

26 ...

27 ...

28 ¹¹ The Nelson Trust would later transfer its interest in the High Country Inn to the LSN Trust on 5/30/01.

1
2 THE COURT FURTHER FINDS that on January 19, 2007, the ELN Trust sold the
3 High Country Inn for \$1,240,000 to Wyoming Lodging, LLC, with the proceeds from the sale
4 being placed directly into the bank account of ELN Trust,¹² without any compensation being
5 paid to the LSN Trust.
6

7 THE COURT FURTHER FINDS that in a fashion similar to the Russell Road
8 transaction, the ELN Trust provided no consideration to the LSN Trust. Further, it is quite
9 apparent that Mr. Nelson never intended to compensate the LSN Trust as evidenced by Mr.
10 Nelson's 2007 Tax Return Form, which listed both the sale of "Wyoming Hotel" (High
11 Country Inn) and "Wyoming OTB" (Off Track Betting) on his Form 1040 Schedule D.¹³
12

13 THE COURT FURTHER FINDS that allowing the ELN Trust to retain the benefit of
14 the proceeds from the sale of the High Country Inn would be unjust, and, accordingly, the LSN
15 Trust is entitled to just compensation. As such, an amount equal to the proceeds from the sale,
16 or in the alternative, property with comparable value, should be transferred to the LSN Trust to
17 avoid the ELN Trust from being unjustly enriched.

18 THE COURT FURTHER FINDS that Mr. Nelson created Banone, LLC on November
19 15, 2007, the same year that he sold High Country Inn.¹⁴ The Operating Agreement lists the
20 ELN Trust as the Initial Sole Member of the company, meaning that Banone, LLC is an asset
21 of the ELN Trust and that all benefits received from the managing of this company are
22 conferred to Mr. Nelson, as beneficiary of the ELN Trust.
23
24
25
26

27 ¹² On January 24, 2007, Uinta Title & Insurance wired proceeds in the total amount of \$1,947,153.37 (\$1,240,000
28 for High Country Inn and \$760,000 for the Off Track Betting Rights) to the ELN Trust's bank account.

¹³ Defendant's Exhibit NNNN.

¹⁴ Plaintiff's Exhibit 10K.

1
2 THE COURT FURTHER FINDS that Banone, LLC, currently holds seventeen
3 Nevada properties worth \$1,184,236.¹⁵

4 THE COURT FURTHER FINDS that equity and justice demands that the LSN Trust
5 receive just compensation in the amount of \$1,200,000 for the sale of the High Country Inn in
6 order to avoid the ELN Trust from being unjustly enriched, and, therefore, the LSN Trust
7 should be awarded the Banone, LLC, properties held by ELN Trust, with a comparable value of
8 \$1,184,236.
9

10 THE COURT FURTHER FINDS that there were additional transfers from the LSN
11 Trust to the ELN Trust, without just compensation, which financially benefitted the ELN Trust
12 to the detriment of the LSN Trust, specifically regarding the Tierra del Sol property,
13 Tropicana/Albertson property and the Brianhead cabin.
14

15 THE COURT FURTHER FINDS that as to the Tierra del Sol property, the entire
16 interest in the property was initially held in Mrs. Nelson's Revocable Trust and was
17 subsequently transferred to the LSN Trust on or about October 18, 2001.

18 THE COURT FURTHER FINDS that the Tierra del Sol property was sold in August 5,
19 2005, for \$4,800,000. Out of the proceeds from the first installment payment, Mr. Nelson had a
20 check issued from the LSN Trust account in the amount of \$677,717.48 in payment of a line of
21 credit incurred by Mr. Nelson against the Palmyra residence, which was solely owned by the
22 LSN Trust. From the proceeds for the second installment payment, the ELN Trust received
23 proceeds in the amount of \$1,460,190.58. As such, the ELN Trust received proceeds from the
24 sale of the Tierra del Sol property despite having no ownership interest in the property.
25

26 ...

27 ...

28 ¹⁵ Defendant's Exhibit GGGGG.

1
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that the ELN Trust
3 paid federal taxes in the amount of \$509,400 and Arizona taxes in the amount \$139,240 for a
4 total of \$648,640 on behalf of the LSN Trust from the proceeds received by the ELN Trust
5 from the sale of the Tierra del Sol property, that would still leave over \$800,000 that the ELN
6 Trust received despite having no ownership interest in the Tierra del Sol property.

7
8 THE COURT FURTHER FINDS that as to the Tropicana/Albertson's property, the
9 ELN Trust transferred a 50% interest in the property to the LSN Trust in November of 2004 in
10 consideration of an \$850,000 loan to the ELN Trust from the LSN Trust.

11 THE COURT FURTHER FINDS that Minutes dated November 20, 2004, reflected that
12 all Mississippi property and Las Vegas property owned by the ELN Trust was transferred to the
13 LSN trust as final payment on the 2002 loans from the LSN to the ELN Trust and to "level off
14 the trusts." It must be noted that in November of 2004 the only Las Vegas property owned by
15 the ELN Trust was the Tropicana/Albertson property.

16 THE COURT FURTHER FINDS that in 2007, Mr. Nelson had the LSN Trust deed
17 back the Tropicana/Albertson property to the ELN Trust, without compensation, and then sold
18 the property the same day, resulting in the ELN Trust receiving all the proceeds from the sale
19 of the property in the amount of \$966,780.23.

20
21 THE COURT FURTHER FINDS that as to the Brianhead cabin, the entire interest was
22 held by the LSN Trust.

23 THE COURT FURTHER FINDS that on May 22, 2007, a 50% interest in the
24 Brianhead cabin was transferred to the ELN Trust at the direction of Mr. Nelson without any
25 compensation to the LSN Trust.

26
27 ...
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1
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for
3 the 50% interest in the Brianhead cabin being transferred to the ELN Trust was the transfer of
4 the Mississippi property to the LSN, the court did not find such testimony credible as it appears
5 that the transfer of the Mississippi property occurred in 2004, whereas, the Brianhead cabin
6 transfer to the ELN Trust was in 2007. In addition, the testimony was not clear as to which
7 Mississippi properties were involved in the alleged transfer and no credible testimony as to the
8 value of the Mississippi property was presented. Accordingly, any alleged consideration for the
9 transfer of the 50% interest in the Brianhead cabin property from the LSN Trust to the ELN
10 Trust is illusory.
11

12 THE COURT FURTHER FINDS that the transfers from the LSN Trust to the ELN
13 Trust regarding the Tierra del Sol property, the Tropicana/Albertson property and the
14 Brianhead cabin all financially benefitted the ELN Trust to the financial detriment of the LSN
15 Trust.
16

17 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were
18 significant loans from the LSN Trust to the ELN Trust, specifically: \$172,293.80 loan in May
19 of 2002; \$700,000 loan in October of 2003; \$250,000 loan in December of 2005 which resulted
20 in a total amount of \$576,000 being borrowed by the ELN Trust from the LSN Trust in 2005.
21

22 THE COURT FURTHER FINDS that while testimony was presented regarding
23 repayments of the numerous loans via cash and property transfers, the Court was troubled by
24 the fact that the loans were always going from the LSN Trust to the ELN Trust and further
25 troubled by the fact that the evidence failed to satisfactorily establish that all of the loans were
26 in fact paid in full.
27
28

1
2 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson
3 exhibited a course of conduct in which he had significant property transferred, including loans,
4 from the LSN Trust to the ELN Trust which benefited the ELN Trust to the detriment of the
5 LSN Trust, and, as such, justice and equity demands that the LSN Trust receive compensation
6 to avoid such unjust enrichment on the part of the ELN Trust.
7

8 *Credibility*

9 THE COURT FURTHER FINDS that during the first six days of trial held in 2010, Mr.
10 Nelson repeatedly testified that the actions he took were on behalf of the community and that
11 the ELN Trust and LSN Trust were part of the community.

12 THE COURT FURTHER FINDS that during the last several weeks of trial in 2012, Mr.
13 Nelson changed his testimony to reflect his new position that the ELN Trust and the LSN Trust
14 were not part of the community and were the separate property of the respective trusts.
15

16 THE COURT FURTHER FINDS that Mr. Nelson failed to answer questions in a direct
17 and forthright manner throughout the course of the proceedings.

18 THE COURT FURTHER FINDS that Mr. Nelson argued in the Motion to Dissolve
19 Injunction requesting the release of \$1,568,000, which the Court had ordered be placed in a
20 blocked trust account and enjoined from being released, that the ELN Trust "has an opportunity
21 to purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00;
22 however, the ELN will be unable to do so unless the Injunction is dissolved."
23

24 THE COURT FURTHER FINDS that despite the Court's denial of the request to
25 dissolve the injunction, the ELN Trust via Dynasty Development Group, LLC, completed the
26 transaction and reacquired Wyoming Downs at a purchase price of \$440,000. The completion
27
28

1 of the purchase, without the dissolution of the injunction, evinced that Mr. Nelson misstated the
2 ELN Trust's financial position, or at the very least was less than truthful with this Court.
3

4 THE COURT FURTHER FINDS that it should be noted that in an attempt to
5 circumvent this Court's injunction regarding the \$1,568,000, Mr. Nelson had a Bankruptcy
6 Petition filed in the United States Bankruptcy Court, District of Nevada, on behalf of the
7 Dynasty Development Group, LLC, requesting that the \$1,568,000 be deemed property of the
8 Debtor's bankruptcy estate; however, the bankruptcy court found that this Court had exclusive
9 jurisdiction over the \$1,568,000 and could make whatever disposition of the funds without
10 regard to the Debtor's bankruptcy filing.
11

12 THE COURT FURTHER FINDS that based upon Mr. Nelson's change of testimony
13 under oath, his repeated failure to answer questions in a direct and forthright manner, his less
14 that candid testimony regarding the necessity of dissolving the injunction in order to purchase
15 the Wyoming race track and RV park, and his attempt to circumvent the injunction issued by
16 this Court clearly reflect that Mr. Nelson lacks credibility.
17

18 THE COURT FURTHER FINDS that United States Bankruptcy Judge, Neil P. Olack,
19 of the Southern District of Mississippi, cited similar concerns as to Mr. Nelson's credibility
20 during a bankruptcy proceeding held on June 24, 2011, regarding Dynasty Development
21 Group, LLC. Specifically, Judge Olack noted that as a witness, Mr. Nelson simply lacked
22 credibility in that he failed to provide direct answers to straight forward questions, which gave
23 the clear impression that he was being less than forthcoming in his responses.¹⁶
24
25
26
27

28 ¹⁶ Defendant's Exhibit QQQQ.

1
2 THE COURT FURTHER FINDS that Bankruptcy Judge Olack found that the evidence
3 showed that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing in
4 three separate transfers, and, subsequently, dismissed the Bankruptcy Petition.¹⁷

5 THE COURT FURTHER FINDS that Mr. Nelson's behavior and conduct during the
6 course of these proceedings has been deplorable. This Court has observed Mr. Nelson angrily
7 bursting from the courtroom following hearings.

8 THE COURT FURTHER FINDS that Mr. Nelson has repeatedly exhibited
9 inappropriate conduct towards opposing counsel, Mr. Dickerson, including, cursing at him,
10 leaving vulgar voice messages on his office phone and challenging him to a fight in the parking
11 lot of his office.
12

13 THE COURT FURTHER FINDS that Mr. Nelson's deplorable behavior also included
14 an open and deliberate violation of the Joint Preliminary Injunction that has been in place since
15 May 18, 2009. On 12/28/2009, Mr. Nelson purchased the Bella Kathryn property and
16 subsequently purchased the adjoining lot on 8/11/2010. Currently, with improvements to the
17 properties factored in, a total of \$1,839,495 has been spent on the Bella Kathryn property.
18

19 THE COURT FURTHER FINDS that Mr. Nelson was living in the Harbor Hills
20 residence upon his separation from Mrs. Nelson and could have remained there indefinitely
21 pending the conclusion of these proceedings, however, he chose to purchase the Bella Kathryn
22 residence in violation of the JPI simply because he wanted a residence comparable to the
23 marital residence located on Palmyra.
24

25 ...

26 ...

27
28 ¹⁷ Defendant's Exhibit QQQQ.

1
2 THE COURT FURTHER FINDS that due to Mr. Nelson's willful and deliberate
3 violation of the JPI, the Bella Kathryn property will be valued at its "costs" in the amount of
4 \$1,839,495 and not at its appraised value of \$925,000 as a sanction for Mr. Nelson's
5 contemptuous behavior.

6
7 THE COURT FURTHER FINDS that as to Mr. Daniel Gerety, who testified as an
8 expert witness on behalf of the ELN Trust and Mr. Nelson, he based his report solely on
9 information and documentation provided to him by Mr. Nelson. It appears that Mr. Gerety
10 made no effort to engage Mrs. Nelson or her counsel in the process. In the Understanding of
11 Facts section of his report, Mr. Gerety repeatedly used the phrases "I have been told" or "I am
12 advised".¹⁸ Since Mr. Gerety considered statements from Mr. Nelson and others who were in
13 support of Mr. Nelson, an impartial protocol would dictate that he obtain statements from Mrs.
14 Nelson and her counsel in order to have a full and complete framework to fairly address the
15 issues at hand.
16

17 THE COURT FURTHER FINDS that Mr. Gerety has maintained a financially
18 beneficial relationship with Mr. Nelson dating back to 1998. This relationship, which has netted
19 Mr. Gerety many thousands of dollars in the past and is likely to continue to do so in the future,
20 calls in question his impartiality.

21 THE COURT FURTHER FINDS that while Mr. Gerety submitted documentation
22 allegedly outlining every transaction made by the ELN Trust from its inception through
23 September 2011, and "tracing" the source of funds used to establish Banone, LLC, this Court
24 found that Mr. Gerety's testimony was not reliable, and, as such, the Court found it to be of
25 little probative value.
26

27
28

¹⁸ Intervenor's Exhibit 168.

1
2 THE COURT FURTHER FINDS that as to Rochelle McGowan, she has had an
3 employment relationship with Mr. Nelson dating back to 2001, and was the person primarily
4 responsible for regularly notarizing various documents executed by Mr. and Mrs. Nelson on
5 behalf of the ELN Trust and LSN Trust, respectively.

6 THE COURT FURTHER FINDS that it was the regular practice for Mr. Nelson to
7 bring documents home for Mrs. Nelson's execution and to return the documents the following
8 day to be notarized by Ms. McGowan.

9
10 THE COURT FURTHER FINDS that the testimony of Ms. McGowan indicating that
11 she would contact Mrs. Nelson prior to the notarization of her signature is not credible as the
12 Court finds it difficult to believe that Ms. McGowan would actually contact Mrs. Nelson
13 directly every time prior to notarizing the documents.

14 *Lack of Trust Formalities*

15 THE COURT FURTHER FINDS that the formalities outlined within the ELN Trust and
16 the LSN Trust were not sufficiently and consistently followed. Article eleven, section 11.3, of
17 both trusts provides that Attorney Burr, as Trust Consultant, shall have the right to remove any
18 trustee, with the exception of Mr. Nelson and Mrs. Nelson, provided that he gives the current
19 trustee ten days written notice of their removal.
20

21 THE COURT FURTHER FINDS that Attorney Burr testified that on February 22,
22 2007, at Mr. Nelson's request, he removed Mr. Nelson's employee, Lana Martin, as
23 Distribution Trustee of both the ELN Trust and the LSN Trust and appointed Mr. Nelson's
24 sister, Nola Harber, as the new Distribution Trustee for both trusts. Attorney Burr further
25 testified that he did not provide Ms. Martin with ten days notice as specified in the trusts
26 documents. In June 2011, at Mr. Nelson's request, Attorney Burr once again replaced the
27
28

1
2 Distribution Trustee for the ELN Trust, without providing ten days notice, by replacing Nola
3 Harber with Lana Martin.

4 THE COURT FURTHER FINDS that the ELN Trust and LSN Trust documents require
5 that a meeting of the majority of the trustees be held prior to any distribution of trust income or
6 principal. During the meetings, the trustees must discuss the advisability of making
7 distributions to the ELN Trust Trustor, Mr. Nelson, and the LSN Trust Trustor, Mrs. Nelson. At
8 that time, a vote must take place and the Distribution Trustee must provide an affirmative vote.
9

10 THE COURT FURTHER FINDS that the testimony of Lana Martin and Nola Harber
11 indicate that neither one of them ever entered a negative vote in regards to distributions to Mr.
12 Nelson or Mrs. Nelson. The testimony also reflected that neither one of them ever advised Mr.
13 Nelson or Mrs. Nelson on the feasibility of making such distributions.
14

15 THE COURT FURTHER FINDS that while Ms. Martin and Ms. Harber testified that
16 they had the authority to approve or deny the distributions to Mr. Nelson under the ELN Trust
17 and to Mrs. Nelson under the LSN Trust, that despite literally hundreds of distributions
18 requests, they never denied even a single distribution request. Therefore, Ms. Martin and Ms.
19 Harber were no more than a "rubber stamp" for Mr. Nelson's directions as to distributions to
20 Mr. Nelson and Mrs. Nelson.
21

22 THE COURT FURTHER FINDS that while the ELN Trust produced multiple Minutes
23 of alleged meetings; this Court seriously questions the authenticity of the submitted
24 documentation. Specifically, several of the Minutes were unsigned, the authenticity of the
25 signatures reflected on some of the Minutes were questionable, and several of the Minutes
26 reflected that the meetings were held at the office of Attorney Burr while the testimony clearly
27 established that no such meetings ever occurred at his law office.
28

1
2 THE COURT FURTHER FINDS that Daniel Gerety testified that he had to make
3 numerous adjustments to correct bookkeeping and accounting errors regarding the two trusts by
4 utilizing the entries "Due To" and "Due From" to correctly reflect the assets in each trust.

5 THE COURT FURTHER FINDS that the numerous bookkeeping and accounting
6 errors, in conjunction with the corresponding need to correct the entries to accurately reflect the
7 assets in each trust, raises serious questions as to whether the assets of each trust were truly
8 being separately maintained and managed.
9

10 THE COURT FURTHER FINDS that the lack of formalities further emphasizes the
11 amount of control that Mr. Nelson exerted over both trusts and that he did indeed manage both
12 trust for the benefit of the community.

13 THE COURT FURTHER FINDS that while the Court could invalidate both Trusts
14 based upon the lack of Trust formalities, this Court is not inclined to do so since invalidation of
15 the Trusts could have serious implications for both parties in that it could expose the assets to
16 the claims of creditors, thereby, defeating the intent of the parties to "supercharge" the
17 protection of the assets from creditors.
18

19 *Liabilities*

20 THE COURT FURTHER FINDS that while Mr. Nelson argued that he and the ELN
21 Trust were subject to numerous liabilities, this Court did not find any documented evidence to
22 support such claims except for the encumbrance attached to the newly reacquired Wyoming
23 Downs property.
24

25 ...

26 ...

1
2 THE COURT FURTHER FINDS that Mr. Bertsch's report addresses several
3 unsupported liabilities alleged by Mr. Nelson. Specifically, Mr. Nelson reported a contingent
4 liability attached to the property located in the Mississippi Bay, however, no value was given to
5 the liability.¹⁹

6
7 THE COURT FURTHER FINDS that the Bertsch report indicated that several of the
8 liabilities were actually options held by subsidiaries that Mr. Nelson owns or options held by
9 relatives of Mr. Nelson, and, as such, were not true liabilities.²⁰

10 THE COURT FURTHER FINDS that while Mr. Nelson represented that a \$3,000,000
11 lawsuit was threatened by a third-party in regards to a transaction involving the Hideaway
12 Casino, no evidence was submitted to the Court that any such lawsuit had in fact been filed.

13 THE COURT FURTHER FINDS that the only verified liability is the loan attached to
14 Wyoming Downs. As mentioned above, Mr. Nelson, via Dynasty Development Group,
15 purchased Wyoming Downs in December 2011 for \$440,000 and subsequently obtained a loan
16 against the property.

17
18 THE COURT FURTHER FINDS that outside of the encumbrance attached to the
19 Wyoming Downs property, the liabilities alleged by Mr. Nelson have not been established as
20 true liabilities and are based on mere speculations and threats.

21 *Community Waste*

22 THE COURT FURTHER FINDS that the Nevada Supreme Court case of *Lofgren v.*
23 *Lofgren* addressed community waste and found that the husband wasted community funds by
24 making transfers/payments to family members, using the funds to improve the husband's home
25 and using the funds to furnish his new home. *Lofgren v. Lofgren*, 112 Nev. 1282, 1284 (1996).

26
27
28 ¹⁹ Defendant's Exhibit GGGGG.

²⁰ Id.

1
2 THE COURT FURTHER FINDS that evidence was adduced at trial that the transfers to
3 Mr. Nelson's family members were to compensate them for various services rendered and for
4 joint-investment purposes, and while some of the family transfers were indeed questionable,
5 Mr. Bertsch, the forensic accountant, testified that 1099s were provided to document income
6 paid and loan repayments to Mr. Nelson's family members.²¹
7

8 THE COURT FURTHER FINDS that transfers to Mr. Nelson's family members appear
9 to have been part of Mr. Nelson's regular business practices during the course of the marriage
10 and that Mrs. Nelson has always been aware of this practice and never questioned such
11 transfers prior to the initiation of these proceedings.

12 THE COURT FURTHER FINDS that Mrs. Nelson failed to establish that the transfers
13 to Mr. Nelson's family members constituted waste upon the community estate.
14

15 THE COURT FURTHER FINDS that as to Mr. Nelson's purchase, improvement and
16 furnishing of the Bella Kathryn residence via the ELN Trust, the ELN Trust and Mr. Nelson are
17 being sanctioned by this Court by valuing such property at "costs" in the amount of \$1,839,495
18 instead of at its appraised value of \$925,000, and, accordingly, it would be unjust for this Court
19 to further consider the Bella Kathryn property under a claim of community waste.

20 *Child Support*

21 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to child support arrears
22 pursuant to NRS 125B.030 which provides for the physical custodian of the children to recover
23 child support from the noncustodial parent.
24
25
26
27

28 ²¹ Mr. Bertsch did not confirm whether or not the 1099s were filed with the IRS as that was not within the scope of his assigned duties.

1
2 THE COURT FURTHER FINDS that the parties separated in September of 2008 when
3 Mr. Nelson permanently left the marital residence, and, therefore, Mrs. Nelson is entitled to
4 child support payments commencing in October 2008.

5 THE COURT FURTHER FINDS that Mr. Nelson's monthly earnings throughout the
6 course of these extended proceedings exceeded the statutory presumptive maximum income
7 range of \$14,816 and places his monthly child support obligation at the presumptive maximum
8 amount which has varied from year to year.
9

10 THE COURT FURTHER FINDS that Mr. Nelson's child support obligation
11 commencing on October 1, 2008 through May 31, 2013, inclusive, is as follows:

12 October 1, 2008 - June 30, 2009 = [(2 children x \$968) x 9 months] = \$17,424
13 July 1, 2009 - June 30, 2010 = [(2 children x \$969) x 12 months] = \$23,256
14 July 1, 2010 - June 30, 2011 = [(2 children x \$995) x 12 months] = \$23,880
15 July 1, 2011 - June 30, 2012 = [(2 children x \$1010) x 12 months] = \$24,240
16 July 1, 2012 - May 31, 2013 = [(2 children x \$1040) x 11 months] = \$22,880
17 Total = \$111,680

18 THE COURT FURTHER FINDS that Mr. Bertsch's report indicates that Mr. Nelson
19 has spent monies totaling \$71,716 on the minor children since 2009, to wit:

20 2009: Carli = \$14,000; Garrett = \$5,270;
21 2010: Carli = \$9,850; Garrett = \$29,539;
22 2011: Carli = \$8,630; Garrett = \$4,427
23 Total = \$71,716
24
25
26 ...
27 ...
28

1
2 THE COURT FURTHER FINDS that NRS 125B.080(9) describes the factors that the
3 Court must consider when adjusting a child support obligation. The factors to consider are:

- 4 (a) The cost of health insurance;
5 (b) The cost of child care;
6 (c) Any special educational needs of the child;
7 (d) The age of the child;
8 (e) The legal responsibility of the parents for the support of others;
9 (f) The value of services contributed by either parent;
10 (g) Any public assistance paid to support the child;
11 (h) Any expenses reasonably related to the mother's pregnancy and confinement;
12 (i) The cost of transportation of the child to and from visitation if the custodial parent
13 moved with the child from the jurisdiction of the court which ordered the support
14 and the noncustodial parent remained;
15 (j) The amount of time the child spends with each parent;
16 (k) Any other necessary expenses for the benefit of the child; and
17 (l) The relative income of both parents.

18 THE COURT FURTHER FINDS that, while the information provided to the Court does
19 not itemize the exact nature of the expenditures by Mr. Nelson on behalf of the children, NRS
20 125B.080(9)(k) does provide for a deviation for any other necessary expenses for the benefit of
21 the child.

22 THE COURT FURTHER FINDS that considering the fact that \$71,716 is a relatively
23 large sum of money, it would appear that fairness and equity demands that Mr. Nelson be given
24 some credit for the payments he made on behalf of the children. Therefore, the Court is inclined
25 to give Mr. Nelson credit for \$23,905 (one-third of the payments made on behalf of the
26 children), resulting in child support arrears in the amount of \$87,775.

27 THE COURT FURTHER FINDS that, while Mr. Nelson did spend a rather significant
28 amount of monies on the children dating back to 2009, Mr. Nelson did not provide any monies
whatsoever to Mrs. Nelson in support of the minor children, and, as such, crediting Mr. Nelson
with only one-third of such payments on behalf of the children seems quite fair and reasonable.

1
2 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to current child support in
3 the amount of \$1,040 a month per child commencing June 1, 2013 through June 30, 2013 for a
4 monthly total of \$2,080.

5 THE COURT FURTHER FINDS that subject minor, Garrett, is 18 years old and will be
6 graduating from high school in June of 2013, and, as such, Mr. Nelson's child support
7 obligation as to Garrett ends on June 30, 2013.

8
9 THE COURT FURTHER FINDS that beginning July 1, 2013, Mr. Nelson's child
10 support obligation as to Carli will be \$1,058 per month.

11 *Spousal Support*

12 THE COURT FURTHER FINDS that NRS 125.150 provides as follows:

13 1. In granting a divorce, the court:

- 14 (a) May award such alimony to the wife or to the husband, in a specified principal sum or as
15 specified periodic payments, as appears just and equitable; and
16 (b) Shall, to the extent practicable, make an equal disposition of the community property of the
17 parties, except that the court may make an unequal disposition of the community property in
18 such proportions as it deems just if the court finds a compelling reason to do so and sets forth in
19 writing the reasons for making the unequal disposition

20 THE COURT FURTHER FINDS that the Nevada Supreme Court has outlined seven
21 factors to be considered by the court when awarding alimony such as: (1) the wife's career prior
22 to marriage; (2) the length of the marriage; (3) the husband's education during the marriage; (4)
23 the wife's marketability; (5) the wife's ability to support herself; (6) whether the wife stayed
24 home with the children; and (7) the wife's award, besides child support and alimony. *Sprenger*
25 v. *Sprenger*, 110 Nev. 855, 859 (1974).

26 THE COURT FURTHER FINDS that the Nelsons have been married for nearly thirty
27 years; that their earning capacities are drastically different in that Mr. Nelson has demonstrated
28 excellent business acumen as reflected by the large sums of monies generated through his
multiple business ventures and investments; that Mrs. Nelson only completed a year and a half

1
2 of college and gave up the pursuit of a career outside of the home to become a stay at home
3 mother to the couple's five children; that Mrs. Nelson's career prior to her marriage and during
4 the first few years of her marriage consisted of working as a receptionist at a mortgage
5 company, sales clerk at a department store and a runner at a law firm, with her last job outside
6 of the home being in 1986;
7

8 THE COURT FURTHER FINDS that Mrs. Nelson's lack of work experience and
9 limited education greatly diminishes her marketability. Additionally, Mrs. Nelson solely relied
10 on Mr. Nelson, as her husband and delegated investment trustee, to acquire and manage
11 properties to support her and the children, and, as such, Mrs. Nelson's ability to support herself
12 is essentially limited to the property award that she receives via these divorce proceedings.
13

14 THE COURT FURTHER FINDS that while Mrs. Nelson will receive a substantial
15 property award via this Divorce Decree, including some income generating properties, the
16 monthly income generated and the values of the real property may fluctuate significantly
17 depending on market conditions. In addition, it could take considerable time to liquidate the
18 property, as needed, especially considering the current state of the real estate market. As such,
19 Mrs. Nelson may have significant difficulty in accessing any equity held in those properties.
20

21 THE COURT FURTHER FINDS that conversely, Mr. Nelson has become a formidable
22 and accomplished businessman and investor. Mr. Nelson's keen business acumen has allowed
23 him to amass a substantial amount of wealth over the course of the marriage.
24

25 THE COURT FURTHER FINDS that the repurchase of Wyoming Downs by Mr.
26 Nelson via Dynasty Development Group and his ability to immediately obtain a loan against
27 the property to pull out about \$300,000 in equity, clearly evidences Mr. Nelson's formidable
28 and accomplished business acumen and ability to generate substantial funds through his

1
2 investment talents. This type of transaction is not atypical for Mr. Nelson and demonstrates his
3 extraordinary ability, which was developed and honed during the couple's marriage, to evaluate
4 and maximize business opportunities and will ensure that he is always able to support himself,
5 unlike Mrs. Nelson.

6 THE COURT FURTHER FINDS that based the upon the findings addressed
7 hereinabove, Mrs. Nelson is entitled to an award of spousal support pursuant to NRS 125.150
8 and the factors enunciated in Sprenger²²
9

10 THE COURT FURTHER FINDS that during the marriage, at the direction of Mr.
11 Nelson, Mrs. Nelson initially received monthly disbursements in the amount of \$5,000, which
12 was increased to \$10,000 per month, and ultimately increased to \$20,000 per month dating
13 back to 2004. The \$20,000 per month disbursements did not include expenses which were paid
14 directly through the Trusts.

15 THE COURT FURTHER FINDS that based upon the distributions that Mrs. Nelson
16 was receiving during the marriage, \$20,000 per month is a fair and reasonable amount
17 necessary to maintain the lifestyle that Mrs. Nelson had become accustomed to during the
18 course of the marriage.
19

20 THE COURT FURTHER FINDS that based upon the property distribution that will be
21 addressed hereinafter, Mrs. Nelson will receive some income producing properties (Lindell,
22 Russell Road, some of the Banone, LLC properties).
23

24 THE COURT FURTHER FINDS that while the evidence adduced at trial reflected that
25 the Lindell property should generate a cash flow of approximately \$10,000 a month, the
26 evidence failed to clearly establish the monthly cash flow from the remaining properties.
27 However, in the interest of resolving this issue without the need for additional litigation, this
28

²² Sprenger v. Sprenger, 110 Nev. 855 (1974).

1
2 Court will assign an additional \$3,000 a month cash flow from the remaining properties
3 resulting in Mrs. Nelson receiving a total monthly income in the amount of \$13,000.

4 THE COURT FURTHER FINDS that based upon a monthly cash flow in the amount of
5 \$13,000 generated by the income producing properties, a monthly spousal support award in the
6 amount of \$7,000 is fair and just and would allow Mrs. Nelson to maintain the lifestyle that she
7 had become accustomed to throughout the course of the marriage.
8

9 THE COURT FURTHER FINDS that Mrs. Nelson is 52 years of age and that spousal
10 support payments in the amount of \$7,000 per month for 15 years, which would effectively
11 assist and support her through her retirement age, appears to be a just and equitable spousal
12 support award.

13 THE COURT FURTHER FINDS that NRS 125.150(a) provides, in pertinent part, that
14 the court may award alimony in a specified *principal sum* or as specified periodic payment
15 (emphasis added).
16

17 THE COURT FURTHER FINDS that the Nevada Supreme Court has indicated that a
18 lump sum award is the setting aside of a spouse's separate property for the support of the other
19 spouse and is appropriate under the statute. *Sargeant v. Sargeant*, 88 Nev. 223, 229 (1972). In
20 *Sargeant*, the Supreme Court affirmed the trial court's decision to award the wife lump sum
21 alimony based on the husband short life expectancy and his litigious nature. The Supreme
22 Court, citing the trial court, highlighted that "the overall attitude of this plaintiff illustrates
23 some possibility that he might attempt to liquidate, interfere, hypothecate or give away his
24 assets to avoid payment of alimony or support obligations to the defendant" *Id.* at 228.
25

26 ...
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1
2 THE COURT FURTHER FINDS that Mr. Nelson's open and deliberate violation of the
3 Joint Preliminary Injunction evidences his attitude of disregard for court orders. The Court also
4 takes notice of Bankruptcy Judge Olack's finding that Mr. Nelson attempted to deplete the
5 assets of Dynasty Development Group on the eve of the bankruptcy filing, raising the concern
6 that Mr. Nelson may deplete assets of the ELN Trust precluding Mrs. Nelson from receiving a
7 periodic alimony award.
8

9 THE COURT FURTHER FINDS that Mr. Nelson has been less than forthcoming as to
10 the nature and extent of the assets of the ELN Trust which raises another possible deterrent
11 from Mrs. Nelson receiving periodic alimony payments.
12

13 THE COURT FURTHER FINDS that, as addressed hereinbefore, the ELN Trust moved
14 this Court to dissolve the injunction regarding the \$1,568,000 because it "has an opportunity to
15 purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00; however,
16 the ELN will be unable to do so unless the Injunction is dissolved."

17 THE COURT FURTHER FINDS that despite the representation to the Court that the
18 injunction needed to be dissolved so that the ELN Trust would be able to purchase Wyoming
19 Downs, less than a month after the hearing, the ELN Trust, with Mr. Nelson serving as the
20 investment trustee, completed the purchase of Wyoming Downs. This leads this Court to
21 believe that Mr. Nelson was less than truthful about the extent and nature of the funds available
22 in the ELN Trust and such conduct on the part of Mr. Nelson raises serious concerns about the
23 actions that Mr. Nelson will take to preclude Mrs. Nelson from receiving periodic spousal
24 support payments.
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1
2 THE COURT FURTHER FINDS that Mr. Nelson alleged numerous debts and
3 liabilities worth millions of dollars, but forensic accountant, Mr. Bertsch, found that these
4 alleged debts and liabilities were based solely on threats and speculations.

5 THE COURT FURTHER FINDS that Mr. Nelson's practice of regularly transferring
6 property and assets to family members, as highlighted in the transactions involving the High
7 Country Inn and Russell Road properties, contributes to this Court's concern that Mr. Nelson
8 may deplete the assets of the ELN Trust via such family transfers, and, thereby, effectively
9 preclude Mrs. Nelson from receiving a periodic spousal support award.
10

11 THE COURT FURTHER FINDS that Mr. Nelson's overall attitude throughout the
12 course of these proceedings illustrates the possibility that he might attempt to liquidate,
13 interfere, hypothecate or give away assets out of the ELN Trust to avoid payment of his support
14 obligations to Mrs. Nelson, thereby justifying a lump sum spousal support award to Mrs.
15 Nelson based on the factors addressed hereinabove and the rationale enunciated in *Sargeant*.
16

17 THE COURT FURTHER FINDS that calculation of a monthly spousal support
18 obligation of \$7,000 for 15 years results in a total spousal support amount of \$1,260,000 which
19 needs to be discounted based upon being paid in a lump sum. Accordingly, Mrs. Nelson is
20 entitled to a lump sum spousal support award in the amount of \$800,000.

21 THE COURT FURTHER FINDS that the ELN Trust should be required to issue a
22 distribution from the \$1,568,000 reflected in the account of Dynasty Development Group, LLC,
23 and currently held in a blocked trust account pursuant to this Court's injunction, to satisfy Mr.
24 Nelson's lump sum spousal support obligation and to satisfy his child support arrearages
25 obligation.
26
27
28

1
2 THE COURT FURTHER FINDS that Mr. Nelson argues that Dynasty Development
3 Group, LLC, is 100% held by the ELN Trust, and, therefore, he has no interest in Dynasty nor
4 the funds reflected in the Dynasty account as all legal interest rests with the ELN Trust.²³

5 THE COURT FURTHER FINDS that various statutes and other sources suggest that
6 the interest of a spendthrift trust beneficiary can be reached to satisfy support of a child or a
7 former spouse.²⁴ Specifically, South Dakota, which also recognizes self-settled spendthrift
8 trust, has addressed the issue in South Dakota Codified Law § 55-16-15 which states:

10 Notwithstanding the provisions of §§ 55-16-9 to 55-16-14, inclusive, this chapter does
11 not apply in any respect to any person to whom the transferor is indebted on account of
12 an agreement or *order of court* for the payment of *support* or *alimony* in favor of such
13 transferor's spouse, *former spouse*, or children, or for a *division or distribution of*
14 *property* in favor of such transferor's spouse or former spouse, to the extent of such debt
(emphasis added).

14 Wyoming, which also allows self-settled spendthrift trust, has also addressed the matter
15 through Wyoming Statutes Annotated § 4-10-503(b):

16 (b) Even if a trust contains a spendthrift provision, a person who has a judgment or
17 court order against the beneficiary for child support or maintenance may obtain from a
18 court an order attaching present or future distributions to, or for the benefit of, the
19 beneficiary.

20 THE COURT FURTHER FINDS that, while not binding on this Court, these statutes
21 clearly demonstrate that spouses entitled to alimony or maintenance are to be treated differently
22 than a creditor by providing that the interest of a spendthrift trust beneficiary can be reached to
23 satisfy support of a child or a former spouse.

24 ...

25 ...

27
28 ²³ NRS 166.130
²⁴ Restatement (Third) of Trust § 59 (2003).

1 THE COURT FURTHER FINDS that in *Gilbert v. Gilbert*, 447 So.2d 299, the Florida
2 Court of Appeals affirmed the district court's order that allowed the wife to garnish the
3 husband's beneficiary interest in a spendthrift trust to satisfy the divorce judgment regarding
4 alimony payments.
5

6 THE COURT FURTHER FINDS that the *Gilbert* court found that while "the cardinal
7 rule of construction in trusts is to determine the intention of the settler and give effect to his
8 wishes . . . there is a strong public policy argument which favors subjecting the interest of the
9 beneficiary of a trust to a claim for alimony."²⁵ The Court went on to state that the dependents
10 of the beneficiary should not be deemed to be creditors as such a view would "permit the
11 beneficiary to have the enjoyment of the income from the trust while he refuses to support his
12 dependents whom it is his duty to support."²⁶ The *Gilbert* court went on to state that a party's
13 responsibility to pay alimony "is a duty, not a debt."²⁷
14

15 THE COURT FURTHER FINDS that there is a strong public policy argument in favor
16 of subjecting the interest of the beneficiary of a trust to a claim for spousal support and child
17 support, and, as such, Mr. Nelson's beneficiary interest in the ELN Trust should be subjected to
18 Mrs. Nelson award of spousal support and child support.
19

20 *Attorney's Fees*

21 THE COURT FURTHER FINDS that NRS 18.010(2)(b) provides, in pertinent part, for
22 the award of attorney's fees to the prevailing party: "when the court finds that the claim,
23 counterclaim, cross-claim or third-party complaint or defense of the opposing party was
24 brought or maintained without reasonable ground or to harass the prevailing party."
25
26

27 ²⁵ Id at 301.

28 ²⁶ *Gilbert v. Gilbert*, 447 So.2d 299, 301

²⁷ Id at 301.

1
2 THE COURT FURTHER FINDS that Mr. Nelson, as the Investment Trustee for the
3 ELN Trust, was the person authorized to institute legal action on behalf of the Trust.

4 THE COURT FURTHER FINDS that Mr. Nelson did not request that the ELN Trust
5 move to be added as a necessary party to these proceedings until almost two years after
6 initiating this action and following the initial six days of trial. It is apparent to this Court that
7 Mr. Nelson was not satisfied with the tenor of the courts preliminary "findings" in that it was
8 not inclined to grant his requested relief, and, consequently, decided to pursue a "second bite at
9 the apple" by requesting that the ELN Trust pursue being added as a necessary party.

10
11 THE COURT FURTHER FINDS that adding the ELN Trust as a necessary party at this
12 rather late stage of the proceedings, resulted in extended and protracted litigation including the
13 re-opening of Discovery, the recalling of witnesses who had testified at the initial six days of
14 trial, and several additional days of trial.

15 THE COURT FURTHER FINDS that Mr. Nelson's position that he had a conflict of
16 interest which prevented him from exercising his authority to institute legal action on behalf of
17 the ELN Trust was not credible as he had appeared before this Court on numerous occasions
18 regarding community waste issues and the transfer of assets from the ELN Trust and the LSN
19 Trust and had never raised an issue as to a conflict of interest.

20
21 THE COURT FURTHER FINDS that while both parties were aware of the existence of
22 the ELN and LSN Trusts from the onset of this litigation, and, as such, Mrs. Nelson could have
23 moved to add the ELN Trust as a necessary party, Mr. Nelson had consistently maintained
24 throughout his initial testimony that the assets held in the ELN Trust and the LSN Trusts were
25 property of the community.
26
27
28

1
2 THE COURT FURTHER FINDS that, while this Court fully respects and supports a
3 party's right to fully and thoroughly litigate its position, Mr. Nelson's change in position as to
4 the character of the property of the ELN Trust and LSN Trust in an attempt to get a "second
5 bite of the apple", resulted in unreasonably and unnecessarily extending and protracting this
6 litigation and additionally burdening this Court's limited judicial resources, thereby justifying
7 an award of reasonable attorney fees and costs in this matter.

8
9 THE COURT FURTHER FINDS that in considering whether or not to award
10 reasonable fees and cost this Court must consider "(1) the qualities of the advocate: his ability,
11 his training, education, experience, professional standing and skill; (2) the character of the work
12 to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility
13 imposed and the prominence and character of the parties where they affect the importance of
14 the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given
15 to the work; (4) the result: whether the attorney was successful and what benefits were
16 derived." *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349 (1969).

17
18 THE COURT FURTHER FINDS Attorney Dickerson has been Mrs. Nelson's legal
19 counsel continuously since September 2009 and is a very experienced, extremely skillful and
20 well-respected lawyer in the area of Family Law. In addition, this case involved some difficult
21 and complicated legal issues concerning Spendthrift Trusts and required an exorbitant
22 commitment of time and effort, including the very detailed and painstaking review of
23 voluminous real estate and financial records. Furthermore, Attorney Dickerson's skill, expertise
24 and efforts resulted in Mrs. Nelson's receiving a very sizeable and equitable property
25 settlement.
26
27
28

1
2 THE COURT FURTHER FINDS that upon review of attorney Dickerson's
3 Memorandum of Fees and Costs, this Court feels that an award of attorney fees in the amount
4 of \$144,967 is fair and reasonable and warranted in order to reimburse Mrs. Nelson for the
5 unreasonable and unnecessary extension and protraction of this litigation by Mr. Nelson's
6 change of position in regards to the community nature of the property and his delay in having
7 the ELN Trust added as a necessary party which added significant costs to this litigation.
8

9 THE COURT FURTHER FINDS that while the Court could invalidate the Trusts based
10 upon Mr. Nelson's testimony as to community nature of the assets held by each Trust, the
11 breach of his fiduciary duty as a spouse, the breach of his fiduciary duty as an investment
12 trustee, the lack of Trust formalities, under the principles of a constructive trust, and under the
13 doctrine of unjust enrichment, the Court feels that keeping the Trusts intact, while transferring
14 assets between the Trusts to "level off the Trusts", would effectuate the parties clear intentions
15 of "supercharging" the protection of the assets from creditors while ensuring that the respective
16 values of the Trusts remained equal.
17

18 THE COURT FURTHER FINDS that in lieu of transferring assets between the Trusts
19 to level off the Trust and to achieve an equitable allocation of the assets between the Trusts as
20 envisioned by the parties, the Court could award a sizable monetary judgment against Mr.
21 Nelson for the extensive property and monies that were transferred from the LSN Trust to the
22 ELN Trust, at his direction, and issue a corresponding charging order against any distributions
23 to Mr. Nelson until such judgment was fully satisfied.
24

25 ...

26 ...

1
2 THE COURT FURTHER FINDS that the Court has serious concerns that Mrs. Nelson
3 would have a very difficult time collecting on the judgment without the need to pursue endless
4 and costly litigation, especially considering the extensive and litigious nature of these
5 proceedings.

6
7 THE COURT FURTHER FINDS that due to Mr. Nelson's business savvy and the
8 complexity of his business transactions, the Court is concerned that he could effectively deplete
9 the assets of the ELN Trust without the need to go through distributions, thereby circumventing
10 the satisfaction of the judgment via a charging order against his future distributions.

11 THE COURT FURTHER FINDS that its concern about Mr. Nelson depleting the assets
12 of the ELN Trust seems to be well founded when considering the fact that Bankruptcy Judge
13 Olack found that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing.

14
15 THE COURT FURTHER FINDS that upon review of Mr. Bertsch's Second
16 Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses
17 for the Period from April 1, 2012 through July 25, 2012, Mr. Bertsch is entitled to payment of
18 his outstanding fees in the amount of \$35,258.

19 THE COURT FURTHER FINDS that in preparing this Decree of Divorce, the
20 monetary values and figures reflected herein were based on values listed in Mr. Bertsch's
21 report and the testimony elicited from the July and August 2012 hearings.²⁸

22
23 THE COURT FURTHER FINDS that as to the repurchase of Wyoming Downs by the
24 ELN Trust via the Dynasty Development Group, this Court is without sufficient information
25 regarding the details of the repurchase of the property, the value of the property and the
26 encumbrances on the property to make a determination as to the disposition of the property,
27

28

²⁸ *Supra*, note 6.

1
2 and, accordingly, is not making any findings or decisions as to the disposition of the Wyoming
3 Downs property at this time.

4 ***Conclusion***

5 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
6 bonds of matrimony now existing between Eric and Lynita Nelson are dissolved and an
7 absolute Decree of a Divorce is granted to the parties with each party being restored to the
8 status of a single, unmarried person.
9

10 IT IS FURTHER ORDERED that the Brianhead cabin, appraised at a value of \$985,000
11 and currently held jointly by the ELN Trust and the LSN Trust, is to be divided equally
12 between the Trusts.

13 IT IS FURTHER ORDERED that both parties shall have the right of first refusal should
14 either Trust decide to sell its interest in the Brianhead cabin.
15

16 IT IS FURTHER ORDERED that the 66.67% interest in the Russell Road property
17 (\$4,333,550) and the 66.67% interest in the \$295,000 note/deed for rents and taxes (\$196,677)
18 currently held by the ELN Trust, shall be equally divided between the ELN Trust and the LSN
19 Trust.

20 IT IS FURTHER ORDERED that both parties shall have the right of first refusal should
21 either Trust decide to sell its interest in the Russell Road property.
22

23 ...

24 ...

25 ...

1
2 IT IS FURTHER ORDERED that the following properties shall remain in or be
3 transferred into the ELN Trust:

| <u>Property Awarded</u> | <u>Value</u> |
|--|--|
| Cash | \$ 80,000 |
| Arizona Gateway Lots | \$ 139,500 |
| Family Gifts | \$ 35,000 |
| Gift from Nikki C. | \$ 200,000 |
| Bella Kathryn Property | \$1,839,495 |
| Mississippi Property (121.23 acres) | \$ 607,775 |
| Notes Receivable | \$ 642,761 |
| Banone AZ Properties | \$ 913,343 |
| Dynasty Buyout | \$1,568,000 |
| ½ of Brianhead Cabin | \$ 492,500 |
| 1/3 of Russell Road (+ note for rents) | \$2,265,113.50 (\$2,166,775 + \$98,338.50) |
| Total | \$8,783,487.50 |

13
14 IT IS FURTHER ORDERED that the following properties shall remain in or be
15 transferred into the LSN Trust:

| <u>Property Awarded</u> | <u>Value</u> |
|--|--|
| Cash | \$ 200,000 |
| Palmyra Property | \$ 750,000 |
| Pebble Beach Property | \$ 75,000 |
| Arizona Gateway Lots | \$ 139,500 |
| Wyoming Property (200 acres) | \$ 405,000 |
| Arnold Property in Miss. | \$ 40,000 |
| Mississippi RV Park | \$ 559,042 |
| Mississippi Property | \$ 870,193 |
| Grotta 16.67% Interest | \$ 21,204 |
| Emerald Bay Miss. Prop. | \$ 560,900 |
| Lindell Property | \$1,145,000 |
| Banone, LLC | \$1,184,236 |
| JB Ramos Trust Note Receivable | \$ 78,000 |
| ½ of Brianhead Cabin | \$ 492,500 |
| 1/3 of Russell Road (+ note for rents) | \$2,265,113.50 (\$2,166,775 + \$98,338.50) |
| Total | \$8,785,988.50 |

27
28
FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1
2 IT IS FURTHER ORDERED that due to the difference in the value between the ELN
3 Trust and the LSN Trust in the amount of \$153,499, the Trusts shall be equalized by
4 transferring the JB Ramos Trust Note from the Notes Receivable of the ELN Trust, valued at
5 \$78,000, to the LSN Trust as already reflected on the preceding page.²⁹

6 IT IS FURTHER ORDERED that the injunction regarding the \$1,568,000 reflected in
7 the account of Dynasty Development Group, LLC, ("Dynasty Buyout") and currently held in a
8 blocked trust account, is hereby dissolved.

9
10 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the
11 \$1,568,000, herein awarded to the ELN Trust, to pay off the lump sum spousal support
12 awarded to Mrs. Nelson in the amount of \$800,000. Said payment shall be remitted within 30
13 days of the date of this Decree.

14 IT IS FURTHER ORDERED that Mrs. Nelson is awarded child support arrears in the
15 amount of \$87,775 and that the ELN Trust shall use the distribution of the \$1,568,000, herein
16 awarded to the ELN Trust, to pay off the child support arrears awarded to Mrs. Nelson via a
17 lump sum payment within 30 days of issuance of this Decree.

18
19 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the
20 \$1,568,000, herein awarded to the ELN Trust, to pay Mr. Bertsch's outstanding fees in the
21 amount of \$35,258 within 30 days of issuance of this Decree.³⁰

22 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the
23 \$1,568,000, herein awarded to the ELN Trust, to reimburse Mrs. Nelson for attorney's fees
24 paid to Attorney Dickerson in the amount of \$144,967 in payment of fees resulting from Mr.
25

26
27 ²⁹ Defendant's Exhibit GGGGG.

28 ³⁰ Second Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the
Period from April 1, 2012 through July 25, 2012.

1
2 Nelson's unreasonable and unnecessary extension and protraction of this litigation. Said
3 payment shall be remitted to Mrs. Nelson within 30 days of the date of this Decree.

4 IT IS FURTHER ORDERED that the funds remaining, in the amount of approximately
5 \$500,000, from the distribution of the \$1,568,000, herein awarded to the ELN Trust, after the
6 payment of the spousal support, child support arrears, Mr. Bertsch's fees and reimbursement of
7 the attorney fees to Mrs. Nelson, shall be distributed to Mr. Nelson within 30 days of issuance
8 of this Decree
9

10 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$2080 in child
11 support for the month of June 2013 for their children Garrett and Carli.

12 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$1,058 a month in
13 support of their child Carli, commencing on July 1, 2013 and continuing until Carli attains the
14 age of majority or completes high school, which ever occurs last.
15

16 IT IS FURTHER ORDERED that Mr. Nelson shall maintain medical insurance
17 coverage for Carli.

18 IT IS FURTHER ORDERED that any medical expenses not paid by any medical
19 insurance covering Carli shall be shared equally by the parties, with such payments being made
20 pursuant to the Court's standard "30/30" Rule.

21 IT IS FURTHER ORDERED that the parties shall equally bear the private education
22 costs, including tuition, of Carli's private school education at Faith Lutheran.
23

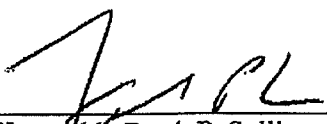
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IT IS FURTHER ORDERED that the parties shall keep any personal property now in their possession and shall be individually responsible for any personal property, including vehicles, currently in their possession.

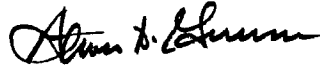
Dated this 3rd day of June, 2013.


Honorable Frank P. Sullivan
District Court Judge – Dept. O

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

EXHIBIT H



CLERK OF THE COURT

1 NEOJ
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
6 Nevada Bar No. 010634
7 KATHERINE L. PROVOST, ESQ.
8 Nevada Bar No. 008414
9 1745 Village Center Circle
10 Las Vegas, Nevada 89134
11 Telephone: (702) 388-8600
12 Facsimile: (702) 388-0210
13 Email: info@dickersonlawgroup.com
14 Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

11 ERIC L. NELSON,
12 Plaintiff/Counterdefendant,
13 v.
14 LYNITA SUE NELSON,
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

16 ERIC L. NELSON NEVADA TRUST
17 dated May 30, 2001, and LSN NEVADA
18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

NOTICE OF ENTRY OF ORDER
DETERMINING DISPOSITION
OF DYNASTY DEVELOPMENT
MANAGEMENT, INC. AKA
WYOMING DOWNS

21 MATT KLABACKA, as Distribution Trustee
22 of the ERIC L. NELSON NEVADA TRUST
23 dated May 30, 2001,

24 Counterclaimant and Crossclaimant,
25 v.

26 LYNITA SUE NELSON and ERIC
27 NELSON,

28 Purported Cross-Defendant and
Counterdefendant,

1 LYNITA SUE NELSON,

2 Counterclaimant, Cross-Claimant,
3 and/or Third Party Plaintiff,

4 v.

5 ERIC L. NELSON, individually and as the
6 Investment Trustee of the ERIC L. NELSON
7 NEVADA TRUST dated May 30, 2001; the
8 ERIC L. NELSON NEVADA TRUST dated
9 May 30, 2001; MATT KLABACKA,
10 Distribution Trustee of the ERIC L.
11 NELSON NEVADA TRUST dated
12 May 30, 2001,

13 Counterdefendant, and/or
14 Cross-Defendants, and/or
15 Third Party Defendants.

16 TO: ERIC L. NELSON, Plaintiff; and

17 TO: RHONDA K. FORSBERG, ESQ., of RHONDA K. FORSBERG, CHTD.,
18 Attorneys for Plaintiff;

19 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of
20 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson
21 Nevada Trust;

22 PLEASE TAKE NOTICE that an ORDER DETERMINING DISPOSITION OF
23 DYNASTY DEVELOPMENT MANAGEMENT, INC. AKA WYOMING DOWNS was
24 entered in the above-entitled matter on September 18, 2014, a copy of which is
25 attached.

26 DATED this 22nd day of September, 2014.

27 THE DICKERSON LAW GROUP

28 By Robert P. Dickerson
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON
3 LAW GROUP, and that on this 22nd day of September, 2014, I caused the above and
4 foregoing document entitled NOTICE OF ENTRY OF ORDER DETERMINING
5 DISPOSITION OF DYNASTY DEVELOPMENT MANAGEMENT, INC. AKA
6 WYOMING DOWNS to be served as follows:

7 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and
8 Administrative Order 14-2 captioned "In the Administrative Matter of
9 Mandatory Electronic Service in the Eighth Judicial District Court," by
mandatory electronic service through the Eighth Judicial District Court's
electronic filing system;

10 [X] by placing same to be deposited for mailing in the United States Mail, in
11 a sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada;

12 [] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed
13 consent for service by electronic means;

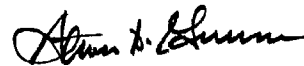
14 [] by hand-delivery with signed Receipt of Copy.

15 To the attorney(s) listed below at the address, email address, and/or facsimile number
16 indicated below:

17 RHONDA K. FORSBERG, ESQ.
18 RHONDA K. FORSBERG, CHARTERED
64 North Pecos Road, Ste. 800
Henderson, Nevada 89074
19 rforsberg@forsberg-law.com
20 mweiss@forsberg-law.com
Attorneys for Plaintiff

21 MARK A. SOLOMON, ESQ.
22 JEFFREY P. LUSZECK, ESQ.
SOLOMON, DWIGGINS, FREER & MORSE, LTD.
9060 W. Cheyenne Avenue
23 Las Vegas, Nevada 89129
24 jluszeck@sdfnvlaw.com
sgerace@sdfnvlaw.com
Attorneys for Distribution Trustee of the ELN Trust

25
26 
27 An employee of The Dickerson Law Group
28



CLERK OF THE COURT

ORDR

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 0418

E-mail: msolomon@sdfnvlaw.com

JEFFREY P. LUSZECK

Nevada State Bar No. 9619

E-mail: jluszeck@sdfnvlaw.com

SOLOMON DWIGGINS & FREER, LTD.

Cheyenne West Professional Centre'

9060 W. Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone No.: (702) 853-5483

Facsimile No.: (702) 853-5485

Attorneys for Distribution Trustee of the

ERIC L. NELSON NEVADA TRUST

dated May 30, 2001

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D411537

Dept.: O

**ORDER DETERMINING DISPOSITION OF
DYNASTY DEVELOPMENT
MANAGEMENT, INC. aka WYOMING
DOWNS**

Date of Hearing: May 30, 2014

Time of Hearing: 9:00 a.m.

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

ORDER

An evidentiary hearing on the disposition of Dynasty Development Management, LLC aka Wyoming Downs (hereinafter referred to as "Wyoming Downs") came on for hearing on this 30th day of May, 2014, before the Honorable Frank P. Sullivan. Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq., of Solomon Dwiggins & Freer, Ltd., appeared on behalf of the Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN Trust"). Robert P. Dickerson, Esq. and Josef M. Karacsonyi, Esq., of the Dickerson Law Group, appeared on behalf of Lynita S. Nelson and the LYNITA S. NELSON NEVADA TRUST dated May 30, 2001 ("LSN Trust"), and Lynita S. Nelson was present. Rhonda K. Forsberg, Esq., of Rhonda K. Forsberg Chartered, appeared on behalf of Eric L. Nelson, and Eric L. Nelson was present. The Court having reviewed and analyzed the pleadings and papers on file herein, the testimony and exhibits proffered, and having heard the arguments of Counsel and the Parties, finds good cause to enter the following order:

THE COURT HEREBY FINDS that at the time the Court entered its Decree of Divorce on June 3, 2013 ("Divorce Decree"), it was without sufficient information to make a determination regarding the disposition of Wyoming Downs. The Court was concerned about how Wyoming Downs was purchased due to the fact that there was a motion to release monies from the \$1,680,000 previously enjoined in David Stephen, Esq.'s trust account for the purchase of Wyoming Downs, which motion was denied. The motion to release monies was filed after the purchase agreement for Wyoming Downs was entered into. Although the Court does not believe it has any probative value to the issue, it will note that Lynita S. Nelson opposed the acquisition of Wyoming Downs as a non-performing asset, and took the position that the ELN Trust and Eric Nelson were taking community assets and dissipating them.

THE COURT FURTHER FINDS that Dynasty Development Management, LLC ("Dynasty") was organized as a Nevada LLC on April 26, 2011, with the ELN Trust as its sole member, and with Eric L. Nelson as its manager.

1 **THE COURT FURTHER FINDS** that in or around November 2011, Banone LLC loaned
2 \$75,000 to Dynasty, which Dynasty utilized as an earnest money deposit toward the purchase of
3 Wyoming Downs.

4 **THE COURT FURTHER FINDS** that Wyoming Downs was purchased around November 16,
5 2011, by Dynasty for \$440,000, which represented a purchase price of \$400,000 and a buyer's
6 premium of \$40,000.

7 **THE COURT FURTHER FINDS** that Dynasty's purchase of Wyoming Downs was financed
8 through debt by Henderson Capital Group, LLC ("Henderson Capital"), a hard money lender.

9 **THE COURT FURTHER FINDS** that the ELN Trust entered into a promissory note in favor
10 of Henderson Capital in the amount of \$700,000. Out of the \$700,000 borrowed \$100,000 was taken
11 out for prepayment of fees and interest. The remaining \$600,000 in loan proceeds, plus \$175.46 for
12 tax reimbursement, and the \$75,000 earnest money deposit (for a total of \$675,175.46), was applied at
13 closing as follows: \$400,000 for the purchase price, \$40,000 for the buyer's premium, \$30,389 in
14 settlement charges, and \$10,000 for an extension fee FOR A TOTAL OF \$480,839.00. Accordingly,
15 at closing a total of \$194,336.46 (\$675,175.46-\$480,839.00) of equity was available to pull out. Eric
16 L. Nelson testified that from the \$194,336.46, \$75,000 was paid back to Banone, LLC, leaving new
17 money of \$119,336.46.

18 **THE COURT FURTHER FINDS** that although Wyoming Downs was acquired by the ELN
19 Trust during the pendency of the marriage between Eric L. Nelson and Lynita S. Nelson, the Court
20 does not find it to be community property as it was clearly purchased through Dynasty, an entity
21 wholly owned by the ELN Trust and the Court maintained the ELN Trust. The Court found no facts
22 leading it to conclude Lynita S. Nelson or the LSN Trust has an interest in Wyoming Downs. The
23 Court maintained the integrity of the ELN Trust and LSN Trust for the reasons set forth in the Divorce
24 Decree.

25 **THE COURT FURTHER FINDS** that there was no transmutation of Wyoming Downs from
26 separate property to community property, even assuming that Wyoming Down was separate property
27 of Eric L. Nelson, and not the property of the ELN Trust, separate and distinct from Eric L. Nelson.
28

1
2 **THE COURT FURTHER FINDS** that the Court went through great efforts in the Divorce
3 Decree to maintain the integrity of the ELN Trust and LSN Trust to give the parties protection from
4 third-party creditors and give them the benefits of the spendthrift trusts, while applying the principles
5 of equity, fairness and constructive trust to remedy the transactions that the Court felt were done to the
6 detriment of Lynita S. Nelson and the LSN Trust, and without compensation, and to the benefit of Eric
7 L. Nelson and the ELN Trust. However, the Court finds it inappropriate to apply such principles of
8 equity, fairness and constructive trust to Wyoming Downs because at the time Wyoming Downs was
9 acquired by Dynasty, Lynita S. Nelson was no longer taking advice from Eric L. Nelson, the ELN
10 Trusts and LSN Trust were being treated as separate and distinct entities, and the Court was not
11 concerned that Wyoming Downs was acquired as a result of any breach of fiduciary duty to Lynita S.
12 Nelson or the LSN Trust.

13 **THE COURT FURTHER FINDS** that it was concerned about the loan from Banone, LLC to
14 Dynasty. The Court awarded the Banone, LLC properties to Lynita S. Nelson for the reasons stated in
15 the Divorce Decree. The \$75,000 loan was the source of earnest money deposit that made it possible
16 for Dynasty to bid on and purchase Wyoming Downs.

17 **THE COURT FURTHER FINDS** that it was troubled by the conduct during discovery.
18 Although many of Lynita S. Nelson's document requests and deposition questions in discovery were
19 overly broad and/or might have been beyond the scope of the evidentiary hearing on Wyoming
20 Downs, the ELN Trust's production of documents and responses to deposition questions were not in
21 good faith, and additional documents and testimony should have been proffered. The Court felt the
22 discovery responses were stonewalling, which has been the case from day one; it has been very
23 difficult for this Court to get information. During the deposition of Eric L. Nelson and the ELN Trust,
24 they failed to answer any questions of substance, and the responses to requests for production could
25 have provided a lot more information, including information concerning issues the ELN Trust raised at
26 the time of trial
27
28

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

1 **THE COURT FURTHER FINDS** that based on the ELN Trust's and Eric L. Nelson's failure
2 to produce documents or testimony during discovery they were precluded, pursuant to NRCP 37(c)(1)
3 and (b)(2), from introducing such evidence at trial. The Court notes that the ELN Trust attempted to
4 introduce documents allegedly showing repayment of the loan to Banone, LLC at the evidence stage
5 which were not provided during discovery, which was inappropriate. If a party will not produce
6 documents during discovery it cannot introduce same into evidence at trial.

7 **THE COURT FURTHER FINDS** that while Eric L. Nelson testified that the \$75,000 was paid
8 back, there was no other evidence to corroborate his testimony. The Court was troubled by the
9 testimony of Eric L. Nelson regarding the repayment of \$75,000 to Banone. The Court has made
10 specific findings regarding Eric L. Nelson's credibility issues or lack thereof, and so have other
11 Courts, including the bankruptcy court which has made some other findings as far as credibility.
12 Accordingly, the Court is not inclined to rely upon the testimony of Eric L. Nelson as to the repayment
13 of the \$75,000 loan absent corroborating evidence.

14 **THE COURT FURTHER FINDS** that, in accordance with the findings set forth above, there
15 was no evidence that the loan to Banone, LLC was repaid. The ELN Trust and Eric L. Nelson should
16 repay to the LSN Trust the \$75,000 earnest money deposit which made it possible for Dynasty to
17 purchase Wyoming Downs.

18 **NOW, THEREFORE,**

19 **IT IS HEREBY ORDERED** that Dynasty Development Management, LLC aka Wyoming
20 Downs belongs to the ELN Trust.

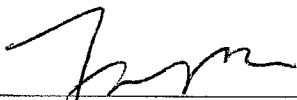
21 **IT IS FURTHER ORDERED** that neither Lynita S. Nelson nor the LSN Trust are entitled to an
22 interest in Dynasty Development Management, LLC aka Wyoming Downs.

23 **IT IS FURTHER ORDERED** that the ELN Trust and Eric L. Nelson shall pay the LSN Trust
24 \$75,000 as repayment for the \$75,000 loan that Banone LLC made to Dynasty Development
25 Management, LLC in or around November 2011.

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

1 IT IS FURTHER ORDERED that this Order disposes of the last known property to be
2 adjudicated between the Parties.

3 DATED this 9th day of September, 2014.

4
5 
6 DISTRICT COURT JUDGE
FRANK P. SULLIVAN ^{CK}

7 Submitted by:

8 SOLOMON DWIGGINS & FREER, LTD.

9 By: 

10 MARK A. SOLOMON, ESQ.
11 Nevada State Bar No. 0418
12 JEFFREY P. LUSZECK
13 Nevada State Bar No. 9619
14 Cheyenne West Professional Centre
15 9060 West Cheyenne Avenue
16 Las Vegas, Nevada 89129

17 *Attorneys for Distribution Trustee of the*
18 *ERIC L. NELSON NEVADA TRUST*
19 *dated May 30, 2001*

20 Approved as to Form and Content:

21 RHONDA K. FORSBERG CHARTERED

22 By: 

23 RHONDA K. FORSBERG, ESQ.
24 Nevada Bar No. 9557
25 64 N. Pecos Road, Suite 800
26 Henderson, NV 89074
27 *Attorneys for Eric L. Nelson*

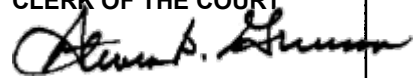
28 Approved as to Form and Content:

THE DICKERSON LAW GROUP

By: 

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 0945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 8414
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 10634
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Lynita S. Nelson

EXHIBIT I



CLARK COUNTY DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D
Dept. No.: O

NOTICE OF ENTRY OF ORDER

TO:

Joseph Karacsonyi, Esq.
By E-Service

Jeffrey Luszeck, Esq.
By E-Service

1
2 Michelle Hauser, Esq.
3 By E-Service

4 PLEASE TAKE NOTICE that a DECISION was duly entered in the
5 above-referenced case on the 12th day of October, 2021.

6 DATED this 12th day of October, 2021.

7
8 

9 Lori Parr
10 Judicial Executive Assistant
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1
2 **CLARK COUNTY DISTRICT COURT**
3 **FAMILY DIVISION – JUVENILE**
4 **CLARK COUNTY, NEVADA**
5

6 ERIC L. NELSON,

7
8 Plaintiff,

Case No.: D-09-411537-D

Dept. No.: O

9 v.

10 LYNITA SUE NELSON, MATT
11 KLABACKA, as Distribution Trustee of
12 the ERIC L. NELSON NEVADA
13 TRUST dated May 30, 2001,

14 Defendants.

15 MATT KLABACKA, as Distribution
16 Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

17 Cross-claimant,

18
19 v.

20 LYNITA SUE NELSON,

21 Cross-defendant.
22

23 **DECISION**

24 This matter was before the Court, pursuant to Matt Klabacka's Motion
25 for Summary Judgment, or Alternatively, Motion to Strike and/or Motion to
26 Extend Deadline to File Rebuttal Expert Report and to Continue Trial;
27 Defendant, Lynita S. Nelson's, Opposition to Matt Klabacka's Motion for
28

1
2 Summary Judgment; and Matt Klabakca's Reply in Support of Motion for
3 Summary Judgment. The Court, having reviewed all the motions, based
4 thereon and good cause appearing therefor:
5

6 **STATEMENT OF FACTS**

7 Lynita and Eric Nelson (the parties) were married on September 17,
8 1983.
9

10 In 1993, Eric Nelson and Lynita Nelson entered into a separate
11 property agreement (SPA) in order to transmute the family's community
12 assets into each parties' respective separate property, effectively dividing the
13 parties' assets into two separate property trusts.
14

15 In 2001, Eric and Lynita converted their separate property trusts into
16 the Eric L. Nelson Trust (ELN Trust) and the Lynita S. Nelson Trust (LSN
17 Trust), respectively, and funded the self-settled spendthrift trusts (SSSTs)
18 with the separate property contained within the separate property trusts.
19

20 Numerous transactions took place in between the SSSTs during the
21 relevant period of 2001 to 2009.
22

23 In 2009, Eric Nelson filed for divorce in this Court. After six days of
24 trial, the SSSTs were added to the divorce action as necessary parties.
25

26 On June 3, 2013, this Court issued the decree of divorce, finding that
27 the SPA was valid and the parties' SSSTs were validly established and
28

1 funded with separate property. In addition to the dissolution of marriage, this
2 Court ordered that Eric's Trust pay Eric's personal obligations to Lynita,
3 namely, child support arrears and spousal support.
4

5
6 In 2017, the Nevada Supreme Court reviewed this matter on appeal.
7 The Supreme Court upheld the validity of the SPA and the separate property
8 character of the SSSTs, but further held that this Court erred by ordering that
9 the assets in the ELN Trust be used to pay Eric's personal obligations to
10 Lynita.
11

12 The Supreme Court further held that the separate-character of the
13 property in the SSSTs afforded statutory protections against court-ordered
14 distribution. However, the Supreme Court further held that any community
15 property contained within the trusts would be subject to the district court's
16 equal distribution.
17

18 Therefore, on remand the Supreme Court ordered that this Court trace
19 the trust assets to determine whether any community property exists within
20 the trusts.
21

22 On remand, this Court found that the SSSTs were funded by the
23 spouses' respective separate property, thereby overcoming the community
24 property presumption under N.R.S. § 123.220.
25
26
27
28

1
2 Additionally, this Court found that for Lynita to receive a court-
3 ordered distribution from the ELN Trust, Lynita bears the burden of proof to
4 demonstrate by clear and convincing evidence that community property
5 exists in the SSSTs.¹
6

7 Furthermore, this Court found that if Lynita could meet her burden of
8 proof by clear and convincing evidence, then the burden of proof will shift
9 to Eric to rebut by clear and convincing evidence that the alleged community
10 property identified in Lynita's expert report is in fact separate property.
11

12 Lynita retained Anthem Forensics ("Anthem"), a forensic accounting
13 firm, to conduct a tracing of the SSSTs between 2001 and 2009.
14

15 Anthem completed an expert report that documented the transactions
16 between the SSSTs between 2001 and 2009, and Lynita thereafter submitted
17 the expert report to this Court. Matt Klabacka, the Distribution Trustee of
18 the ELN Trust, subsequently filed the motion for summary judgment
19 presently before this Court.
20
21

22 Klabacka's motion argues that because the expert report purportedly
23 falls short of the clear and convincing evidentiary standard, this Court
24 should rule that there are no community assets in the SSSTs as a matter of
25 law.
26

27
28 ¹ *Sprenger v. Sprenger*, 110 Nev. 855 (1994), holding that "transmutation from separate
to community property must be shown by clear and convincing evidence."

1
2 In her opposition to summary judgment, Lynita argues that her expert
3 report satisfied her burden of proof, thereby shifting the burden to Eric to
4 prove by clear and convincing evidence that the purported community
5 property should be characterized as separate property.
6

7
8 **CONCLUSIONS OF LAW**

9 **A. Lynita Bears the Burden of Proof to Rebut this Court's**
10 **Presumption that the Assets Held in Trust are Separate Property**
11 **by Clear and Convincing Evidence.**

12 A party is entitled to summary judgment when the evidence, viewed in
13 the light most favorable to the nonmoving party, demonstrates that no
14 genuine issue of material fact remains and that the moving party is entitled
15 to judgment as a matter of law. *See*, NRCP 56; *see also Wood v. Safeway*,
16 121 Nev. 724 (Nev. 2005).
17

18 “When a motion for summary judgment is made and supported by NRCP
19 56, the non-moving party may not rest upon general allegations and
20 conclusions, but must, by affidavit or otherwise, set forth specific facts
21 demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*
22 *Newspaper*, 118 Nev. 706 (Nev. 2002).
23

24 In support of its opposition to a motion for summary judgment, “the non-
25 moving party’s documentation must be admissible evidence, as she is not
26
27
28

1 entitled to build a case on the gossamer threads of whimsy, speculation and
2 conjecture.” *Id.*

3
4 Here, Anthem’s expert report admits that its analysis “sought to identify
5 types of transactions that [they] believe provide probative indications of
6 commingling between and/or within the SSSTs at various points during the
7 relevant period.” Expert Witness Report, at 10, *Nelson v. Nelson*, No. D-09-
8 411537-D (Apr. 30, 2021).
9

10
11 Additionally, the expert report further admits that its analysis of
12 “commingling between the SSSTs” has been “presented in the form of
13 examples in this report that are not intended to be, and should not be
14 construed as, an exhaustive listing.” *Id.* at 29; *Nelson v. Nelson*, No. D-09-
15 411537-D (Apr. 30, 2021).
16

17
18 Upon review of the expert report, this Court has identified three types
19 of transactions: (1) transfers of property from one trust to another trust; (2)
20 one spouse’s transfer of property to the other spouse; and (3) transfers of
21 property from Eric Nelson’s businesses to the parties’ children.
22

23 **B. The Expert Report’s Identification of Trust-to-Trust Transfers of**
24 **Real Property is Not In-of-Itself Sufficient to Rebut this Court’s**
25 **Presumption Characterizing the Assets Held in Trust as Separate**
26 **Property.**

27 Under Nevada’s community property statute, “all property acquired after
28 marriage by either spouse or both spouses, is community property unless

1 otherwise provided by (1) an agreement in writing between the spouses; or
2
3 (2) a decree of separate maintenance issued by a court of competent
4
5 jurisdiction.” N.R.S. § 123.220 (2017).

6 While Nevada is a community property state, the Supreme Court of
7 Nevada has held that each spouse’s right to their separate property is as
8 “sacred” as their right to community property. *Barret v. Franke*, 46 Nev. 170
9 (Nev. 1922). In Nevada, where a court finds that an item of “property was
10 once of a separate character, it will be presumed that it maintains that
11 character until some direct evidence to the contrary is made to appear.” *Id.*
12

13 Furthermore, Nevada recognizes that “all property of a spouse owned by
14 [them] before marriage, and that was acquired by [them] afterwards by gift,
15 bequest, devise, or descent...with the rents, issues, and profits thereof, is
16 their separate property.” N.R.S. § 123.130 (2017).
17

18 Here, the SPA Eric and Lynita entered into amounts to an agreement in
19 writing whereby both spouses agreed that any community property placed
20 into the separate property trusts would be transmuted into the separate
21 property of each spouses respective trust, thereby rebutting the community
22 property presumption under N.R.S. § 123.220.
23

24 Therefore, since the SPA has been upheld as a valid written agreement
25
26 between Eric Nelson and Lynita Nelson, this Court presumes each SSST has
27
28

1
2 a separate property ownership interest in each asset held in the respective
3 trusts.

4 The expert report identifies several transactions in which real property
5 held by the LSN Trust was transferred to the ELN Trust “without fair market
6 financial consideration.” Furthermore, Lynita argues that these transfers
7 amounted to a commingling of real property because the properties were
8 transferred without “fair market financial consideration.”
9
10

11 Accordingly, this Court is going to address the real property transactions
12 described in the report.
13

14 a. Russel Road Property

15 On November 23, 1999, the Lynita SPT purchased the Russel Road
16 property for approximately \$855,945. Ownership of Russel Road was
17 converted to the LSN Trust pursuant to the establishment of the SSSTs in
18 2001.
19

20 On June 14, 2001, LSN Trust transferred its ownership interest in
21 Russel Road to CJE&L, LLC, a company that the LSN Trust held a 50%
22 ownership interest in. The LSN Trust received no financial consideration
23 in exchange for transferring its ownership interest in Russel Road to
24 CJE&L.
25
26
27
28

1 In 2004, LSN Trust transferred its 50% ownership interest in CJE&L
2 to Nelson Nevada Trust. Subsequently, on February 3, 2010, CJE&L sold
3 a 50% interest in Russel Road to Eric Nelson Auctioneering for \$4
4 million. Eric Nelson Auctioneering subsequently sold the real property to
5 Oasis Baptist Church for \$6.5 million.
6

7 This Court finds that the transaction outlined in the expert report
8 shows that the LSN Trust transferred its ownership interest in the Russel
9 Road property to CJE&L when it transferred title to the real property to
10 CJE&L for “no financial consideration” back in 2004.
11

12 At this time, the Court finds that one trust transferred its separate
13 property asset to a different trust.² Therefore, the evidence offered by the
14 expert report was not clear and convincing enough to rebut this Court’s
15 presumption that the assets held by the SSSTs are the separate property
16 of their respective trusts.
17

18 b. Lindell Office
19

20 On November 26, 1996, Lynita SPT held a 100% ownership interest
21 in the property referred to throughout the litigation as the “Lindell
22 Office.” On August 22, 2001, ownership of the Lindell Office was
23

24
25 ² Since N.R.S. § 123.130 presumes certain property held by a spouse to be that spouse’s separate property
26 and because N.R.S. § 123.125 holds that a Court’s presumption as to the separate or community character
27 of property placed into trust can only be rebutted by clear and convincing evidence, that one trust’s transfer
28 of its separate property interest to another trust in-of-itself is not evidence sufficient to rebut a Court’s
presumption as to the separate or community character of the property.

1 transferred to the LSN Trust. On March 28, 2007, a 50% ownership
2 interest in Lindell Office was transferred to the ELN Trust for no
3 consideration.
4

5 Here, Lynita's expert report showed that between 2008 and 2011, the
6 ELN Trust collected 100% of the rent payments attributable to the
7 Lindell Office, despite the LSN Trust's 50% ownership interest in the
8 Lindell Office.
9
10

11 This Court finds that the transfer of the Lindell Office from one trust
12 to another is not in-of-itself sufficient to rebut this Court's presumption
13 that the assets held by the SSSTs are the separate property of their
14 respective trusts.
15

16 c. High Country Inn
17

18 On January 11, 2000, the Lynita SPT purchased the High Country Inn
19 for an indeterminate amount of money. Subsequently, ownership of the
20 property was transferred to the LSN Trust. On January 18, 2007, the
21 property was transferred to the ELN Trust for no financial consideration.
22 On January 19, 2007, the ELN Trust sold the High Country Inn for
23 approximately \$1.24 million. On January 24, 2007, \$1,947,153.37 was
24 deposited in the ELN Trust account ending 2798, with \$1.24 million of
25 the total deposit being attributable to the sale of the High Country Inn.
26
27
28

1
2 Subsequently, on January 29, 2007, the ELN Trust transferred \$1.25
3 million from the ELN Trust account ending in 2798 to the ELN Trust
4 account ending in 7077.
5

6 Here, Lynita's expert report purports that \$1.24 million out of the
7 \$1.25 million transferred to the ELN Trust account ending in 7077 was
8 attributable to the January 19, 2007 sale of the High Country Inn.
9

10 However, this Court finds that the LSN Trust's transfer of the High
11 Country Inn to the ELN Trust for "no financial consideration" is limited
12 to establishing that one trust transferred its separate property interest to a
13 different trust. This in-of-itself is insufficient to demonstrate that the
14 character of the property was transmuted from separate property to
15 community property.
16
17

18 At this time the Court finds that the expert report failed to rebut the
19 presumption that the money attributable to the sale of the High Country
20 Inn is the separate property of the ELN Trust.
21

22 d. Tierra del Sol

23 On February 1, 1994, Lynita SPT held a 100% ownership interest in
24 Tierra del Sol, a parcel of real property located in Arizona. On October
25 18, 2001, Tierra del Sol was transferred to the LSN Trust.
26
27
28

1
2 On August 5, 2005, LSN Trust sold the property for \$4.8 million. The
3 sale was paid for with an installment plan, whereby the LSN Trust
4 received \$936,164.06 in sale proceeds, with another \$3.5 million secured
5 through a note payable.
6

7 On August 28, 2006, the \$3.5 million debt from the sale was
8 discharged after the purchasers (1) transferred \$2 million to the LSN
9 Trust BNY Mellon account ending in 1710 and (2) sent an incoming wire
10 of \$1,460,190.58 to the ELN Trust BNY Mellon account ending in 1700.
11

12 Lynita's expert report purports that the \$1.46 million sent to the ELN
13 Trust BNY Mellon account ending in 1700 demonstrates that the LSN
14 Trust was not fully compensated for the sale of its wholly-owned
15 separate property asset.
16

17 The expert report shows that while the LSN Trust sold Tierra del Sol
18 for \$4.8 million, the LSN Trust only received a portion of the sale price
19 as demonstrated by its collection of one payment for \$936,164.06, and
20 another later payment for \$2 million.
21

22 This Court will therefore presume that the LSN Trust discharged the
23 \$3.5 million note payable after the ELN Trust received \$1.46 million
24 attributable to the sale of Tierra del Sol.
25
26
27
28

1
2 Therefore, this Court finds that the report's description of the sale
3 does not rebut the presumption that the proceeds received by the trusts as
4 a result of the sale are characterized as each trust's separate property.
5

6 e. Tropicana Avenue Property

7 On May 29, 2002, the ELN Trust purchased a 50% interest in the
8 property referred to in the Anthem Report as the "Tropicana Avenue
9 Property." On October 9, 2003, the LSN Trust issued a \$700,000
10 promissory note to the ELN Trust, with the Tropicana Avenue property
11 pledged as collateral.
12

13 On January 5, 2005, the ELN Trust transferred its 50% ownership
14 interest in the property to the LSN Trust to discharge the debt owed on
15 the \$700,000 note. Subsequently, on June 25, 2007, the Tropicana
16 Avenue property was transferred from the LSN Trust to the ELN Trust
17 for no consideration. The property was later sold by the ELN Trust to Las
18 Vegas, LLC for \$1.457 million on July 2, 2007.
19

20 This Court finds that on January 5, 2005, and June 25, 2007, the LSN
21 Trust held a separate property ownership interest in the Tropicana
22 Avenue Property. This Court further finds that on June 25, 2007, the LSN
23 Trust transferred the Tropicana Avenue property to the ELN Trust, which
24
25
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1
2 shortly thereafter sold the property for \$1.457 million, and those proceeds
3 are presumed to be the separate property of the ELN Trust.

4 This Court finds that the expert report's description of this trust-to-
5 trust transfer of property is insufficient to rebut this Court's presumption
6 that the proceeds from the sale is the separate property of the ELN Trust.
7

8 Therefore, this Court presumes that the proceeds from the Tropicana
9 Avenue property sale are the sole separate property of the ELN Trust.
10

11 f. Flamingo Property

12 On November 15, 2002, the LSN Trust purchased 3.25 acres of land
13 on Flamingo Road for \$546,000. On May 25, 2004, LSN Trust
14 transferred 100% of its ownership interest in the Flamingo Property to
15 Grotta Financial Partnership for no consideration. Both prior to and after
16 the transfer took place, the LSN Trust held a 16.67% ownership interest
17 in Grotta Financial Partnership.
18

19 Subsequently, Grotta Financial Partnership transferred the Flamingo
20 Property to Grotta Group, LLC. On December 2, 2005, Grotta Group
21 sold the Flamingo Property for \$4 million, and \$565,000 of the sale's
22 proceeds were deposited in the LSN Trust/Lindell Office Bank of
23 America account ending in 2730.
24
25
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1
2 Here, this Court finds that the LSN Trust transference of its separate
3 property interest in the Flamingo property to Grotta Financial Group to
4 be a transfer of one trust's separate property to another trust. This Court
5 further finds that the expert report's finding that the LSN Trust received
6 \$565,000 in its Bank of America account ending in 2730 is not clear and
7 convincing evidence to rebut this Court's presumption that any proceeds
8 from the sale of the Flamingo property be characterized as separate
9 property.
10

11
12 Therefore, this Court finds that while the proceeds from the sale of the
13 Flamingo property were divided between the LSN Trust and the ELN
14 Trust, Lynita's expert report failed to offer evidence that was clear and
15 convincing to rebut this Court's presumption that the proceeds received
16 by the ELN Trust and the LSN Trust are each SSSTs' sole separate
17 property.
18
19

20
21 g. Brian Head Cabin

22 On October 11, 1995, Lynita SPT purchased real property referred
23 throughout the Anthem Report as "Brian Head Cabin." The cabin was
24 subsequently transferred to the LSN Trust on October 22, 2001. On May
25 22, 2007, the LSN Trust transferred a 50% interest in the Brian Head
26 Cabin to ELN Trust for no financial consideration.
27
28

1
2 Since this transaction merely amounted to a transfer of one trust's
3 separate property to another trust, this Court finds that the expert report
4 has not met the burden of rebutting this Court's separate property
5 presumption towards the Brian Head Cabin by clear and convincing
6 evidence.
7

8
9 h. Wyoming Horse Racing

10 On May 29, 1998, the Eric SPT purchased Wyoming Horse Racing,
11 Inc. (WHR). WHR held approximately 400 acres of land in Wyoming
12 referred to as Wyoming Downs.
13

14 On October 15, 2004, Eric, as the President of WHR conveyed the
15 land to the ELN Trust. In November of 2004, the ELN Trust transferred
16 200 acres to the LSN Trust for no financial consideration. On about
17 August 30, 2006, the LSN Trust conveyed 11.502 acres to Wyoming
18 Racing, LLC.
19

20 On or about September 15, 2006, the ELN Trust sold WHR for
21 approximately \$11.2 million. Anthem further admits that it believes the
22 11.502 acres previously held by the LSN Trust was included in this sale.
23

24 This Court presumes that the prior to November 2004, the ELN Trust
25 held a separate property interest in all 400 acres collectively referred to as
26 Wyoming Downs.
27
28

1
2 This Court further presumes that the November 2004 transfer of 200
3 acres from the ELN Trust to the LSN Trust was a trust-to-trust transfer of
4 property. This type of trust-to-trust transaction in-of-itself is insufficient
5 to rebut this Court's presumption that the assets held in trust are
6 characterized as each trust's separate property.
7

8 This Court further presumes that the LSN Trust's transfer of 11.502
9 acres to Wyoming Racing, LLC was a transfer from a separate property
10 trust to a limited liability company. A transfer of property between a trust
11 and a limited liability company in-of-itself is insufficient to rebut the
12 presumption that the asset transferred from the trust is characterized as
13 separate property.
14

15 Therefore, this Court finds that Lynita's expert report failed to offer
16 evidence sufficient to rebut this Court's separate property presumption by
17 clear and convincing evidence.
18

19
20
21 i. Rental Income Attributable to Silver Slipper RV Park.

22 Pursuant to an "RV Park Management Agreement" dated in or about
23 2009, Silver Slipper Casino Venture, LLC collected payments
24 attributable to the rent owed by tenants who resided on Silver Slipper RV
25 Park, which rests on land that was wholly-owned by the LSN Trust.
26
27
28

1
2 During the period between February 2008 and April 2015, Silver
3 Slipper Casino paid \$255,458.88 to bank accounts owned by Banone,
4 LLC, which is a company wholly-owned by the ELN Trust.
5

6 The mere fact that the ELN Trust received money attributable to rent
7 payments from land once held by the LSN Trust is not in-of-itself
8 sufficient to rebut the presumption that the ELN Trust has a separate
9 property interest in the money it received pursuant to the agreement.
10

11 j. Rental Income from Property in Greenville, Mississippi.
12

13 Pursuant to the "Rent Collection Agreement" dated March 20, 2009
14 between the McGarrh Agency, Inc. and the ELN Trust, rent payments
15 attributable to land wholly-owned by the LSN Trust was deposited into the
16 ELN Trust Bank of America account ending in 5829.
17

18 Again, the mere fact that that the ELN Trust collected payments that was
19 attributable to land owned by the LSN Trust is not in-of-itself sufficient to
20 rebut this Court's presumption that the ELN Trust has a separate property
21 interest in the rent payments deposited into the ELN Trust Bank of America
22 account ending in 5829.
23

24 This Court finds that the expert report's mere description of the ELN
25 Trust's receipt of rent payments attributable to land owned by the LSN Trust
26
27
28

1 is not in-of-itself sufficient to rebut this Court's presumption that the assets
2 held by the trusts are characterized as separate property.
3

4 This Court finds that because Anthem admitted its report is limited to
5 providing an incomplete list of transactions believed to be "probative
6 indications of commingling between the SSSTs," the report in-of-itself fails
7 to offer evidence that is clear and convincing to rebut this Court's
8 presumption that the assets held by the SSSTs are the separate property of
9 each respective trust.
10

11 Therefore, this Court presumes that the following assets held by the
12 SSSTs are characterized as the separate property of their respective trusts:
13 (a) the Russel Road Property; (b) Lindell Office; (c) High Country Inn;
14 (d)Tierra del Sol; (e) Tropicana Avenue Property; (f) Flamingo Property; (g)
15 Brian Head Cabin; (h) Wyoming Horse Racing, Inc.; (i) the rental income
16 attributed to Silver Slipper RV Park; and (j) the rental income attributable to
17 the real property in Greenville, Mississippi.
18

19
20
21
22 **C. There is a Genuine Issue of Material Fact as to Whether the**
23 **Transfer of Harbor Hills Created a Community Property**
24 **Interest, or if the Transfer was a Gift or Other Transaction that**
25 **Otherwise Triggers Nevada's Separate Property Statute.**

26 Under Nevada's Separate Property statute, *all* property acquired by a
27 spouse after marriage by gift, bequest, or devise is his separate property.

28 N.R.S. § 123.130 (2017).

1
2 The expert report's description as to how Harbor Hills was transferred
3 from the LSN Trust to the ELN Trust is distinguishable from the previously
4 discussed trust-to-trust transfers of property. The expert report indicates that
5 the LSN Trust transferred Harbor Hills to Lynita, who then transferred the
6 property to Eric, who thereafter transferred the property to the ELN Trust.³
7

8 This Court finds there is a genuine issue of material fact as to whether
9 Lynita's transfer of Harbor Hills to Eric amounted to a gift or other
10 transaction that triggers Nevada's separate property statute. If the transfer
11 amounts to a gift or other qualifying transaction under the separate property
12 transaction, this Court will presume that Lynita transferred her separate
13 property interest in Harbor Hills to Eric, who thereafter transferred the
14 property to the ELN Trust.
15
16
17

18 This Court finds that Lynita bears the burden of proof to rebut this
19 Court's presumption that she transferred her separate property interest in
20 Harbor Hills to Eric.
21

22 If Lynita satisfies her burden of proof with regards to the transfer of
23 Harbor Hills, the burden of proof will shift to Eric. If the burden of proof
24 shifts to Eric, he will only be able to rebut this Court's presumption that the
25
26
27

28 ³ "Property acquired by gift during marriage is separate property pursuant to NRS 123.130, and therefore is not community property pursuant to NRS 123.220." *Kerley v. Kerley*, 112 Nev. 37 (Nev. 1996).

1
2 transfer of Harbor Hills created a community property interest by clear and
3 convincing evidence.

4
5 **D. The Expert Report's Description of Payments Made on Behalf of**
6 **the Parties' Children by Companies Held by the ELN Trust Does**
7 **Not Rebut this Court's Separate Property Presumption by Clear**
8 **and Convincing Evidence.**

9 N.R.S. § 123.180 provides that all property acquired by a child by
10 gift, bequest, devise, or descent is the child's own separate property, and
11 neither parent is entitled to any interest therein. A minor child's earnings and
12 accumulations of earnings are the community property of the child's parents
13 unless relinquished to the child. *Id.*

14
15 This Court presumes that the payments made on behalf of the parties'
16 children from various business accounts held by the ELN Trust were
17 transfers by the companies to the children.

18
19 This Court further presumes that prior to any of the companies
20 making payments on behalf of the children, the money used to pay for the
21 children's expenses were the sole separate property of the respective
22 companies held by the ELN Trust.

23
24 Since N.R.S. § 123.180 provides that "all property provided to a child
25 by gift, bequest, devise, or descent" is the child's own separate property, this
26
27
28

1 Court presumes that the children held separate property interests in the
2 money received from the companies held by the ELN Trust.
3

4 **E. The Expert Report's Ultimate Opinion as to the Character of the**
5 **Property is Permissible.**

6 Under N.R.S. § 50.295, otherwise admissible expert testimony is not
7 objectionable because it embraces an ultimate issue to be decided by the
8 trier of fact.
9

10 Mr. Klabacka argues that the expert report should be struck because it
11 defined legal terms such as “commingle” and “transmutation” in
12 explaining its analytical framework.
13

14 At this time the Court finds that the expert report is not objectionable
15 under N.R.S. § 50.295, because its use of legalese in explaining its
16 analytical framework is permissible.
17

18 **ORDER**

19
20 Based thereon:

21 **IT IS HEREBY ORDERED** that Matt Klabacka's Motion for
22 Summary Judgment is **DENIED**.
23

24 **IT IS FURTHER ORDERED** that Matt Klabacka's Motion to Strike
25 Lynita's Expert Report is **DENIED**.
26
27
28

1
2 **IT IS FURTHER ORDERED** that Lynita Nelson bears the burden of
3 proof at trial to rebut the presumption by clear and convincing evidence that
4 the assets held by the trusts are characterized as separate property.
5

6 **IT IS FURTHER ORDERED** that Matt Kalabacka's Motion to
7 Extend Deadline to File Rebuttal Expert Report and to Continue Trial is
8 **GRANTED**, and the extended deadlines will be provided for in an
9 Amended Scheduling Order.
10

11 DATED this 12th of October, 2021.
12

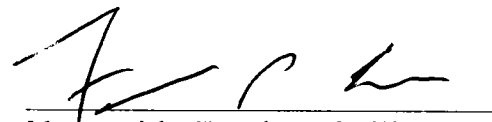
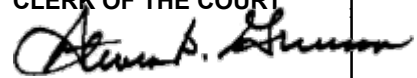
13 
14 Honorable Frank P. Sullivan
15 District Court Judge
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EXHIBIT J



**DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

NOTICE OF ENTRY OF ORDER

TO:

Joseph Karacsonyi, Esq.
By E-Service

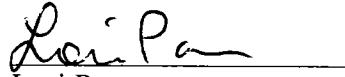
Jeffrey Luszeck, Esq.
By E-Service

Michael Carman, Esq.
By E-Service

1 Michelle Hauser, Esq.
2 By E-Service

3 PLEASE TAKE NOTICE that a DECISION AND ORDER was duly entered in the
4 above-referenced case on the 29th day of June, 2022.

5 DATED this 29th day of June, 2022.

6
7 
8 Lori Parr
9 Judicial Executive Assistant

**DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D
Dept. No.: O

DECISION AND ORDER

This matter came before this Court on March 28, 2022, March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022, April 6, 2022, April 7, 2022, April 27, 2022, and April 28, 2022, for a trial. Present before the Court via BlueJeans and in person were the following parties: Eric Nelson in his individual capacity and his capacity as the investment trustee of the ELN Trust, represented by his counsel Michael Carman, Esq., and Michelle Hauser, Esq.;

1 Lynita Nelson in her individual capacity as well as her capacity as the investment trustee of the
2 LSN Trust, represented by her counsel Josef Karacsonyi, Esq., and Natalie Karacsonyi, Esq.;
3 and the ELN Trust through its distribution trustee Matt Klabacka, through its counsel Jeffrey
4 Luszeck, Esq. The Court has considered the testimony presented by multiple witnesses, the
5 numerous exhibits admitted into evidence by all parties, oral arguments by counsels, and the
6 lengthy history of this case, and issues the following decision.
7

8 **I. FINDINGS OF FACT**
9

10 This case has a long and arduous history, but this Court will attempt to briefly
11 summarize the facts relevant to its current decision.

12 Eric Nelson ("Eric") and Lynita Nelson ("Lynita") were married on September 17,
13 1983. In 1993, Eric and Lynita entered into a Separate Property Agreement ("SPA") which
14 transmuted their marital community property into the parties' respective separate property.
15 pursuant to Schedules A and B attached to the SPA.¹ Schedule A of the SPA funded Eric's
16 separate property trust ("Eric SPT"). Schedule B of the SPA funded Lynita's separate property
17 trust ("Lynita SPT").
18

19 On May 30, 2001, Eric and Lynita converted their separate property trusts into self-
20 settled spendthrift trusts (collectively, "SSSTs"). the Eric SPT became the Eric L. Nelson
21 Nevada Trust ("ELN Trust") and the Lynita SPT became the Lynita S. Nelson Nevada Trust
22 ("LSN Trust"). Except for personal details such as trustees and beneficiaries, the trust
23 agreements for the ELN Trust and the LSN Trust are identical. Both trust agreements are
24 written documents that establish an irrevocable trust. Each SSST contains a spendthrift
25 provision which states that any property distributable by the SSST is not subject to attachment.
26

27 ¹ See Defendant Lynita S. Nelson's Exhibit SSS-R ("Separate Property Agreement dated July
28 13, 1993").

1 assignment, or encumbrance. Both SSSTs name the settlor as the investment trustee, the legal
2 owner of the trust estate. From 2001 to 2013, the ELN Trust and the LSN Trust transferred
3 numerous properties between themselves.
4

5 Eric filed for divorce in 2009. Both SSSTs were joined as necessary parties to the
6 divorce case. On June 3, 2013, this Court issued its Decree of Divorce for Eric and Lynita.
7 However, this Court did not dispose of the Wyoming Downs property in its Decree of Divorce.
8 On September 22, 2014, this Court disposed of Wyoming Downs, making its judgment final.
9 Eric and the ELN Trust filed its first Notice of Appeal after this Court's disposition of
10 Wyoming Downs.
11

12 On June 8, 2015, this Court ordered Eric and the ELN Trust to pay additional monies to
13 Lynita to enforce the decree. Eric and the ELN Trust filed its second Notice of Appeal
14 regarding this Court's June 8, 2015, Order.
15

16 On May 25, 2017, the Nevada Supreme Court issued its Decision regarding the two
17 appeals filed by Eric and the ELN Trust. The Nevada Supreme Court first held that the SPA
18 was a valid transmutation agreement under its plain, unambiguous language, and that the
19 parties' community property was validly separated into the parties' respective separate property
20 trusts. The Nevada Supreme Court then held that the SSSTs were validly created and funded
21 with separate property stemming from a valid separate property agreement. The Nevada
22 Supreme Court further held that this Court erred by not tracing the assets contained within each
23 SSST to determine if community property existed in either SSST, either through a reliable
24 expert or by other available means, as without a proper tracing the Court is left only with the
25 parties' testimony on characterization, which holds no weight. The Nevada Supreme Court
26 remanded the case to this Court in order to conduct a tracing of the assets within the SSSTs to
27
28

1
2 determine if community property exists in either SSST, which would be subject to equitable
3 distribution upon divorce.

4 This Court has issued a number of decisions based on the Nevada Supreme Court's
5 remand. In its April 19, 2018, Decision, this Court found that the proper date to begin the
6 tracing period was May 30, 2001, the date the SSSTs were created, to June 3, 2013, the date of
7 the divorce decree.² This Court also found that the property that initially funded the SSSTs was
8 the parties' separate property. Based upon the Nevada Supreme Court's Order, in its October
9 10, 2019, Decision, this Court appointed a Special Master to conduct a tracing of each asset
10 within the SSSTs during the tracing period. This Court stressed that it was not the Special
11 Master's role to determine the ultimate character of the assets, but simply to perform a detailed
12 list of each asset's origin and disposition. However, this Court later relieved the Special Master
13 of his duties in its October 27, 2020, Order and informed the parties that they would have to
14 retain their own experts to trace the assets in the SSSTs during the relevant tracing period.
15

16 II. CONCLUSIONS OF LAW

17 The Nevada Supreme Court has previously held in *Klabacka* that Eric and Lynita
18 executed a valid Separate Property Agreement ("SPA") which transmuted the parties'
19 community property into their individual separate property as delineated on SPA Schedules A
20 and B, and that the SPA through its plain language remained in effect during divorce.³
21 Specifically, the Nevada Supreme Court "conclude[d] the SPA was valid, and the parties'
22 property was validly separated into their respective separate property trusts at that time."⁴
23
24
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26

27 ² This Court reaffirmed the proper tracing period in its May 22, 2018, Decision.

28 ³ *Klabacka v. Nelson*, 133 Nev. 164, 170 (2017).

⁴ *Klabacka*, 133 Nev. at 171.

1
2 The Nevada Supreme Court further held that “the SSSTs are valid and the trusts were
3 funded with separate property stemming from a valid separate property agreement.”⁵ The
4 Nevada Supreme Court conducted its own analysis of the SSSTs’ validity. Specifically, the
5 Nevada Supreme Court reviewed the statutory requirements to create a spendthrift trust: the
6 settlor’s intent; a spendthrift requirement; a trustee who is a Nevada resident; and that the SSST
7 be in writing, be irrevocable, not require distributions to the settlor, and not intended to hinder,
8 delay, or defraud known creditors.⁶ The Nevada Supreme Court found that “a plain reading of
9 the written terms of [the SSSTs]” met all of the requirements to create valid Nevada self-settled
10 spendthrift trusts.⁷
11

12 The Nevada Supreme Court has directed this Court is to examine the property within
13 Eric’s and Lynita’s individual self-settled spendthrift trusts (“SSSTs”) from the date of creation
14 of the SSSTs on May 30, 2001, to the date of the decree of divorce on June 3, 2013. While the
15 Nevada Supreme Court did not specifically name those dates, in its Decision in *Klabacka* it
16 states that the SSSTs were initially funded on the date of creation (May 30, 2001) with separate
17 property⁸ and any possible community property would have ended with the dissolution of the
18 community upon the decree of divorce (June 3, 2013).
19

20 The Nevada Supreme Court also informed this Court that it must conduct a tracing to
21 determine if any community property exists within the SSSTs. as any community property
22 within the SSSTs would be subject to equal distribution in divorce.⁹
23
24

25 ⁵ *Id.*

26 ⁶ *Id.* at 171-72. *See also* NRS 166.050, 166.015(2)(a), and NRS 166.040(1)(b).

27 ⁷ *Id.* at 172.

28 ⁸ “We hold the SSSTs are valid and the trusts were funded with separate property stemming
from a valid separate property agreement.” *Id.* at 171.

⁹ *Id.* at 173.

1
2 Based on the Nevada Supreme Court's holding in *Klabacka* that the SSSTs were
3 originally funded by the parties' separate property, this Court has previously held in its
4 October 27, 2020, Decision, that Lynita bears the burden of proof by clear and convincing
5 evidence that community property ever existed in either SSST and that the separate property in
6 each of the SSSTs was commingled with community property to the extent that the separate
7 property and the community property could no longer be separated via tracing.¹⁰
8

9 **A. Wyoming Downs is not community property and was never transmuted**
10 **into community property.**

11 At trial, Lynita presented two theories as to how community property could be present
12 in the two SSSTs: first, that the Wyoming Downs property ("Wyoming Downs") directly
13 funded the purchase of at least 80% of the community property; second, that trust to trust
14 transfers between spouses' trusts transmute separate property into community property. This
15 Court will first address Lynita's argument regarding Wyoming Downs.

16 This Court will first very briefly review the history of Wyoming Downs. The Eric
17 Separate Property Trust ("Eric SPT"), created before either of the SSSTs, purchased Wyoming
18 Horse Racing, Inc. ("WHR") in 1998. At the time of the Eric SPT purchase, WHR owned
19 Wyoming Downs. Wyoming Downs is a piece of property of approximately 400 acres in
20 Wyoming, which included a racetrack. Eric then became the president of WHR. WHR then
21 sold Wyoming Downs to Dynasty Inc., for cash and a promissory note.
22

23 After the creation of the SSSTs, Dynasty Inc.'s successor-in-interest, Phoenix Leisure,
24 defaulted on the promissory note to WHR. On March 9, 2003, Phoenix Leisure promised to
25

26
27 ¹⁰ See also NRS 123.125(2) ("A spouse or other party in a case must establish by clear and
28 convincing evidence the transmutation of community property or separate property that is
transferred into a trust...")

1 pay "Eric L. Nelson, as an individual" a total of \$416,666.67.¹¹ Phoenix Leisure defaulted on
2 its note, and WHR then repossessed Wyoming Downs. On October 15, 2004, Eric, as president
3 of WHR, conveyed Wyoming Downs to the ELN Trust. After Wyoming Downs had been
4 transferred to the ELN Trust, the ELN Trust sold the Wyoming Downs racetrack for
5 approximately \$11 million while maintaining ownership of the surrounding 400 acres. The
6 ELN Trust gifted the LSN Trust approximately 200 of the total 400 acres of Wyoming Downs.
7 The LSN Trust then granted approximately 11 acres of Wyoming Downs to the ELN Trust for
8 \$10.
9

10
11 Lynita argues that because Phoenix Leisure issued a promissory note to pay "Eric L.
12 Nelson, as an individual" that at that point Eric took Wyoming Downs as a married individual,
13 thus creating community property. Lynita continues her argument by stating that because
14 Wyoming Downs was community property, then any further property that can be traced back to
15 the subsequent sale of Wyoming Downs must also be community property.
16

17 This Court finds that Lynita's argument regarding Wyoming Downs has no merit, as
18 she cannot show by clear and convincing evidence that Wyoming Downs was ever transmuted
19 into community property.

20 Lynita's argument rests on the language "Eric L. Nelson, as an individual." However,
21 Eric as an individual did not repossess Wyoming Downs; WHR as a corporation did. It is clear
22 to this Court that Eric was acting in his capacity as president of WHR, not in his individual
23 capacity. The Court examined the transfer of Wyoming Downs from WHR to the ELN Trust.
24 WHR, through its president Eric, conveyed Wyoming Downs to the ELN Trust. This
25 transaction establishes that when Wyoming Downs was repossessed, it was done so by WHR
26

27
28 ¹¹ See Defendant Lynita S. Nelson's Exhibit HHHH-R ("Secured Convertible Promissory Note").

1 and not by Eric as an individual. If Eric took Wyoming Downs as an individual, then the
2 transfer to the ELN Trust would have been from Eric, as an individual, rather than from WHR.
3 through its president Eric. The Court has seen no evidence to conclude that Eric ever took
4 possession of Wyoming Downs as an individual.
5

6 Even if this Court were to find that the language "Eric L. Nelson, as an individual"
7 meant that Eric (and not WHR) did in fact take possession of Wyoming Downs, this Court
8 finds that by the language of the parties' own SSSTs, Eric never held Wyoming Downs as an
9 individual. Rather, Eric held Wyoming Downs in his individual capacity as the investment
10 trustee for the ELN Trust.
11

12 Both the ELN Trust and the LSN Trust state in Article 9 that:

13 [T]he Trustor shall have the right, at any time, to devise, bequeath, grant,
14 convey, give or transfer additional real ... properties to the Trust by inter vivos
15 act ... subject to the same terms and conditions as the original provisions of this
16 Trust Agreement, and said additions shall be evidence by receipt therefore
signed by the Trustee.¹²

17 The ELN Trust and LSN Trust also both state the following in Article 12.1:

18 The Investment Trustee shall have the following powers, all of which are to be
19 exercised in a fiduciary capacity: (a) To register any securities or other property
20 held hereunder in the name of the Investment Trustee or in the name of a
21 nominee, *with or without the addition of words indicating that such securities or
22 other property are held in a fiduciary capacity*, and to hold in bearer form any
securities or other property held hereunder so that title thereto will pass by
23 delivery, but the books and records of the Trustee shall show that all such
24 investments are part of his respective funds.¹³

25 ¹² Defendant Lynita S. Nelson's Exhibit RRRRRRR-R, the Eric L. Nelson Nevada Trust
26 Agreement, Dated May 30, 2001, Article 9. See also Defendant Lynita S. Nelson's Exhibit
27 CCCCCCCC-R, the Lynita S. Nelson Nevada Trust Agreement, Dated May 30, 2001, Article
9.

28 ¹³ Defendant's Exhibit RRRRRRR-R at Article 12.1 (emphasis added). See also Defendant's
Exhibit CCCCCCCC-R at Article 12.1.

1 The ELN Trust and LSN Trust further both state the following in Article 12.3:
2

3 *Any property held in trust and any income earned by the trusts created*
4 *hereunder shall be the separate property* (in distinction with community
5 *property, joint tenancy property, tenancy in common, marital property, quasi-*
6 *community property or the tenancy by the entirety) of the beneficiaries of such*
7 *trusts. Additionally, any distribution to or for the benefit of any beneficiary shall*
8 *be and remain the sole and separate property and estate of beneficiaries.*¹⁴

9 When read as a whole, the ELN Trust states that an investment trustee can hold property
10 in his individual name without an indication that the investment trustee is holding it in a
11 fiduciary capacity.¹⁵ Even assuming that the language "Eric L. Nelson, as an individual" meant
12 that Eric did in fact take possession of Wyoming Downs as an individual, it is clear to this
13 Court that Eric did not take personal possession but rather took possession for the ELN Trust in
14 a fiduciary capacity as its investment trustee.¹⁶ The plain language of the ELN Trust does not
15 require any language indicating that Eric held Wyoming Downs as the SSST's fiduciary.¹⁷

16 Additionally, the plain language of the ELN Trust states that any property held by the
17 SSST and any income derived from that property is the separate property of the beneficiaries.
18 During his life, Eric is the primary beneficiary of the ELN Trust. Under this method of
19 analysis, Wyoming Downs ultimately was Eric's separate property. Regardless of which
20 method of valid analysis this Court examines, it is clear that Wyoming Downs was never Eric's
21 individual property, and thus Wyoming Downs could have never been community property.
22
23

24 ¹⁴ Defendant's Exhibit RRRRRRR-R at Article 12.3 (emphasis added). *See also* Defendant's
25 Exhibit CCCCCCCC-R at Article 12.3.

26 ¹⁵ *See also* NRS 163.410 ("A fiduciary may make contracts and execute instruments ... as may
27 be necessary in the exercise of the powers herein granted.").

28 ¹⁶ *See* NRS 163.100 ("all powers of a trustee are attached to the office and are not personal").

¹⁷ The Court would like to note that this analysis would also apply to Lynita and the LSN Trust,
as the language contained within the ELN Trust is identical to language contained within the
LSN Trust.

1
2 Lynita argues that a spouse could transfer any property into a trust, and that transfer in
3 and of itself would subvert the community property presumption in Nevada. This Court finds
4 that this is an overbroad simplification of the specific facts present in this case. Eric and Lynita
5 executed not one, not two, but three separate agreements demonstrating their intent to create
6 and keep separate property rather than community property -- the initial SPA, the parties' SPTs,
7 and the parties' SSSTs. The Nevada Supreme Court previously held that spouses holding
8 separate accounts and separate property trusts "evidenced a clear intent to keep separate
9 property separate."¹⁸ There are *three* separate documents here, including two documents that
10 the Nevada Supreme Court has held are valid and unambiguous (the SPA and the SSSTs)¹⁹,
11 that evince a clear and unambiguous intent to keep separate property separate. Transferring
12 Wyoming Downs (or any property) into a trust alone did not subvert the community, and the
13 Court finds Lynita's argument that a spouse-to-trust transfer alone subverts the community is
14 devoid of merit. In this specific case, Wyoming Downs was and remains Eric's separate
15 property because of the specific language contained within the ELN Trust -- an irrevocable
16 self-settled spendthrift, *separate property* trust.
17
18

19 Lynita also argues that the transfer of 200 acres of Wyoming Downs from the ELN
20 Trust to the LSN Trust transmuted Wyoming Downs into community property. A mere trust-to-
21 trust transfer does not transmute separate property into community property, or vice versa.²⁰
22 Lynita would need to demonstrate by clear and convincing evidence that Wyoming Downs was
23 so commingled with existing community property that it cannot be traced to separate
24 properties. Lynita has not. The Eric SPT, which was funded by a valid SPA, initially bought
25
26

27 ¹⁸ *Tarbell v. Tarbell*, 373 P.3d 966 (Nev. 2011) (unpublished).

28 ¹⁹ *See generally Klabacka*, 133 Nev. 164 (2017).

²⁰ NRS 123.125(2).

1
2 Wyoming Horse Racing and by extension Wyoming Downs. Anything stemming from that
3 initial purchase by the Eric SPT is Eric's separate property. Lynita further stated that it was the
4 parties' intent for Wyoming Downs to be community property. However, during Lynita's
5 cross-examination by Mr. Carmen, Mr. Carmen correctly pointed out that Lynita alleged in her
6 previous court pleadings that Eric invested in many risky gaming ventures and that the purpose
7 of the SSSTs was to insulate their individual assets from creditors if Eric lost money through
8 his speculative gaming investments.²¹ While this Court cannot consider parol evidence because
9 language of the Separate Property Agreement (and the Eric SPT, and the SSSTs themselves) is
10 unambiguous²², the testimony heard at trial confirms this Court's conclusion upon examining
11 the plain language of the SPA and the SSSTs -- Wyoming Downs is and was intended to be
12 Eric's separate property.
13

14 No matter how this Court examines Wyoming Downs, there is no logical conclusion for
15 this Court to draw in which Wyoming Downs is community property. Lynita has failed to show
16 by clear and convincing evidence that this Court should characterize Wyoming Downs as
17 community property.
18
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22 ²¹ This Court has previously heard testimony in this case that Lynita did not want to associate
23 with the ownership in any businesses dealing with gaming or alcohol; it is logical to conclude
24 that based upon those representations, Lynita wanted nothing to do with nor any interest in
25 Wyoming Downs. *See also Tarbell* (holding that a spouse could not argue community property
26 over earnings, retirement, and investments made after the creation of valid separate property
27 trusts).

28 ²² *Klabacka*, 133 Nev. at 171 (holding that Lynita could not use extraneous evidence, including
a purported verbal agreement between her and Eric, to demonstrate that the parties' intent was
to have certain properties remain community property and not be transmuted by an SPA). *See*
also Frei v. Goodsell, 129 Nev. 403, 409 (2013) (holding that "[e]xtrinsic or parol evidence is
not admissible to contradict or vary the terms of an unambiguous written instrument, since all
prior negotiations and agreements are deemed to have been merged").

1
2 **B. All other properties (excluding Wyoming Downs) are not community**
3 **property and were never transmuted into community property.**

4 Lynita further argues that, based upon her expert report, that the remaining properties in
5 question should be considered community property. This Court is bound by the statutory
6 definition of community property and finds that Lynita's expert's definition of community
7 property does not align with the statutory definition of community property. Thus, this Court
8 must find that Lynita did not demonstrate by clear and convincing evidence that any
9 community property ever existed within the SSSTs.

10 NRS 123.220 states that any property acquired by the spouse(s) after marriage is
11 community property, unless the spouses state otherwise in writing. The Nevada Supreme Court
12 has already stated that the SSSTs were originally funded with separate property, consistent with
13 the SPA previously executed by Eric and Lynita.²³ Once separate property is created, a spouse
14 seeking to challenge the characterization of property held in trust must demonstrate by clear
15 and convincing evidence that it was transmuted to community property.²⁴ This Court has
16 previously informed Lynita that she bears the burden of proof to demonstrate by clear and
17 convincing evidence that community property existed in the SSSTs and that said community
18 property was so commingled with the existing separate property that the properties could no
19 longer be separated via tracing.
20

21 Lynita's expert, Anthem Forensics ("Anthem") defined community property as "any
22 transactions made from one trust to another for less than fair market value."²⁵ Anthem relies on
23 the transfers between the SSSTs that were below fair market value and its own definition of
24

25
26 ²³ *Klabacka*, 133 Nev. at 171.

27 ²⁴ NRS 123.125(2).

28 ²⁵ Defendant Lynita S. Nelson's Exhibit GGGGGG-R ("Anthem Forensics Expert Witness
Report dated April 30, 2021").

1 community property to demonstrate that: a) the existing separate property in the SSSTs was
2 transmuted into community property. and b) the property is so commingled that it should be
3 considered community property. Anthem further stated in its expert report that any transfers
4 from the ELN Trust to any entities within the ELN Trust could be commingling and that any
5 transfers from the ELN Trust to the parties' children could be commingling, without
6 considering if the children were beneficiaries of the ELN Trust.
7

8 Anthem's representative in Court, Jennifer Allen, testified that based upon their
9 definition of community property ("any transactions made from one trust to another for less
10 than fair market value") that the entirety of the transfers between the SSSTs over the tracing
11 period would be considered community property. However, on cross-examination by Mr.
12 Carmen, Ms. Allen stated that without Anthem's assumption that a trust-to-trust transfer
13 without fair market value is community property, then any trust-to-trust transfers would be
14 separate property. Ms. Allen further stated on cross-examination that Anthem did not review
15 the ELN Trust or the LSN Trust, as it was considered to be outside the scope of their
16 engagement. Additionally, Ms. Allen stated on cross-examination that characterizing particular
17 property as community property was a legal conclusion that was outside of her expertise. Upon
18 cross-examination by Mr. Luszeck, Ms. Allen stated that she was unable to complete a tracing
19 from 2009-2013 for the LSN Trust due to a lack of documentation from the LSN Trust (i.e.,
20 bank records, accountings, etc.).
21

22 This Court does not hold any weight to whether or not a trust-to-trust transfer was done
23 above, at, or below fair market value when determining transmutation into community
24 property. The SSSTs are entities separate from Eric or Lynita, and as such the SSSTs can
25 transfer property freely between themselves. A trust-to-trust transfer does not create community
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1
2 property nor does it transmute existing separate property into community property. NRS
3 123.220 defines community property as "all property ... *acquired after marriage by either*
4 *spouse or both spouses* ... unless otherwise provided by an agreement in writing between the
5 spouses, or a decree of separate maintenance issued by a court of competent jurisdiction."²⁶ The
6 statutory definition of community property does not make any reference as to fair market value
7 or trust-to-trust transactions. A SSST cannot create community property by transferring
8 property to another SSST; the statutory definition states that only property acquired after
9 marriage *by a spouse or both spouses* is community property.
10

11 Lynita relied heavily upon Anthem's report to demonstrate that the separate property
12 was transmuted into community property. Again, this Court must abide by the statutory
13 definition of community property. Anthem's definition of community property does not even
14 remotely match the statutory definition. Additionally, Ms. Allen herself stated on cross-
15 examination that without Anthem's definition of community property, then all of the transfers
16 during the tracing period would be separate property. Lynita did not provide this Court any
17 evidence other than Anthem's expert report to demonstrate that the existing separate property
18 within the SSSTs was transmuted into community property. Because Lynita did not
19 demonstrate transmutation to this Court by clear and convincing evidence, by extension Lynita
20 did not demonstrate by clear and convincing evidence that the separate property and
21 community property were so commingled that tracing would not be able to separate them.
22 However, this Court will briefly analyze the properties that Anthem listed in its expert report
23 using this Court's analysis.
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²⁶ NRS 123.220. (emphasis added)

1
2 *1. Cleopatra properties, Hacienda Casita, Evanston Horse Racing Inc.,*
3 *and Wyoming Downs Rodeo*

4 Lynita argues that because the Cleopatra properties, the Hacienda Casita, Evanston
5 Horse Racing Inc., and Wyoming Downs Rodeo were transferred to the SSSTs after May 30,
6 2001, these properties are community property rather than separate property. This Court
7 accords this argument no weight. These properties had never been addressed by Lynita at any
8 point during this case's extensive proceedings prior to this trial. This Court finds that these
9 transfers were no more than funding the SSSTs with the separate property as established by the
10 SPA. Additionally, Ms. Allen stated that Anthem had not conducted any community property
11 analysis over Hacienda Casita, Evanston Horse Racing Inc., Wyoming Downs Rodeo, and all
12 of the Cleopatra properties, included, but not limited to, Cleopatra Gaming Management.
13 Cleopatra Palace, Cleopatra Club, Cleopatra Casino, Cleopatra Wild Goose, Cleopatra Cable,
14 and Cleopatra Wild Grizzly. Even if this Court was to consider these properties this late in the
15 proceedings, as stated hereinabove, Ms. Allen testified that she did not perform any analysis as
16 to the characterization of these properties. Thus, this Court finds that the Cleopatra properties,
17 Hacienda Casita, Evanston Horse Racing Inc., and Wyoming Downs Rodeo are considered
18 separate property.
19
20

21 *2. Russell Road Property*

22 As of May 30, 2001, the Russell Road Property was held by the Lynita SPT which was
23 then transferred to the LSN Trust upon its formation. As of May 31, 2001, the LSN Trust held a
24 50% interest in CJE&L, LLC.²⁷ On June 14, 2001, the Russell Road Property was transferred
25 from the LSN Trust to CJE&L, LLC, for no financial consideration. In 2004, Lynita signed a
26 guarantee on a flooring contract for Cal's Blue Water Marine, a business that was to be
27

28 ²⁷ An acronym for Cal, Jeanette, Eric, and Lynita.

1 operated out of the Russell Road Property. On January 1, 2005, Lynita withdrew her guarantee
2 of the flooring contract and, as a result, the LSN Trust's 50% interest in CJE&L, LLC was
3 transferred to the Nelson Nevada Trust²⁸ for no financial consideration.²⁹ On February 3, 2010,
4 CJE&L, LLC sold a 50% interest in the Russell Road Property to Eric Nelson Auctioneering, a
5 company 100% held by the ELN Trust, for \$4,000,000.
6

7 This Court finds that the transaction outlined above, and referenced in detail in the
8 Anthem expert report, shows that the LSN Trust transferred its ownership interest of the
9 Russell Road Property to CJE&L, LLC, on January 1, 2005. As the LSN Trust held the Russell
10 Road Property as separate property, pursuant to the valid funding of the LSN Trust, and
11 transferred its interest to CJE&L, LLC, there is insufficient evidence to show that the Russell
12 Road Property was transmuted into community property.
13

14 *3. Lindell Office*

15 On August 22, 2001, ownership of the Lindell Office was transferred into the LSN
16 Trust and was considered separate property at the time of transfer. On March 28, 2007, a 50%
17 interest in the Lindell Office was transferred to the ELN Trust for no financial consideration.
18 This Court has determined that the 50% ownership interest was a trust-to-trust transfer and that
19 a lack of financial consideration has no bearing on a property converting from separate to
20 community. No other evidence was presented to rebut the presumption that interest of the
21 Lindell Office held by the ELN Trust is separate property. This Court reviewed the rents
22 collected for the Lindell Office and finds that it has no bearing on the status of the property as
23
24

25
26 ²⁸ The Nelson Nevada Trust in this transaction is distinct and separate from Lynita's SPT,
which was also entitled the Nelson Nevada Trust.

27 ²⁹ While there was no financial consideration for this transaction, the testimony heard by this
28 Court demonstrated that there was consideration, as Lynita was relieved of any personal
liability on the flooring contract and CJE&L, LLC would assume her liability.

1 separate or community. Additionally, this Court is not the proper venue for any dispute
2 regarding the collection of rents for the Lindell Office.
3

4 *4. High Country Inn*

5 On January 11, 2000, the Lynita SPT purchased a 100% ownership interest in the High
6 Country Inn which was subsequently transferred to the LSN Trust. On January 18, 2007, the
7 100% ownership interest in the High Country Inn was transferred to the ELN Trust for no
8 financial consideration. This Court finds that this is a trust-to-trust transfer and that a lack of
9 financial consideration has no bearing on a property converting from separate to community.
10 No other evidence was presented to rebut the presumption that the interest of the High Country
11 Inn held by the ELN Trust is separate property.
12

13 *5 Tierra Del Sol*

14 As of February 1, 1994, the Lynita SPT held a 100% ownership interest in Tierra Del
15 Sol, which was subsequently transferred to the LSN Trust on October 18, 2001. On August 5,
16 2005, the LSN Trust sold Tierra Del Sol for \$4,800,000. Proceeds from the sale were dispersed
17 to the LSN Trust and the ELN Trust. This transaction shows no transfer of the property itself to
18 the ELN Trust. This Court finds that the LSN Trust had 100% of the ownership interest in
19 Tierra Del Sol prior to its sale. No additional evidence was presented to show that the ELN
20 Trust ever held an interest in Tierra Del Sol. This Court finds that the dispersion of funds from
21 the sale of Tierra Del Sol has no bearing on transmuting property from separate to community
22 status. Additionally, this Court is not the proper venue for any dispute regarding the dispersion
23 of funds from the sale of Tierra Del Sol.
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6. Tropicana Avenue Property

On May 29, 2002, the ELN Trust purchased a 50% interest in the Tropicana Avenue Property. On or about October 9, 2003, a \$700,000 promissory note was issued by the ELN Trust to the LSN Trust with the Tropicana Avenue Property pledged as collateral. On January 5, 2005, the ELN Trust transferred its 50% interest in the Tropicana Avenue Property to the LSN Trust to satisfy the October 9, 2003, promissory note. On June 25, 2007, the LSN Trust transferred the 50% interest in the Tropicana Avenue Property to the ELN Trust for no financial consideration. This Court finds that this is a trust-to-trust transfer and that a lack of financial consideration has no bearing on a property converting from separate to community. No other evidence was presented to rebut the presumption that the interest of the Tropicana Avenue Property held by the ELN Trust is separate property.

7. Flamingo Property

On November 15, 2002, the LSN Trust purchased the Flamingo Property. On May 27, 2004, the LSN Trust transferred its ownership interest in the Flamingo Property to Grotta Financial Partnership for no financial consideration. The LSN Trust owned 16.6667% interest in the Grotta Financial Partnership at the time of the transfer. Subsequently, Grotta Financial Partnership transferred the Flamingo Property to Grotta Group, LLC. On December 2, 2005, Grotta Group, LLC sold the Flamingo Property for \$4,000,000. \$565,000 (representing the LSN Trust's interest in the proceeds from the sale of the Flamingo Property) from the sale were dispersed to the LSN Trust. After the deposit, the funds were dispersed to both Eric and the ELN Trust.

This transaction shows no transfer of the property itself to the ELN Trust. This Court finds that the LSN Trust had 100% of the ownership interest in the Flamingo Property prior to

1
2 its sale. No additional evidence was presented to show that the ELN Trust ever held an interest
3 in the Flamingo Property. This Court finds that the dispersion of funds from the sale of the
4 Flamingo Property have no bearing on transmuting property from separate to community
5 status. Additionally, this Court is not the proper venue for any dispute regarding the dispersion
6 of funds from the sale of the Flamingo Property.

7
8 *8. Brian Head Cabin*

9 On October 11, 1995, the Lynita SPT purchased the Brian Head Cabin, which was
10 subsequently transferred to the LSN Trust on October 22, 2001. On May 22, 2007, the LSN
11 Trust transferred a 50% interest in the Brian Head Cabin to the ELN Trust for no financial
12 consideration. This Court finds that this is a trust-to-trust transfer and that a lack of financial
13 consideration has no bearing on a property converting from separate to community. No other
14 evidence was presented to rebut the presumption that the interest of the Brian Head Cabin held
15 by the ELN Trust is separate property.

16
17 *9. Harbor Hills*

18 On November 6, 2007, the LSN Trust purchased the Harbor Hills property. On October
19 17, 2008, the following transfers occurred regarding the property: the LSN Trust transferred the
20 property to Lynita in her personal capacity, Lynita transferred the property to Eric in his
21 personal capacity. Eric transferred the property to the ELN Trust, and the ELN Trust
22 transferred the property to Banone, LLC, which is held entirely by the ELN Trust. None of
23 these transfers included any financial consideration.

24
25 This Court finds that after analyzing the transfers discussed above, the Harbor Hills
26 property remains the separate property of Eric. The LSN Trust states in Article 12.3 that "any
27 property held in trust and any income earned by the trusts created hereunder shall be the
28

1 separate property . . . of the beneficiaries of such trusts. Additionally, any distribution to or for
2 the benefit of any beneficiary shall be and remain the sole and separate property and estate of
3 beneficiaries.” Based upon the language from the LSN Trust, the distribution of the Harbor
4 Hills property from the LSN Trust to Lynita individually was Lynita’s separate property, as
5 Lynita is the sole beneficiary of the LSN Trust during her lifetime. Lynita then transferred her
6 separate property to Eric as his separate property. Any transfer by Eric subsequent to this
7 transfer would not change the characterization of this property. This Court has seen no
8 evidence to overcome the presumption present within the SPA, SPTs, and the SSSTs to
9 overcome the established presumption that the parties intended to keep their separate property
10 separate. Thus, the transfer from Eric to the ELN Trust did not change the characterization of
11 the Harbor Hills property, and the Harbor Hills property remains Eric’s separate property.
12
13

14 *10. Rental Income*

15 The Anthem expert report makes mention of rents collected by the ELN Trust from
16 properties owned wholly by the LSN Trust. This Court finds that collection of rents by the ELN
17 Trust from properties owned by the LSN Trust has no bearing on the characterization of the
18 properties themselves. Lynita has provided no additional evidence to rebut the presumption that
19 property held in the ELN Trust remains separate property. This Court is not the proper venue
20 for any disputes regarding the appropriate collection of rents for the properties.
21

22 **C. Management Fees**

23 This Court also considered whether or not management fees paid to Eric were separate
24 property or community property. Both the spouses’ SPTs and the SPA itself are silent as to
25 whether future wages are considered separate property or community property. Because there is
26 nothing in writing demonstrating to this Court that a spouse’s wages were the spouse’s separate
27
28

1 property, this Court must assume that if the management fees were being paid to Eric as his
2 individual wages, then the management fees must be considered community property and
3 would be subject to equitable distribution in divorce.
4

5 However, it is not clear to this Court whether the management fees were considered
6 Eric's individual wages, or whether the management fees were reinvested into the ELN Trust,
7 or if Eric received the wages as the beneficiary of the ELN Trust. If either of the latter two
8 theories are true, then the management fees would be considered Eric's separate property and
9 would not be subject to equitable distribution in divorce. This Court requires further evidence
10 as to the issue of management fees paid to Eric before ruling on whether said fees are separate
11 property or community property.
12

13 **D. Other Outstanding Issues**

14 Lynita argued several other theories before this Court, including several tort claims such
15 as breach of fiduciary duty. The underlying matter before this Court is the divorce of Eric and
16 Lynita. This Court is limited in its scope in this particular matter to the issue that the Nevada
17 Supreme Court remanded the case for: conducting a tracing of assets within the SSSTs. In its
18 October 16, 2018, Decision, this Court previously denied Lynita's motion to consolidate the
19 present divorce matter with her tort claims, as there was no common question of law or fact.
20 This Court repeats here that it is not the proper forum in which to argue any tort claims, such as
21 those related to fiduciary duties, unjust enrichment, or any other claim specifically arising from
22 the management of the SSSTs.
23

24 ...
25

26 ...
27

28 ...

1
2 **III. CONCLUSION**

3 In conclusion, this Court has found that based upon the expert testimony and report by
4 Anthem Forensics, and other testimony and exhibits presented before this Court, that Lynita
5 has not met her burden of proof to establish by clear and convincing evidence that any
6 community property exists within the parties' respective SSSTs.

7 **IV. ORDER**

8 Based thereon:

9
10 **IT IS HEREBY ORDERED** that the ERIC L. NELSON NEVADA TRUST'S
11 MOTION FOR JUDGMENT ON PARTIAL FINDINGS pursuant to NRCP Rule 52(c) is
12 hereby **GRANTED** as to all issues except for the question of ERIC NELSON's Management
13 Fees;

14 **IT IS FURTHER ORDERED** that additional evidence and testimony will be taken by
15 this Court to determine the characterization of ERIC NELSON's Management Fees on dates
16 later to be determined by this Court:

17
18 **IT IS FURTHER ORDERED** that the separate property within the Eric L. Nelson
19 Nevada Trust dated May 30, 2001, and the Lynita S. Nelson Nevada Trust dated May 30, 2001,
20 from the period of May 30, 2001, to June 3, 2013, is not subject to an equitable distribution
21 between Eric and Lynita pursuant to this Court's Decree of Divorce.

22 Dated this 29th of June, 2022.

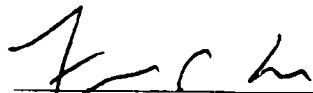
23
24 
25 Honorable Frank P. Sullivan
26 District Court Judge - Dept. O
27
28

EXHIBIT K

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

Case No.: D-09-411537-D
Dept.: O

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee
of the ERIC L. NESLON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

NOTICE OF ENTRY OF DECISION

PLEASE TAKE NOTICE that a *Decision Denying Plaintiff's Motion to Correct, Clarify, Alter, or Amend; and Denying Defendant's Motion to Correct, Clarify, and/or Reconsider* was entered in the above-entitled matter on January 31, 2023, a true and correct copy of which is attached hereto.

DATED this 31st day of January, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

Jeffrey P. Luszeck, Esq. (#9619)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on January 31, 2023, I caused to be served a true and correct copy of the **NOTICE OF ENTRY OF DECISION** to the following in the manner set forth below:

| | |
|-------------------------------------|---|
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | U.S. Mail, Postage Prepaid |
| <input type="checkbox"/> | Certified Mail, Receipt No.: _____ |
| <input type="checkbox"/> | Return Receipt Request |
| <input checked="" type="checkbox"/> | E-Service through Odyssey eFileNV as follows: |

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Attorneys for Lynita Sue Nelson

/s/ Alexandra Carnival

An Employee of Solomon Dwiggin & Freer, Ltd.

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Case No.: D-09-411537-D

Plaintiff/Counterdefendant,

Dept. No.: O

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants/Counterclaimants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated May 30, 2011,
and ERIC NELSON,

Cross-Defendant.

**DECISION DENYING PLAINTIFF'S MOTION TO CORRECT,
CLARIFY, ALTER, OR AMEND; AND DENYING DEFENDANT'S
MOTION TO CORRECT, CLARIFY, AND/OR RECONSIDER**

1
2 This matter came before the Court for hearing on August 30, 2022, for oral
3 argument on Defendant's Motion to Correct, Clarify and/or Reconsider; as well
4 as Plaintiff's Motion to Correct, Clarify, Alter, or Amend. Present before the
5 Court were the following parties: Eric Nelson in his individual capacity and his
6 capacity as the investment trustee of the ELN Trust, represented by his counsel
7 Michael Carman, Esq., and Michelle Hauser, Esq.; Lynita Nelson in her
8 individual capacity as well as her capacity as the investment trustee of the LSN
9 Trust, represented by her counsel Josef Karacsonyi, Esq., and Natalie Karacsonyi,
10 Esq.; and the ELN Trust through its distribution trustee Matt Klabacka, through
11 its counsel Jeffrey Luszeck, Esq.
12
13
14
15

16 The Court has considered the past testimony presented by multiple
17 witnesses, the multiple pleadings and exhibits filed recently in the action, oral
18 arguments by counsel, the lengthy history of this case, and makes the following
19 findings:
20

21 **THIS COURT FINDS** that the Findings in its' Decision and Order of June
22 29, 2022, were based upon this Court considering, that even if the Defendants
23 (Lynita and LSN Trust) arguments were true, they were not sufficient to rebut this
24 Court's presumption characterizing the assets held in trust as separate property,
25 and, as such, Defendants were not entitled to relief. Accordingly, such Findings
26 were merely an analysis of the merits of Defendants arguments as to the
27
28

1
2 insufficiency of the evidence presented to overcome the presumption of the trust
3 assets as separate property.
4

5 **THIS COURT FURTHER FINDS** that Plaintiffs (Eric and ELN Trust)
6 are concerned that this Court's Findings in its Decision and Order of June 29,
7 2022, would be binding/conclusive upon the Parties in future proceedings,
8 particularly as to the related Civil Action A-17-763004-C.
9

10
11 **THIS COURT FURTHER FINDS** that the Civil Action related to
12 this case, which had been pending for the last 5 years, was dismissed *with*
13 *prejudice* on September 14, 2002. As such, this Court views most of the issues
14 presented in the instant Motions, Oppositions, and Countermotions are now moot,
15 as they relate to how the civil court proceedings may be impacted or bound by the
16 Findings and Decision issued by this Court.
17
18

19 **THIS COURT FURTHER FINDS** that the remaining issues which
20 involve Defendants argument that certain assets are community property, and,
21 thus, Plaintiff has the burden of proving that these items are separate property,
22 have been litigated *ad nauseum* over the past 13+ years, have been previously
23 addressed in past Decisions, and will not again be specifically addressed item by
24 item.
25
26
27
28

1
2 **THIS COURT FURTHER FINDS** that the alleged omitted asset of the
3 2001 and 2002 federal tax return refund, which Defendant brings post-trial, will
4 not be further addressed as it was merely mentioned during trial. Defendants' own
5 experts (Anthem) did not conduct any tracing investigation regarding how the tax
6 refund was connected to the 2001 and 2002 tax returns and specifically provided
7 in its' expert report that: "As reflected on Exhibit 2, we have not received Eric
8 and Lynita's joint tax returns for 2001, 2002, and 2003 . . .".
9

10
11 Therefore,
12

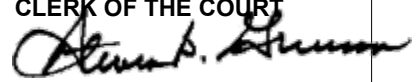
13 **IT IS HEREBY ORDERED** that both Defendant's Motion to Correct,
14 Clarify and/or Reconsider; as well as Plaintiff's Motion to Correct, Clarify, Alter,
15 or Amend, are hereby **DENIED** in their entirety.
16

17
18 DATED this 31st day of January, 2023
19

20
21 

22 **HON. FRANK P. SULLIVAN**
23 **District Court Judge – Dept. O**
24
25
26
27
28

EXHIBIT L



NEOJ
HAUSER FAMILY LAW
Michelle A. Hauser, Esq.
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Attorneys for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff

Case No.: D-09-411537-D
Dept.: O

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**NOTICE OF ENTRY OF ORDER AFTER HEARING GRANTING ERIC
NELSON'S, IN HIS PERSONAL CAPACITY, REQUEST FOR
ATTORNEY'S FEES AND VERIFIED MEMORANDUM OF COSTS**

YOU WILL PLEASE TAKE NOTICE, that an "ORDER AFTER

1 **HEARING GRANTING ERIC NELSON’S, IN HIS PERSONAL CAPACITY,**
2 **REQUEST FOR ATTORNEY’S FEES AND VERIFIED MEMORANDUM**
3 **OF COSTS”** was entered in the above-captioned case on the 27th day of July, 2023,
4
5 by filing a copy with the Clerk.

6 A true and correct copy of said Order is attached hereto and made a part
7
8 thereof.

9
10 Dated this 27th day of July, 2023.

11
12 **HAUSER FAMILY LAW**

13
14 **/s/ MICHELLE HAUSER**

15 Michelle A. Hauser, Esq.

16 Nevada State Bar No. 7738

17 1489 West Warm Springs Road, Suite 110

18 Henderson, Nevada 89014

19 702-867-8313

20 Email: michelle@hauserfamilylaw.com

21 Attorneys for Plaintiff

22 Eric Nelson
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HAUSER FAMILY LAW and that on the 27th day of July, 2023, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER AFTER HEARING GRANTING ERIC NELSON'S, IN HIS PERSONAL CAPACITY, REQUEST FOR ATTORNEY'S FEES AND VERIFIED MEMORANDUM OF COSTS**

to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first-class postage was prepaid in Las Vegas, Nevada; and
- ☒ pursuant to N.E.F.C.R. 9, to be sent via electronic service;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ by email to
- ☐ hand-delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

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Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"

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Michaelson Law
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Henderson, NV 89012
stacy@michaelsonlaw.com

Attorney for the Lynita S. Nelson Nevada Trust Dated May 30, 2001

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Attorneys for Plaintiff

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

Case No.: D-09-411537-D
Dept.: O

LYNITA SUE NELSON, MATT KLABACKA, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**ORDER AFTER HEARING GRANTING ERIC NELSON'S, IN HIS PERSONAL
CAPACITY, REQUEST FOR ATTORNEY'S FEES AND VERIFIED MEMORANDUM
COSTS**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on Eric Nelson, in his
Individual Capacity, "Eric Nelson's Verified Memorandum of Costs" filed on February 6, 2023,

1 and “Eric Nelson’s, In His Individual Capacity, Motion for Attorney’s Fees.” filed on February
2 21, 2023.

3 **FINDINGS OF FACT**

4 1. Eric (“Eric”) and Lynita (“Lynita”) Nelson were married on September 17, 1983.

5 2. In 1993, Eric and Lynita entered into a valid separate property agreement (the
6 “SPA”) which transmuted their community property into each Parties’ respective separate
7 property.
8

9 3. The property equally divided by the SPA contemporaneously funded each Parties’
10 1993 separate property trust. Eric’s Separate Property Trust is hereinafter referred to as “Eric’s
11 SPT,” and Lynita’s Separate Property Trust is hereinafter referred to as “Lynita’s SPT.”

12 4. In 2001, Eric and Lynita converted each of their respective 1993 separate property
13 trusts into valid self-settled spendthrift trusts – respectively, the Eric L. Nelson Nevada Trust
14 (“ELN Trust”) and the Lynita S. Nelson Nevada Trust (“LSN Trust”) (collectively, the “Trusts”).

15 5. On May 6, 2009, Eric filed his Complaint for Divorce in the instant matter.

16 6. On June 24, 2011, Eric filed a motion seeking to join the ELN Trust as a necessary
17 party in the instant matter.
18

19 7. On June 3, 2013, over five years after the original Complaint for Divorce was filed,
20 a Decree of Divorce (“Decree”) was entered after multiple trials and hearings on the matter.
21 After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the Nevada Supreme
22 Court on October 20, 2014.
23

24 8. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
25 the pending issues before this Court, the Nevada Supreme Court held:

26 Both the [separate property agreement] and the parties’ respective SSSTs
27 were signed, written agreements. We hold the written instruments at
28 issue here are all valid and the terms therein are unambiguous.

...

1 We conclude the [separate property agreement] is a valid transmutation
2 agreement, and the plain terms of the [separate property agreement]
3 indicate it remains in effect during divorce.

4 . . .

5 We conclude the [separate property agreement] is a valid transmutation
6 agreement and the parties' community property was converted into
7 separate property.

8 . . .

9 [W]e conclude the [separate property agreement] was valid, and the
10 parties' property was validly separate into their respective separate
11 property trusts.

12 . . .

13 [W]e hold that the SSSTs are valid and the trusts were funded with
14 separate property stemming from a valid separate property agreement.

15 . . .

16 The parties contest whether the assets within the SSSTs remained
17 separate property or whether, because of the many transfers of property
18 between the trusts, the assets reverted back to community property. In a
19 divorce involving trust assets, the district court must trace those assets to
20 determine whether any community property exists within the trusts – as
21 discussed below, the parties' respective separate property in the SSSTs
22 would be afforded the statutory protections against court ordered
23 distribution, while any community property would be subject to the
24 district court's equal distributions. We conclude the district court did not
25 trace the assets in question. . . . Without proper tracing, the district court
26 is left with only the parties' testimony regarding the characterization of
27 the property, which carries no weight.

28 . . .

Separate property contained within the spendthrift trusts is not subject to
attachment or execution, as discussed below. However, if community
property exists within the trusts, the district court shall make an equal
distribution of that community property.

. . .

Having concluded the district court had subject- matter jurisdiction, the
written instrument at issue are valid, and the district court must trace trust
assets to determine whether any community property exists within the
trusts.

9. The language in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d
270, 274-75 (2021) likewise reiterates the holding in *Klabacka v. Nelson*, 133 Nev. 164 (2017).
Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically stated:

1 we also recognized assets within the trusts **may** contain community property and remanded the
2 case so that the district court could conduct proper tracing of the trust assets to determine whether
3 any community property was transferred into or commingled within the trusts. *Id.* at 274.
4 [Emphasis Added]

5 10. Lynita had the burden of proving by clear and convincing evidence that separate
6 property had been transmuted into community property. This legal issue was disputed by Lynita
7 for a minimum of two years post-remand.
8

9 11. Lynita continued for the next two years litigating the date the tracing period should
10 commence. Lynita's request was repeatedly denied by this Court. After the Court denied Lynita's
11 request, Lynita filed a Petition for A Writ of Mandamus or Prohibition with the Nevada Supreme
12 Court on the issue of the applicable period for tracing between the two Trusts, which was denied.
13

14 12. After this matter was remanded by the Nevada Supreme Court, the ELN Trust
15 immediately requested confirmation that both Eric and Lynita would retain individual experts.
16 Lynita refused to retain her own expert and demanded Bertsch be appointed as a Special Matter.
17

18 13. On August 22, 2017, Lynita argued that this Court "should re-appoint Mr. Bertsch
19 to update the prior forensic accounting through the present date. *See* Lynita's Reply to Opposition
20 to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the
21 Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property
22 Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial
23 Information, and for Sale of Property for Payment of Attorneys' Fees and Costs, filed with this
24 Court on August 22, 2017, at p. 11:27-28.
25

26 14. Eric disputed any transmutation occurred; he was ordered to financially assist
27 Lynita's efforts to meet her burden that could not be met based upon the history of the Parties'
28 trusts by paying one-half of Mr. Bertsch's fees. This Court later removed Mr. Bertsch on October

1 27, 2020 (after it became clear that he was not serving in a neutral capacity, and was not meeting
2 the deadlines imposed by the Court), significant costs were incurred by Eric and the ELN Trust.

3 15. The ELN Trust filed a Motion for Burden of Proof at Trial on May 18, 2020, to
4 clarify the scope of the issues pending before this Court and the Parties' burdens of proof.

5 16. On October 27, 2020, the Court issued its Decision and Order wherein it reiterated
6 the direction provided by the Nevada Supreme Court, and held that the burden of proof by the
7 party asserting that separate property was transmuted into community property lies with the
8 moving party and that Lynita had the burden of proof to establish that transmutation occurred.

9 17. Lynita filed a Writ to the Nevada Supreme Court, which was denied.

10 18. Subsequent to Mr. Bertsch's removal from the case, Lynita utilized Anthem
11 Forensics ("Anthem"), to serve as her expert witnesses in this matter. Even though Anthem's
12 principal – Joe Leauanae – had testified at his deposition on July 27, 2010, that "we've completed
13 most of the forensic accounting analysis," no expert report was produced by Lynita until April
14 30, 2021.

15 19. The ELN Trust filed a motion seeking summary judgment on June 21, 2021. As
16 argued in this motion, Anthem's report did not complete a tracing analysis and was unable to
17 identify any specific assets that had been transmuted. The report also stated Lynita denied her
18 expert access to documents that were available to her such as the Parties' joint tax returns for tax
19 years 2001, 2002, and 2003.

20 20. Judge Sullivan's October 2021 order was further discussed at the hearing conducted
21 on October 25, 2021. Judge Sullivan specifically stated:

22
23
24
25 My intent on that summary judgment thing was to show, from what I've
26 seen, looking at that light, I was seeing transfers from trust to trust. I wasn't
27 seeing anything that was showing that there was a community property
28 interest or her claim of that basis on that report. See October 25, 2021
hearing at 54:14.

21. After hearing arguments on October 12, 2021, this Court issued its order indicating that Lynita had not met her burden (“MSJ Order”).

22. This Court’s findings in the MSJ Order also provided Lynita with a framework regarding what Lynita was required to prove at the trial in this matter.

23. The October 12, 2021, “Decision” regarding the ELN Trust “Motion for Summary Judgment, or Alternatively, Motion to Strike and/or Motion to Extend Deadline to File Rebuttal Expert Report and to Continue Trial.” Although in this Decision, the District Court denied the ELN Trust Motion for Summary Judgement, it identified concerns regarding the Defendant’s expert report as it relates to Defendant(s) claim there was a transmutation of separate property to community property. The District Court provided a ten-page analysis of the issues with the state of Defendant(s) evidence.

24. On page 19 of the “Decision,” the District Court stated,

Therefore, this Court presumes that the following assets held by the SSSTs are characterized as the separate property of their respective trusts: (a) the Russel Road Property; (b) Lindell Office; (c) High Country Inn; (d) Tierra del Sol; (e) Tropicana Avenue Property; (f) Flamingo Property; (g) Brian Head Cabin; (h) Wyoming Horse Racing, Inc.; (i) the rental income attributed to Silver Slipper RV Park; and (j) the rental income attributable to the real property in Greenville, Mississippi.

25. Lynita elected to proceed forward to trial and essentially presented the same evidence outlined in Anthem’s Report that the Court already indicated would not meet her burden of proof.

26. Rather than completing a tracing analysis, or withdrawing her claims that were not supported by the evidence in this case, Lynita elected to engage in costly litigation filing the following motions:

1. October 26, 2021, Defendant, Lynita S. Nelson’s, Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision on Motion for Summary Judgement Entered on October 21, 2021.

2. December 21, 2021, Reply in Support of Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision on Motion for Summary Judgement Entered on October 21, 2021 and Opposition to Countermotion in Limine.

3. January 7, 2022, Defendant, Lynita S. Nelson's, Status Report for January 11, 2022.

4. January 13, 2022, Defendant, Lynita S. Nelson's, Motion Regarding Management of the Lindell Property.

5. February 1, 2022, Defendant, Lynita S. Nelson's Emergency Motion for an Order to Show Cause to Issue Against Eric L. Nelson and Matt Klabacka for Egregious Violation of JPI in Selling Ten Banone Properties, for Funds from Sale to be Deposited into Blocked Account and Frozen, for Sanctions of Contempt and Attorney's Fees, and For Related Relief.

27. The trial commenced on March 28, 2022, with Lynita having five years post-remand to gather evidence regarding her transmutation claims.

28. After Lynita and the LSN Trust rested her case-in-chief, this Court issued an order on June 29, 2022, granting ELN Trust/Eric's Motion for Judgment on Partial Findings pursuant to NRCp 52(c) after hearing evidence over 8 days of testimony.

29. After the Court issued its order on June 29, 2022 ("June 29, 2022 Order"), Lynita/the LSN Trust continued to file motions.

30. On July 4, 2022, Lynita/the LSN Trust filed a Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and Order entered June 29, 2022, which this Court denied in an Order entered on January 31, 2023.

31. In the Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and Order entered June 29, 2022, Lynita/the LSN Trust requested the Court find that tax returns from 2001 and 2002 be deemed community property.

32. This Court found that the issue "was merely mentioned during trial," and Lynita/the LSN Trust's own expert had failed to conduct any tracing investigation regarding this issue. *See*

1 Decision Denying Defendant's Motion to Correct, Clarify, Alter or Amend, and/or Reconsider
2 Decision and Order entered June 29, 2022.

3 33. On January 31, 2023, the District Court entered its "Decision Regarding the
4 Characterization of Management Fees" and "Decision Denying Plaintiff's Motion to Correct,
5 Clarify, Alter, or Amend; and Denying Defendant's Motion to Correct, Clarify, and/or
6 Reconsider."

7
8 34. The District Court's "Decision and Order" entered on June 29, 2022, and January
9 31, 2023, was entered after nine days of an evidentiary hearing. The District Court heard evidence
10 on March 28, 2022, March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022, April 6,
11 2022, April 7, 2022, April 27, 2022, and April 28, 2022.

12 35. Pursuant to the Court's "Decision and Order" entered on June 29, 2022, the Court
13 determined there was no community property and there was never a transmutation of community
14 property in the properties and businesses known as Wyoming Downs, Cleopatra, Hacienda Casita,
15 Evanston Horse Racing Inc, and Wyoming Downs Rodeo, Russell Road, Lindell Office, High
16 Country Inn, Tierra Del Sol, Tropicana Avenue Property, Flamingo Property, Brian Head Cabin,
17 and Harbor Hills.

18
19 36. The "Decision and Order" was entered on June 29, 2022, with the filing of a Notice
20 of Entry of Order.

21
22 37. On January 31, 2023, a Notice of Entry of Order was filed with the District Court
23 regarding "Decision Regarding the Characterization of Management Fees." In this Decision, the
24 District Court found that Defendant(s) had not met their legal burden by clear and convincing
25 evidence regarding Management Fees for Silver Slipper and Lindell. The Court further found the
26 Defendant(s) did not show by clear and convincing evidence that the management fees were Eric
27 Nelson's personal income.
28

1 Based upon the findings of the District Court, the Court ordered the management fees for
2 Silver Slipper and Lindell Professional Plaza were deemed to be the separate property of the ELN
3 Trust.

4 38. The entry of the “Decision and Order” on June 29, 2022, and the “Decision
5 Regarding the Characterization of Management Fees” entered on January 31, 2023, all issues
6 presented at the evidentiary hearing conducted over ten days were resolved.

7
8 39. On February 6, 2023, Eric filed his “Eric Nelson’s Verified Memorandum of
9 Costs.” On February 21, 2023, Eric filed his “Eric Nelson’s, In his Individual Capacity, Motion
10 for Attorney’s Fees.”

11 40. On March 22, 2023, Defendant filed her “Defendant/Cross-Defendant, Lynita S.
12 Nelson's, Opposition to ELN Trusts and Eric Nelsons Motions for Attorney’s Fees” and “Appendix
13 of Exhibits in Support of Defendant/Cross-Defendant, Lynita S. Nelson's, Opposition to ELN
14 Trusts and Eric Nelsons Motions for Attorney’s Fees.

15
16 41. On April 28, 2023, The ELN Trust and Eric Nelson, in his Individual Capacity
17 filed, “Joint Reply to "Defendant/Cross-Defendant Lynita S. Nelson's Opposition to ELN Trust's
18 and Eric Nelson's Motion for Attorney's Fees."

19 42. On February 9, 2023, Defendant filed her “Defendant, Lynita S. Nelson’s, Motion
20 to Retax.”

21
22 43. On February 24, 2023, Eric Nelson filed “Eric Nelson’s Opposition to Defendant,
23 Lynita S. Nelson’s Motion to Retax.” On February 27, 2023, the ELN Trust filed its “Joinder to
24 Eric Nelson’s Opposition to Defendant, Lynita S. Nelson’s Motion to Retax.”

25 44. The Verified Memorandum of Costs filed by Eric requested the Court award Eric
26 costs in the amount of \$13,507.06. Pursuant to NRS 18.005, Eric attached the relevant
27 documentation supporting his request for cost including invoices and cancel checks for the cost
28

1 incurred.

2 45. The District Court considered all papers and pleadings filed and the oral arguments
3 of counsel.

4 46. If any of these findings of fact are more appropriately designated Conclusions of
5 law, they shall be so deemed.

6 **CONCLUSIONS OF LAW**

7
8 1. This Court has subject matter jurisdiction and personal jurisdiction over the parties
9 to this action.

10 2. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
11 the pending issues before this Court, the Nevada Supreme Court held:

12 Both the [separate property agreement] and the parties' respective SSSTs
13 were signed, written agreements. We hold the written instruments at
14 issue here are all valid and the terms therein are unambiguous.

15 . . .

16 We conclude the [separate property agreement] is a valid transmutation
17 agreement, and the plain terms of the [separate property agreement]
18 indicate it remains in effect during divorce.

19 . . .

20 We conclude the [separate property agreement] is a valid transmutation
21 agreement and the parties' community property was converted into
22 separate property.

23 . . .

24 [W]e conclude the [separate property agreement] was valid, and the
25 parties' property was validly separate into their respective separate
26 property trusts.

27 . . .

28 [W]e hold that the SSSTs are valid and the trusts were funded with
separate property stemming from a valid separate property agreement.

. . .

The parties contest whether the assets within the SSSTs remained
separate property or whether, because of the many transfers of property
between the trusts, the assets reverted back to community property. In a
divorce involving trust assets, the district court must trace those assets to

1 determine whether any community property exists within the trusts – as
2 discussed below, the parties’ respective separate property in the SSSTs
3 would be afforded the statutory protections against court ordered
4 distribution, while any community property would be subject to the
5 district court’s equal distributions. We conclude the district court did not
6 trace the assets in question.⁷ . . . Without proper tracing, the district court
7 is left with only the parties’ testimony regarding the characterization of
8 the property, which carries no weight.

9 . . .

10 Separate property contained within the spendthrift trusts is not subject to
11 attachment or execution, as discussed below. However, if community
12 property exists within the trusts, the district court shall make an equal
13 distribution of that community property.

14 . . .

15 Having concluded the district court had subject- matter jurisdiction, the
16 written instrument at issue are valid, and the district court must trace trust
17 assets to determine whether any community property exists within the
18 trusts.

19 3. NRS 18.110 (4) provides:

20 Within 3 days after service of a copy of the memorandum, the adverse party
21 may move the court, upon 2 days’ notice, to retax and settle the costs, notice
22 of which motion shall be filed and served on the prevailing party claiming
23 costs. Upon the hearing of the motion the court or judge shall settle the
24 costs.

25 4. Pursuant to NRS 18.110(4), LSN had until February 9, 2023, to file a
26 memorandum/motion to retax and settle the costs. The “Motion To Retax” filed on February 9,
27 2023, was filed by Lynita in her individual capacity.

28 5. As the “Decision and Order” entered on June 29, 2022, and the “Decision
Regarding the Characterization of Management Fees” entered on January 31, 2023, noted, the ELN
Trust was represented by Counsel at the evidentiary hearing in this manner. The LSN Trust was
represented by the same counsel as the Defendant, Lynita Nelson, in her Individual Capacity.

6. As the LSN Trust was represented by Counsel, the LSN Trust should have filed a
timely motion to retax as required by NRS 18.110 (4). The LSN Trust did not file a motion to
retax as required by NRS 18.110 (4).

1 7. EDCR 5.503 (b) provides: failure of an opposing party to serve and file a written
2 opposition may be construed as an admission that the motion is meritorious and a consent that it
3 be granted. Although a “Verified Memorandum of Cost” as required pursuant to NRS18.110 (4)
4 may not be a “motion,” the language in NRS 18.110(4) requires a party to respond by filing a
5 motion to retax. LSN’s failure to file a motion to retax acts similarly to a party failing to oppose a
6 motion.
7

8 Thus, pursuant to EDCR 5.503(b) LSN’s failure to file a motion to retax is an admission
9 that Eric’s “Verified Memorandum of Costs” is meritorious and consent to the granting of the
10 “Verified Memorandum of Costs.”

11 8. As LSN did not file a timely motion/memorandum to retax, LSN has waived any
12 objections to the costs requested by the Eric.

13 9. Based upon the Nevada Supreme Court’s decision (and consistent with *Sprenger v.*
14 *Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994), *Lake v. Bender*, 18 Nev. 361, (1884);
15 *Carlson v. McCall*, 70 Nev. 437 (1954); *Zahringer v. Zahringer*, 76 Nev. 21 (1960); *Kelly v. Kelly*,
16 86 Nev. 301 (1970); *Todkill v Todkill*, 88 Nev. 231 (1972); *Burdick v. Pope*, 90 Nev. 28 (1974);
17 *Cord v. Cord*, 98 Nev. 210 (1982); *Forrest v. Forrest*, 99 Nev. 602 (1983); *Pryor v. Pryor*, 103
18 Nev. 148, at 150, 734 P.2d 718 (1987); and *Verheyden v. Verheyden*, 104 Nev. 342 (1988)) it was
19 clear that Lynita/the LSN Trust had the burden to prove by clear and convincing evidence that
20 separate property had been transmuted into community property.
21

22 10. NRCP 54(d)(2) provides in relevant part:
23

24 **(2) Attorney Fees.**

25 **(A) Claim to Be by Motion.**

26 A claim for attorney fees must be made by motion. The court may decide a
27 postjudgment motion for attorney fees despite the existence of a pending
28 appeal from the underlying final judgment.

(B) Timing and Contents of the Motion.

 Unless a statute or a court order provides otherwise, the motion must:

 (i) be filed no later than 21 days after written notice of entry of judgment is

1 served;

2 (ii) specify the judgment and the statute, rule, or other grounds entitling the
3 movant to the award;

4 (iii) state the amount sought or provide a fair estimate of it;

5 (iv) disclose, if the court so orders, the nonprivileged financial terms of any
6 agreement about fees for the services for which the claim is made; and

7 (v) be supported by:

8 (a) counsel's affidavit swearing that the fees were actually and
9 necessarily incurred and were reasonable;

10 (b) documentation concerning the amount of fees claimed; and

11 (c) points and authorities addressing the appropriate factors to be
12 considered by the court in deciding the motion.

13 11. EDCR 5.219 provides:

14 Sanctions may be imposed against a party, counsel, or other person, after
15 notice and an opportunity to be heard, for unexcused intentional or negligent
16 conduct including but not limited to:

17 (a) Presenting a position that is obviously frivolous, unnecessary, or
18 unwarranted;

19 (b) Multiplying the proceedings in a case so as to increase costs
20 unreasonably and vexatiously;

21 (c) Failing to prepare for a proceeding;

22 (d) Failing to appear for a proceeding;

23 (e) Failing or refusing to comply with these rules; or

24 (f) Failing or refusing to comply with any order or directive of the court.

25 12. A party may seek attorneys' fees when allowed by an agreement, rule, or statute.

26 *See* NRS 18.010 (governing awards of attorney fees); *RTTC Communications, LLC v. The*
27 *Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting that "a court may not award
28 attorney fees absent authority under a specific rule or statute").

13. A court may additionally grant an award of attorneys' fees to a prevailing party
when (a) the prevailing party's recovery is not more than \$20,000; or (b) when the court finds that
the claim, cross-claim, third party complaint, or defense was brought by the opposing party without
a reasonable ground or to harass the prevailing party. NRS 18.010(2)(b)

14. NRS 18.010(2)(b) provides that:

The Court shall liberally construe the provisions of this paragraph in favor
of awarding attorney's fees in all appropriate situations. It is the intent of
the Legislature that the court award attorney's fees pursuant to this
paragraph . . . in all appropriate situations to punish for and deter frivolous

or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

15. Black's Law Dictionary 1145 (7th ed. 1999) defines "prevailing party" as a "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded. A party can be a "prevailing party," under the general attorney fee statute, if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit. N.R.S. 18.010, subd. 2(a). *Women's Federal Sav. and Loan Ass'n of Cleveland v. Nevada Nat. Bank*, 1985, 623 F.Supp. 469.

16. "[t]he Nevada Supreme Court has concluded that a prevailing party on a motion may be entitled to an award of attorney's fees." *Love v. Love*, 114 Nev 527, (Nev. 1998).

17. In *Romano v. Romano*, the Nevada Court upheld an award of attorney's fees awarded in a post-divorce motion hearing. *Romano v. Romano*, 138 Nev. Adv. Op. 1, 501 P.3d 980, 986 (2022).

18. A court may not award attorney fees or costs unless authorized to do so by a statute, rule, or contract. *U.S. Design & Const. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002).

19. "In determining the amount of fees to award, the [district] court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, so long as the requested amount is reviewed in light of the" *Brunzell* factors. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citing *Haley v. Eighth Judicial Dist. court*, 128 Nev. 171, 273 P.3d 855, 860 (internal quotations omitted)). The Supreme Court in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969) gave guidance on how a court is to determine the reasonable value of the work performed by a movant's counsel. *Brunzell* directs courts to consider the following when determining a reasonable amount

1 of attorney fees to award: (1) the qualities of the advocate: his ability, his training, education,
2 experience, professional standing and skill; (2) the character of the work to be done: its difficulty,
3 its intricacy, its importance, time and skill required, the responsibility imposed and the prominence
4 and character of the parties where they affect the importance of the litigation; (3) the work actually
5 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
6 attorney was successful and what benefits were derived. *Id.* (internal quotation marks omitted). In
7 addition to the Brunzell factors, the court must evaluate the disparity of income between parties to
8 family law matters. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). The
9 court has been unable to make this consideration as Plaintiff has refused to participate in these
10 proceedings. The court can follow any rational method so long as it applies the *Brunzell* factors; it
11 is not confined to authorizing an award of attorney fees exclusively from billing records or hourly
12 statements. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Shuette v. Beazer*
13 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based on
14 a “lodestar” amount, as well as a contingency fee arrangement). Although the court must
15 “expressly analyze each factor”, no single factor should be given undue weight. *Logan v. Abe*, 131
16 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33. After
17 determining the reasonable value of an attorney’s services analyzing the factors established in
18 *Brunzell*, the court must then provide sufficient reasoning and findings concerning those factors in
19 its order. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005).
20 The court’s decision must be supported by “substantial evidence”. *Logan v. Abe*, 131 Nev. 260,
21 266, 350 P.3d 1139, 1143 (2015). Substantial evidence supporting a request for fees must be
22 presented to the court by “affidavits, unsworn declarations under penalty of perjury, depositions,
23 answers to interrogatories, [or] admissions on file”. The Supreme Court has confirmed that the
24 Brunzell factors must be presented by affidavit or other competent evidence. *Miller v. Wilfong*,
25
26
27
28

1 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen. Improvement Dist.*, 452
2 P.3d 411 (Nev. 2019), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020) (citing *Herbst v.*
3 *Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an
4 affidavit documenting the hours of work performed, the length of litigation, and the number of
5 volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable
6 determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*,
7 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among
8 other evidence, two depositions from attorneys testifying about the value of the services
9 rendered)). An award that is not based on such substantial evidence is subject to reversal, as the
10 court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668
11 P.2d 268 (1983).
12

13 20. In *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274- 75
14 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit through its
15 trustee.
16

17 21. A District Court may award attorney fees to a prevailing party when it finds that
18 the opposing party brought or maintained a claim without reasonable grounds. NRS 18.010(2)(b).
19 The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's
20 fees in all appropriate situations. See Nev. Rev. Stat. Ann. § 18.010.
21

22 For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible
23 evidence to support it. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684,
24 687-88 (1995).

25 22. While the District Court has discretion to award attorney fees under NRS
26 18.010(2)(b), there must be evidence supporting the District Court's finding that the claim or
27 defense was unreasonable or brought to harass." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470,
28

493, 215 P.3d 709, 726 (2009), holding modified by *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 293 P.3d 869 (2013). A claim is frivolous or groundless if there is no credible evidence to support it. *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432 P.3d 726, 734 (2018).

23. NRS 18.020 provides: Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property or a possessory right thereto.

2. In an action to recover the possession of personal property, where the value of the property amounts to more than \$2,500. The value must be determined by the jury, court or master by whom the action is tried.

3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.

4. In a special proceeding, except a special proceeding conducted pursuant to NRS 306.040.

5. In an action which involves the title or boundaries of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in the action if originally commenced in a Justice Court. (Emphasis Added).

24. A party prevails in an action “if it succeeds on any significant issue in litigation,” it need not prevail on all claims to be the prevailing party. *Las Vegas Metro. Police Dep’t v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (emphasis omitted) (quoting *Valley Elec. Assn v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)).

25. On remand the issues that the Court adjudicated fall squarely within NRS 18.020. Specifically, Lynita/LSN were seeking: (1) “recovery of real property or a possessory right thereto,” see NRS 18.020(1), (2) personal property in excess of \$2,500, see NRS 18.020(2), (3) recovery of money or damages in excess of \$2,500. See NRS 18.020(3).

26. Although this case “was initiated as a divorce proceeding under NRS Chapter 125,” the Court must still apply the Nevada Rules of Civil Procedure, Titles 12 and 13, etc. as it relates to matters outside of the scope of NRS 3.223 and NRS 125.

...

1 27. An argument has been presented by Lynita that the LSN Trust was not a party to
2 the action and therefore, cannot be responsible for any of the attorney's fees. This argument belies
3 the record before the District Court. The LSN Trust was represented by Counsel at the Evidentiary
4 Hearing as provided for in the District Court's orders entered on June 29, 2022, and January 31,
5 2023. The procedural postulate of this case makes it clear the LSN Trust was a party to the action
6 and was represented at the evidentiary hearing.
7

8 Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274- 75
9 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit through its
10 trustee. In her Writ to the Nevada Supreme Court, Lynita argued both trusts are parties to this
11 underlying action. This was also denoted in the Nevada Supreme Court's decision resolving the
12 Writ. The Nevada Supreme Court specifically wrote: Lynita argues both trusts are parties to this
13 action, and moreover, the trusts may be parties to an action under EDCR 5.518.
14

15 28. Eric filed a timely motion pursuant to NRCP 54(d)(2).

16 29. In reviewing the *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme
17 Court never stated the District Court had to conduct a tracing of the assets as argued by the
18 Defendant(s). To the contrary, the Nevada Supreme Court found the SSST's were legally valid
19 instruments, and thus, the property contained with the ELN Trust was funded with Eric's separate
20 property. The Supreme Court further found the assets were the separate property of each respective
21 trust thereby upholding the validity of the SSST's, and if any party wanted to allege there was
22 community property in either trust, a proper tracing under *Schmanski v. Schmanski*, 115 Nev. 247,
23 984 P.2d 752 (1999) needed to be conducted.
24

25 Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274-75
26 (2021) the Supreme Court reiterated the holding in *Klabacka v. Nelson*, 133 Nev. 164 (2017).
27 Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically stated:
28

1 we also recognized assets within the trusts **may** contain community property and remanded the
2 case so that the district court could conduct proper tracing of the trust assets to determine whether
3 any community property was transferred into or commingled within the trusts. Id. at 274.
4 [Emphasis Added]

5 Nothing in the Supreme Court's decision required the District Court to conduct tracing of
6 the assets. This was the decision of either of the parties to make based upon the information they
7 received during the discovery process.
8

9 30. Eric is entitled to an award of attorney's fees as the LSN Trust and Lynita pursuant
10 to EDCR 5.219 (a) and (b). After the District Court entered its order in October 2021, providing
11 a detailed explanation as why The LSN Trust and Lynita had not met its legal burden, the LSN
12 Trust and Lynita unilaterally decided to continue to litigate the matter, knowing it could not make
13 its legal burden.
14

15 Moreover, as discussed in the pleadings filed before the District Court, at the original trial
16 conducted in 2012, the ELN Trust proffered expert testimony that "no evidence that any
17 community property was transferred to [Eric's Trust] or that any community property was
18 commingled with the assets of [Eric's Trust]. See *Klabacka v. Nelson*.

19 By the time of the evidentiary hearing/trial in 2022, the Defendant's had possession of the
20 ELN Trust expert report which was presented during the 2012 trial for a decade. In fact, on the
21 first day of the evidentiary hearing, the Defendant(s) called the 2012 expert as their first witness
22 in its case in chief.
23

24 In reviewing the testimony from the Defendant(s) first witness, Dan Gerety, Mr. Gerety
25 testified he provided all of the source documentation to support his 2012 report during the trial
26 2012, by handing Mr. Dickerson a thumb drive with all of the documents used to complete his
27 report.
28

1 31. In reviewing the *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme
2 Court never stated the District Court had to conduct a tracing of the assets as argued by the
3 Defendant(s).

4 32. Despite the 2012 expert report and this Court's decision of October 2021, the
5 Defendant(s) proceeded to trial, knowing they could not meet their legal burden. This was in
6 violation of EDCR 5.219 (a) and (b).
7

8 33. Pursuant to NRS 18.010(2)(b) allows the District Court to award attorney's fees
9 when it finds the claim, counterclaim, cross-claim or third-party complaint or defense of the
10 opposing party was brought or maintained without reasonable ground or to harass the prevailing
11 party. The court shall liberally construe the provisions of this paragraph in favor of awarding
12 attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award
13 attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada
14 Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
15 claims and defenses because such claims and defenses overburden limited judicial resources,
16 hinder the timely resolution of meritorious claims and increase the costs of engaging in business
17 and providing professional services to the public.
18

19 As discussed *infra*, Defendant(s) undertook a claim to an evidentiary hearing/trial knowing
20 they could not prevail. For the same reasons Eric is entitled to fees pursuant to EDCR 5.219 (a)
21 and (b), Eric is entitled to fees pursuant to NRS NRS 18.010(2)(b).
22

23 34. The Defendant(s) have alleged Eric is not entitled to an award of fees as he did not
24 file a General Financial Disclosure Form. In reviewing the procedural postulate of this case, it is
25 unclear how the filing of a GFDF would assist the Court in resolving the pending issue before the
26 District Court, as neither party owns property or has been "employed." The fact the parties own
27 no assets or have no income has been the heart of the litigation for over a decade. Thus, any GFDF
28

1 filed by Eric would show he owns no property and has no income.

2 35. Eric's counsel filed its *Brunzell* Affidavit as part of its underlying motion for
3 attorney's fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate*
4 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983);
5 *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), *Wright v. Osburn*, 114 Nev.
6 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been satisfied.

7
8 36. The fees charged by Eric's counsel in this matter were necessary to the matter and
9 are reasonable in the marketplace, given the experience and qualities of the advocates in the
10 amount granted by the court.

11 37. Eric's counsel provided the court with the following sworn testimony and other
12 evidence in its "*Brunzell* Declaration of Michael P. Carman, Esq" and "Declaration of Counsel
13 Pursuant to *Brunzell* in Support of Plaintiff's Motion for Attorney's Fees" filed by Michelle A.
14 Hauser.
15

16 **A. The Qualities of the Advocate.**

17 Mr. Carman and Ms. Hauser are well respected within the legal community. Both counsels
18 were members of the Nevada Family Law Section Executive Council. Both attended the Family
19 Law Trial Advocacy Institution in May 2008. Both counsels are part of the Family Law Bench
20 Bar committee. Both counsels have taught Continuing Legal Education. Both counsels have
21 served in other committees. Both counsels have been licensed for more than 20 years.
22

23 **B. Character of Work Performed.**

24 The character of the work of Ms. Hauser and Mr. Carman performed was important and
25 necessary. The underlying facts of this case presented an issue regarding whether the ELN Trust
26 held any community property.
27

28 ...

1 **C. Work Performed**

2 The work performed in this matter included, but is not limited to:

- 3 1. Preparing for and attend a multi-day evidentiary hearing;
- 4 2. Preparing for and conduct depositions of Anthem Forensics;
- 5 3. Preparing for and conducting the deposition of Lynita Nelson;
- 6 4. Preparing a Pre-Trial Memorandum;
- 7 5. Reviewing and responding to multiple motions filed by Lynita and the LSN Trust;
- 8 6. Attending the deposition of ELN Trust's expert witness; and
- 9 7. Addressing discovery issues.

10 The detailed billing invoices provided by Eric outline a significant amount of work which

11 was necessary given the nature of the issues before the Court. Moreover, it was noted by the

12 District Court, Ms. Hauser and Mr. Carman did not "double bill" their hourly rate when they

13 appeared jointly at hearings, etc. Oftentimes, Eric was only billed for one counsel's hourly rate,

14 or a discounted rate was applied when both counsel appeared.

15 **D. Result**

16 The quality and outcome of Mr. Carman's and Ms. Hauser's representation is reflected in

17 this Court's June 29, 2022 Order and January 31, 2023 Order as Eric was a prevailing party.

18 38. The District Court also reviewed the Billing Statements provided by Eric and found

19 the billing statements to be fair and reasonable. The District Court also found the billing rates

20 given the experience of Counsel to be fair and reasonable.

21 39. Pursuant to the October 2021 "Decision," Lynita and the LSN Trust were on notice

22 they were unable to meet their burden of proof as discussed in the District Court's Findings.

23 Despite knowing this well in advance of the evidentiary hearing, the LSN Trust and Lynita elected

24 to proceed forward with the evidentiary hearing.

1 40. Ultimately, after hearing all of the evidence, Lynita and the LSN Trust did not
2 prevail on any of the issues heard during the evidentiary hearing. As indicated above, this was
3 known to Lynita and the LSN Trust well in advance of the evidentiary hearing, and yet, they
4 elected to proceed to trial.

5 41. Eric was the prevailing party, as defined by *Las Vegas Metro. Police Dep't v.*
6 *Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (emphasis omitted) (quoting
7 *Valley Elec. Assn v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005)).

8 42. The decision to proceed to a trial/evidentiary, knowing you cannot meet your
9 evidentiary basis is the definition of a frivolous or a groundless claim.

10 43. The costs incurred by Eric were fair and reasonable.

11 **BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF**
12 **LAW,**

13 **IT IS HEREBY ORDERED** that Eric Nelson's Motion for Attorneys' Fees is GRANTED
14 in the total amount of \$155,528.15.

15 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
16 against the LSN Trust in the amount of \$155,528.15 as and for an award of attorney's fees, which
17 fees represent the fees billed since the October 21, 2021 Order. The amount of \$155,528.15 is
18 reduced to judgment, shall collect interest at the legal rate, and shall be collectible by any lawful
19 means.

20 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
21 against Lynita Nelson, individually in the amount of \$155,528.15 as and for an award of attorney's
22 fees. The amount of \$155,528.15 is reduced to judgment, shall collect interest at the legal rate,
23 and shall be collectible by any lawful means.

24 ...
25
26
27
28

1 **IT IS HEREBY ORDERED** that Eric Nelson's Memorandum of Costs is GRANTED in
2 the total amount of \$13,570.06.

3 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
4 against the LSN Trust in the amount of \$13,570.06 as and for an award of costs. The amount of
5 \$13,570.06 is reduced to judgment, shall collect interest at the legal rate, and shall be collectible
6 by any lawful means.
7

8 **IT IS FURTHER ORDERED** a judgment shall be entered in favor of Eric Nelson and
9 against Lynita Nelson, individually in the amount of \$13,570.06 as and for an award of costs. The
10 amount of \$13,570.06 is reduced to judgment, shall collect interest at the legal rate, and shall be
11 collectible by any lawful means.
12

Dated this 27th day of July, 2023



8A1 B8F BE23 5A4B
Regina M. McConnell
District Court Judge

LS

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16
17
18 RESPECTFULLY SUBMITTED BY:
19 **HAUSER FAMILY LAW**

20 /s/ MICHELLE A. HAUSER
21 Michelle A. Hauser, Esq.
22 Nevada State Bar No. 7738
23 1489 West Warm Springs Road, Suite 110
24 Henderson, Nevada 89014
25 702-867-8313
26 Email: michelle@hauserfamilylaw.com
27 Attorneys for Plaintiff
28 Eric Nelson

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/27/2023

15 Jeffrey Luszeck

jluszeck@sdfnvlaw.com

16 Sherry Curtin-Keast

skeast@sdfnvlaw.com

17 "James J. Jimmerson, Esq." .

jjj@jimmersonlawfirm.com

18 "Rhonda K. Forsberg, Esq." .

Rforsberg@forsberg-law.com

19 Kimberly Stewart .

ks@jimmersonlawfirm.com

20 Larry Bertsch .

larry@llbcpa.com

21 Mandi Weiss- Legal Assistant .

Mweiss@Forsberg-law.com

22 Nick Miller .

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23 Shahana Polselli .

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26
27
28

| | | |
|----|--------------------|---------------------------------------|
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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 7/28/2023

| | |
|-----------------|--|
| James Jimmerson | 415 South Sixth St., Ste 100 Las Vegas, NV, 89101 |
|-----------------|--|

EXHIBIT M

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

Case No.: D-09-411537-D
Dept.: O

MATT KLABACKA, Distribution Trustee
of the ERIC L. NESLON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees* was entered in the above-entitled matter on July 27, 2023, a true and correct copy of which is attached hereto.

DATED this 27th day of July, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

Jeffrey P. Luszeck, Esq. (#9619)
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Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*



CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on July 27, 2023, I caused to be served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** to the following in the manner set forth below:

| | |
|-------------------------------------|---|
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | U.S. Mail, Postage Prepaid |
| <input type="checkbox"/> | Certified Mail, Receipt No.: _____ |
| <input type="checkbox"/> | Return Receipt Request |
| <input checked="" type="checkbox"/> | E-Service through Odyssey eFileNV as follows: |

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*Attorney for Lynita Sue Nelson and
LSN Trust in an "Unbundled
Capacity"*

*Attorney for the Lynita S. Nelson
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Attorney for Eric L. Nelson

/s/ Alexandra Carnival

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT KLABACKA,
as Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D
Dept.: O

**ORDER AFTER HEARING GRANTING ELN TRUST'S REQUEST FOR AN AWARD OF
ATTORNEY'S FEES**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on MATT KLABACKA,

DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001 (“ELN TRUST”), “Motion for Attorneys’ Fees Pursuant to NRCP 54” filed on February 21, 2023.

FINDINGS OF FACT

1. Eric L. Nelson (“Eric”) and Lynita S. Nelson (“Lynita”) were married on September 17, 1983.

2. In 1993, Eric and Lynita entered into a valid separate property agreement (the “SPA”) which transmuted their community property into each Parties’ respective separate property.

3. The property equally divided by the SPA contemporaneously funded each Parties’ 1993 separate property trust. Eric’s Separate Property Trust is hereinafter referred to as “Eric’s SPT,” and Lynita’s Separate Property Trust is hereinafter referred to as “Lynita’s SPT.”

4. In 2001, Eric and Lynita converted each of their respective 1993 separate property trusts into valid self-settled spendthrift trusts – respectively, the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita S. Nelson Nevada Trust (“LSN Trust”) (collectively, the “Trusts”).

5. On May 6, 2009, Eric filed his Complaint for Divorce in the instant matter.

6. On June 24, 2011, Eric filed a motion seeking to join the ELN Trust as a necessary party in the instant matter.

7. On June 3, 2013, over five years after the original Complaint for Divorce was filed, a Decree of Divorce (“Decree”) was entered after multiple trials and hearings on the matter. After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the Nevada Supreme Court on October 20, 2014.

8. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to the pending issues before this Court, the Nevada Supreme Court held:

Both the [separate property agreement] and the parties’ respective SSSTs were signed, written agreements. We hold the written instruments at issue here are all valid and the terms therein are unambiguous.

...

We conclude the [separate property agreement] is a valid transmutation agreement, and the plain terms of the [separate property agreement] indicate it remains in effect during divorce.

...
We conclude the [separate property agreement] is a valid transmutation agreement and the parties' community property was converted into separate property.

...
[W]e conclude the [separate property agreement] was valid, and the parties' property was validly separate into their respective separate property trusts.

...
[W]e hold that the SSSTs are valid and the trusts were funded with separate property stemming from a valid separate property agreement.

...
The parties contest whether the assets within the SSSTs remained separate property or whether, because of the many transfers of property between the trusts, the assets reverted back to community property. In a divorce involving trust assets, the district court must trace those assets to determine whether any community property exists within the trusts – as discussed below, the parties' respective separate property in the SSSTs would be afforded the statutory protections against court ordered distribution, while any community property would be subject to the district court's equal distributions. We conclude the district court did not trace the assets in question.⁷ . . . Without proper tracing, the district court is left with only the parties' testimony regarding the characterization of the property, which carries no weight.

...
Separate property contained within the spendthrift trusts is not subject to attachment or execution, as discussed below. However, if community property exists within the trusts, the district court shall make an equal distribution of that community property.

...
Having concluded the district court had subject- matter jurisdiction, the written instrument at issue are valid, and the district court must trace trust assets to determine whether any community property exists within the trusts.

9. The language in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274-75 (2021) likewise reiterates the holding in *Klabacka v. Nelson*, 133 Nev. 164 (2017). Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically stated: we also recognized assets within the trusts may contain community property and remanded the case so that the district court could conduct proper tracing of the trust assets to determine whether any

1 community property was transferred into or commingled within the trusts. *Id.* at 274. [Emphasis
2 Added]

3 10. Lynita had the burden of proving by clear and convincing evidence that separate
4 property had been transmuted into community property. This legal issue was disputed by Lynita
5 for a minimum of two years post-remand.
6

7 11. Lynita continued for the next two years litigating the date the tracing period should
8 commence. Lynita's request was repeatedly denied by this Court. After the Court denied Lynita's
9 request, Lynita filed a Petition for A Writ of Mandamus or Prohibition with the Nevada Supreme
10 Court on the issue of the applicable period for tracing between the two Trusts, which was denied.
11

12 12. After this matter was remanded by the Nevada Supreme Court, the ELN Trust
13 immediately requested confirmation that both Eric and Lynita would retain individual experts.
14 Lynita refused to retain her own expert and demanded that Larry Bertsch, CPA be appointed as a
15 Special Matter.

16 13. On August 22, 2017, Lynita argued that this Court "should re-appoint Mr. Bertsch
17 to update the prior forensic accounting through the present date. *See* Lynita's Reply to Opposition
18 to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the
19 Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property
20 Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial
21 Information, and for Sale of Property for Payment of Attorneys' Fees and Costs, filed with this
22 Court on August 22, 2017, at p. 11:27-28.
23

24 14. Although Eric disputed any transmutation occurred, he was ordered to financially
25 assist Lynita's efforts to meet her burden that could not be met based upon the history of the Parties'
26 trusts by paying one-half of Mr. Bertsch's fees. The District Court later removed Mr. Bertsch on
27
28

October 27, 2020 (after it became clear that he was not serving in a neutral capacity, and was not meeting the deadlines imposed by the Court), significant costs were incurred by the ELN Trust.

15. The ELN Trust filed a Motion for Burden of Proof at Trial on May 18, 2020, to clarify the scope of the issues pending before the District Court and the Parties' burdens of proof.

16. On October 27, 2020, the District Court issued its Decision and Order wherein it reiterated the direction provided by the Nevada Supreme Court, and held that the burden of proof by the party asserting that separate property was transmuted into community property lies with the moving party and that Lynita had the burden of proof to establish that transmutation occurred.

17. Lynita filed a Writ to the Nevada Supreme Court, which was denied.

18. Subsequent to Mr. Bertsch's removal from the case, Lynita utilized Anthem Forensics ("Anthem") and its principal Melissa Attanasio, to serve as her expert witnesses in this matter. Even though Anthem's principal – Joe Leauanae – had testified at his deposition on July 27, 2010, that "we've completed most of the forensic accounting analysis," no expert report was produced by Lynita until April 30, 2021.

19. The ELN Trust filed a motion seeking summary judgment on June 21, 2021. As argued in this motion, Anthem's report did not complete a tracing analysis and was unable to identify any specific assets that had been transmuted. The report also stated Lynita denied her expert access to documents that were available to her such as the Parties' joint tax returns for tax years 2001, 2002, and 2003.

20. The District Court's October 2021 order was further discussed at the hearing conducted on October 25, 2021, wherein it specifically stated:

My intent on that summary judgment thing was to show, from what I've seen, looking at that light, I was seeing transfers from trust to trust. I wasn't seeing anything that was showing that there was a community property interest or her claim of that basis on that report. See October 25, 2021 hearing at 54:14.

21. After hearing arguments on October 12, 2021, the District Court issued its order indicating that Lynita had not met her burden (“MSJ Order”).

22. The District Court’s findings in the MSJ Order also provided Lynita with a framework regarding what Lynita was required to prove at the trial in this matter.

23. The October 12, 2021, the “Decision” regarding the ELN Trust “Motion for Summary Judgment, or Alternatively, Motion to Strike and/or Motion to Extend Deadline to File Rebuttal Expert Report and to Continue Trial.” Although in this Decision, the District Court denied the ELN Trust Motion for Summary Judgement, it identified concerns regarding the Defendant’s expert report as it relates to Defendant(s) claim there was a transmutation of separate property to community property. The District Court provided a ten-page analysis of the issues with the state of Defendant(s) evidence.

24. On page 19 of the “Decision,” the District Court stated,

Therefore, this Court presumes that the following assets held by the SSSTs are characterized as the separate property of their respective trusts: (a) the Russel Road Property; (b) Lindell Office; (c) High Country Inn; (d) Tierra del Sol; (e) Tropicana Avenue Property; (f) Flamingo Property; (g) Brian Head Cabin; (h) Wyoming Horse Racing, Inc.; (i) the rental income attributed to Silver Slipper RV Park; and (j) the rental income attributable to the real property in Greenville, Mississippi.

25. Lynita elected to proceed forward to trial and essentially presented the same evidence outlined in Anthem’s Report that the Court already indicated would not meet her burden of proof.

26. Rather than completing a tracing analysis, or withdrawing her claims that were not supported by the evidence in this case, Lynita elected to engage in costly litigation filing the following motions:

1. October 26, 2021, Defendant, Lynita S. Nelson’s, Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision on Motion for Summary Judgement Entered on October 21, 2021.

2. December 21, 2021, Reply in Support of Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision on Motion for Summary Judgment Entered on October 21, 2021 and Opposition to Countermotion in Limine.

3. January 7, 2022, Defendant, Lynita S. Nelson's, Status Report for January 11, 2022.

4. January 13, 2022, Defendant, Lynita S. Nelson's, Motion Regarding Management of the Lindell Property.

5. February 1, 2022, Defendant, Lynita S. Nelson's Emergency Motion for an Order to Show Cause to Issue Against Eric L. Nelson and Matt Klabacka for Egregious Violation of JPI in Selling Ten Banone Properties, for Funds from Sale to be Deposited into Blocked Account and Frozen, for Sanctions of Contempt and Attorney's Fees, and For Related Relief.

27. The trial commenced on March 28, 2022, with Lynita having five years post-remand to gather evidence regarding her transmutation claims.

28. After Lynita and the LSN Trust rested their case-in-chief, the District Court issued an order on June 29, 2022, granting the ELN Trust/Eric's Motion for Judgment on Partial Findings pursuant to NRCP 52(c) after hearing evidence over 8 days of testimony.

29. After the District Court issued its order on June 29, 2022 ("June 29, 2022 Order"), Lynita/the LSN Trust continued to file motions.

30. On July 4, 2022, Lynita/the LSN Trust filed a Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and Order entered June 29, 2022, which this Court denied in an Order entered on January 31, 2023.

31. In the Motion to Correct, Clarify, Alter or Amend, and/or Reconsider Decision and Order entered June 29, 2022, Lynita/the LSN Trust requested the Court find that tax returns from 2001 and 2002 be deemed community property.

32. The District Court found that the issue "was merely mentioned during trial," and Lynita/the LSN Trust's own expert had failed to conduct any tracing investigation regarding this

1 issue. *See* Decision Denying Defendant’s Motion to Correct, Clarify, Alter or Amend, and/or
2 Reconsider Decision and Order entered June 29, 2022.

3 33. On January 31, 2023, the District Court entered its “Decision Regarding the
4 Characterization of Management Fees” and “Decision Denying Plaintiff’s Motion to Correct,
5 Clarify, Alter, or Amend; and Denying Defendant’s Motion to Correct, Clarify, and/or Reconsider.”
6 The District Court previously entered its “Decision and Order” on June 29, 2023.
7

8 34. The District Court’s “Decision and Order” entered on June 29, 2022, was entered
9 after nine days of an evidentiary hearing. The District Court heard evidence on March 28, 2022,
10 March 29, 2022, March 30, 2022, March 31, 2022, April 1, 2022, April 6, 2022, April 7, 2022,
11 April 27, 2022, and April 28, 2022.
12

13 35. Pursuant to the Court’s “Decision and Order” entered on June 29, 2022, the Court
14 determined there was no community property and there was never a transmutation of community
15 property in the properties and businesses known as Wyoming Downs, Cleopatra, Hacienda Casita,
16 Evanston Horse Racing Inc, and Wyoming Downs Rodeo, Russell Road, Lindell Office, High
17 Country Inn, Tierra Del Sol, Tropicana Avenue Property, Flamingo Property, Brian Head Cabin,
18 and Harbor Hills.
19

20 36. The “Decision and Order” was entered on June 29, 2022, with the filing of a Notice
21 of Entry of Order.

22 37. On January 31, 2023, a Notice of Entry of Order was filed with the District Court
23 regarding “Decision Regarding the Characterization of Management Fees.” In this Decision, the
24 District Court found that Defendant(s) had not met their legal burden by clear and convincing
25 evidence regarding Management Fees for Silver Slipper and Lindell. The Court further found the
26 Defendant(s) did not show by clear and convincing evidence that the management fees were Eric’s
27 personal income.
28

1 38. Based upon the findings of the District Court, the Court ordered the management
2 fees for Silver Slipper and Lindell Professional Plaza were deemed to be the separate property of
3 the ELN Trust.

4 39. The entry of the “Decision and Order” entered on June 29, 2023, and the “Decision
5 Regarding the Characterization of Management Fees” entered on January 31, 2023, all issues
6 presented at the evidentiary hearing conducted over ten days were resolved.

7 40. On February 21, 2023, The ELN Trust filed, “MOTION FOR ATTORNEYS’ FEES
8 PURSUANT TO NRCP 54.” In this motion, the ELN Trust requested an award of attorney’s fees
9 in the amount of \$539,979.80.

10 41. On March 22, 2023, Defendant filed her “Defendant/Cross-Defendant, Lynita S.
11 Nelson's, Opposition to ELN Trust and Eric Nelson’s Motions for Attorney’s Fees” and “Appendix
12 of Exhibits in Support of Defendant/Cross-Defendant, Lynita S. Nelson's, Opposition to ELN
13 Trusts and Eric Nelsons Motions for Attorney’s Fees.”

14 42. Unlike the Motion to Retax filed by the Defendant on February 9, 2023, this
15 Opposition was filed by “Defendant/Cross-Defendant, LYNITA S. NELSON (“Lynita”),
16 Individually and as Investment Trustee of the LSN NEVADA TRUST, dated May 30, 2001 (“LSN
17 Trust”).”

18 43. On April 28, 2023, The ELN Trust and Eric Nelson, in His Individual Capacity filed,
19 “Joint Reply to "Defendant/Cross- Defendant Lynita S. Nelson's Opposition to ELN Trust's and
20 Eric Nelson's Motion for Attorney's Fees."

21 44. The District Court heard an oral argument on this motion on May 30, 2023. The
22 Court scheduled the motion to be heard on a “special setting.” All Parties were represented by
23 Counsel at this hearing.

CONCLUSIONS OF LAW

...
Separate property contained within the spendthrift trusts is not subject to attachment or execution, as discussed below. However, if community property exists within the trusts, the district court shall make an equal distribution of that community property.

...
Having concluded the district court had subject- matter jurisdiction, the written instrument at issue are valid, and the district court must trace trust assets to determine whether any community property exists within the trusts.

3. Based upon the Nevada Supreme Court's decision (and consistent with *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284, 286 (1994), *Lake v. Bender*, 18 Nev. 361, (1884); *Carlson v. McCall*, 70 Nev. 437 (1954); *Zahringer v. Zahringer*, 76 Nev. 21 (1960); *Kelly v. Kelly*, 86 Nev. 301 (1970); *Todkill v Todkill*, 88 Nev. 231 (1972); *Burdick v. Pope*, 90 Nev. 28 (1974); *Cord v. Cord*, 98 Nev. 210 (1982); *Forrest v. Forrest*, 99 Nev. 602 (1983); *Pryor v. Pryor*, 103 Nev. 148, at 150, 734 P.2d 718 (1987); and *Verheyden v. Verheyden*, 104 Nev. 342 (1988)) it was clear that Lynita/the LSN Trust had the burden to prove by clear and convincing evidence that separate property had been transmuted into community property.

4. NRCP 54(d)(2) provides in relevant part:

(2) Attorney Fees.

(A) Claim to Be by Motion.

A claim for attorney fees must be made by motion. The court may decide a postjudgment motion for attorney fees despite the existence of a pending appeal from the underlying final judgment.

(B) Timing and Contents of the Motion.

Unless a statute or a court order provides otherwise, the motion must:

- (i) be filed no later than 21 days after written notice of entry of judgment is served;
- (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
- (iii) state the amount sought or provide a fair estimate of it;
- (iv) disclose, if the court so orders, the nonprivileged financial terms of any agreement about fees for the services for which the claim is made; and
- (v) be supported by:
 - (a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;
 - (b) documentation concerning the amount of fees claimed; and
 - (c) points and authorities addressing the appropriate factors to be

considered by the court in deciding the motion.

5. Further, EDCR 5.219 provides:

Sanctions may be imposed against a party, counsel, or other person, after notice and an opportunity to be heard, for unexcused intentional or negligent conduct including but not limited to:

- (a) Presenting a position that is obviously frivolous, unnecessary, or unwarranted;
- (b) Multiplying the proceedings in a case so as to increase costs unreasonably and vexatiously;
- (c) Failing to prepare for a proceeding;
- (d) Failing to appear for a proceeding;
- (e) Failing or refusing to comply with these rules; or
- (f) Failing or refusing to comply with any order or directive of the court.

6. A party may seek attorneys' fees when allowed by an agreement, rule, or statute.

See NRS 18.010 (governing awards of attorney fees); *RTTC Communications, LLC v. The Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting that "a court may not award attorney fees absent authority under a specific rule or statute").

7. A court may additionally grant an award of attorneys' fees to a prevailing party when

(a) the prevailing party's recovery is not more than \$20,000; or (b) when the court finds that the claim, cross-claim, third party complaint, or defense was brought by the opposing party without a reasonable ground or to harass the prevailing party. NRS 18.010(2)(b)

8. NRS 18.010(2)(b) provides that:

The Court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph . . . in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

9. Black's Law Dictionary 1145 (7th ed. 1999) defines "prevailing party" as a "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded. A party can be a "prevailing party," under the general attorney fee statute, if it succeeds on any significant issue

1 in litigation which achieves some of the benefit it sought in bringing suit. N.R.S. 18.010, subd. 2(a).
2 *Women's Federal Sav. and Loan Ass'n of Cleveland v. Nevada Nat. Bank*, 1985, 623 F.Supp. 469.

3 10. “[T]he Nevada Supreme Court has concluded that a prevailing party on a motion
4 may be entitled to an award of attorney’s fees.” *Love v. Love*, 114 Nev 527, (Nev. 1998).

5 11. In *Romano v. Romano*, the Nevada Court upheld an award of attorney’s fees awarded
6 in a post-divorce motion hearing. *Romano v. Romano*, 138 Nev. Adv. Op. 1, 501 P.3d 980, 986
7 (2022).

8 12. “In determining the amount of fees to award, the [district] court is not limited to one
9 specific approach; its analysis may begin with any method rationally designed to calculate a
10 reasonable amount, so long as the requested amount is reviewed in light of the Brunzell factors”.
11 *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015) (citing *Haley v. Eighth Judicial Dist.*
12 *Court*, 128 Nev. 171, 273 P.3d 855, 860 (internal quotations omitted)). The Supreme Court in
13 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969) gave
14 guidance on how a court is to determine the reasonable value of the work performed by a movant’s
15 counsel. Brunzell directs courts to consider the following when determining a reasonable amount
16 of attorney fees to award: (1) the qualities of the advocate: his ability, his training, education,
17 experience, professional standing and skill; (2) the character of the work to be done: its difficulty,
18 its intricacy, its importance, time and skill required, the responsibility imposed and the prominence
19 and character of the parties where they affect the importance of the litigation; (3) the work actually
20 performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the
21 attorney was successful and what benefits were derived. *Id.* (internal quotation marks omitted). In
22 addition to the *Brunzell* factors, the court must evaluate the disparity of income between parties to
23 family law matters. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). The
24 court has been unable to make this consideration as Plaintiff has refused to participate in these
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proceedings. The court can follow any rational method so long as it applies the *Brunzell* factors; it is not confined to authorizing an award of attorney fees exclusively from billing records or hourly statements. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 549 (2005) (approving awards based on a “lodestar” amount, as well as a contingency fee arrangement). Although the court must “expressly analyze each factor”, no single factor should be given undue weight. *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015); *Brunzell*, 85 Nev. at 349-50, 455 P.2d at 33. After determining the reasonable value of an attorney’s services analyzing the factors established in *Brunzell*, the court must then provide sufficient reasoning and findings concerning those factors in its order. *Shuette*, 121 Nev. at 865, 124 P.3d at 549. The court’s decision must be supported by “substantial evidence”. *Logan*, 131 Nev. at 266, 350 P.3d at 1143. Substantial evidence supporting a request for fees must be presented to the court by “affidavits, unsworn declarations under penalty of perjury, depositions, answers to interrogatories, [or] admissions on file”. The Supreme Court has confirmed that the *Brunzell* factors must be presented by affidavit or other competent evidence. *Miller v. Wilfong*, 121 Nev. 619, 624, 119 P.3d 727, 730 (2005); *Katz v. Incline Vill. Gen. Improvement Dist.*, 452 P.3d 411 (Nev. 2019), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020) (citing *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an affidavit documenting the hours of work performed, the length of litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among other evidence, two depositions from attorneys testifying about the value of the services rendered)). An award that is not based on such substantial evidence is subject to reversal, as the court will have no factual basis on which to base its decision. *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

1 13. In *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270, 274- 75
2 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit through its
3 trustee.

4 14. NRCP 16 and NRCP 16.205 require each party governed by the applicable rule to
5 file a complete General Financial Disclosure Form.

6 15. In *Young v. Nev. Gaming Control Bd.*, 473 P.3d 1034 (2020), the Nevada Supreme
7 Court held a word is ambiguous if it “is subject to more than one reasonable interpretation.”
8 *Savage*, 123 Nev. at 89, 157 P.3d at 699.

9 16. If a word is not vague, the next issue is whether interpreting its plain meaning would
10 provide an absurd result or was clearly unintended. *See Young v. Nev. Gaming Control Bd.*, 473
11 P.3d 1034 (2020).

12 17. *Landreth v. Malik*, 127 Nev. Adv. Op. N0. 16, 49732 (2011) held we hold that a
13 district court judge in the family division has the same constitutional power and authority as any
14 district court judge, a family court judge has the authority to preside over a case improperly filed
15 or assigned to the family court division.

16 18. Pursuant to the October 2021 “Decision,” Lynita and the LSN Trust were on notice
17 they were unable to meet their burden of proof as discussed in the District Court’s Findings. Despite
18 knowing this well in advance of the evidentiary hearing, the LSN Trust and Lynita elected to
19 proceed forward with the evidentiary hearing.

20 19. Ultimately, after hearing all of the evidence, Lynita and the LSN Trust did not
21 prevail on any of the issues heard during the evidentiary hearing. As indicated above, this was
22 known to Lynita and the LSN Trust well in advance of the evidentiary hearing, and yet, they elected
23 to proceed to trial.

24 20. The ELN Trust was the prevailing party.

1 21. The decision to proceed to a trial/evidentiary hearing knowing you cannot meet your
2 evidentiary basis is the definition of a frivolous or a groundless claim.

3 22. An argument has been presented by Lynita that the LSN Trust was not a party to the
4 action and therefore, cannot be responsible for any of the attorney's fees. This argument belies the
5 record before the District Court. The LSN Trust was represented by Counsel at the Evidentiary
6 Hearing as provided for in the District Court's orders entered on June 29, 2022 and January 31,
7 2023.

8 23. Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,
9 274- 75 (2021), the Nevada Supreme Court specifically held a trust can be a party to a lawsuit
10 through its trustee. In her Writ to the Nevada Supreme Court, Lynita argued both trusts are parties
11 to this underlying action. This was also denoted in the Nevada Supreme Court's decision resolving
12 the Writ. The Nevada Supreme Court specifically wrote: Lynita argues both trusts are parties to
13 this action, and moreover, the trusts may be parties to an action under EDCR 5.518.

14 24. The ELN Trust filed a timely motion pursuant to NRCP 54(d)(2).

15 25. In reviewing the *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme
16 Court never stated the District Court had to conduct a tracing of the assets as argued by the
17 Defendant(s). To the contrary, the Nevada Supreme Court found the SSST's were legally valid
18 instruments, and thus, the property contained with the ELN Trust was funded with Eric's separate
19 property. The Supreme Court further found the assets were the separate property of each respective
20 trust thereby upholding the validity of the SSST's, and if any party wanted to allege there was
21 community property in either trust, a proper tracing under *Schmanski v. Schmanski*, 115 Nev. 247,
22 984 P.2d 752 (1999) could be conducted.

23 26. Moreover, in *Nelson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 14, 484 P.3d 270,
24 274-75 (2021) the Supreme Court reiterated the holding in *Klabacka v. Nelson*, 133 Nev. 164
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1 (2017). Specifically, in *Nelson v. Eighth Jud. Dist. Ct.*, the Nevada Supreme Court specifically
2 stated: we also recognized assets within the trusts **may** contain community property and
3 remanded the case so that the district court could conduct proper tracing of the trust assets to
4 determine whether any community property was transferred into or commingled within the trusts.
5 *Id.* at 274. [Emphasis Added]
6

7 27. Nothing in the Supreme Court's decision required the District Court to conduct
8 tracing of the assets. This was the decision of either of the parties to make based upon the
9 information they received during the discovery process.

10 28. The ELN Trust is entitled to an award of attorney's fees as the LSN Trust and Lynita
11 pursuant to EDCR 5.219 (a) and (b). After the District Court entered its order in October 2021,
12 providing a detailed explanation as why The LSN Trust and Lynita had not met its legal burden,
13 the LSN Trust and Lynita unilaterally decided to continue to litigate the matter, knowing it could
14 not make its legal burden.
15

16 29. Moreover, as discussed in the pleadings filed before the District Court, at the original
17 trial conducted in 2012, the ELN Trust proffered expert testimony that "no evidence that any
18 community property was transferred to [Eric's Trust] or that any community property was
19 commingled with the assets of [Eric's Trust]. See *Klabacka v. Nelson*.
20

21 30. By the time of the evidentiary hearing/trial in 2022, Lynita/the LSN Trust had
22 possession of the ELN Trust expert report which was presented during the 2012 trial for a decade.
23 In fact, on the first day of the evidentiary hearing, the Lynita/the LSN Trust called the 2012 expert
24 as their first witness in its case in chief.

25 31. In reviewing the testimony from the Defendant(s) first witness, Dan Gerety, testified
26 that he provided all of the source documentation to support his 2012 report during the 2012 trial,
27 by handing Mr. Dickerson a thumb drive with all of the documents used to complete his report.
28

1 32. In reviewing *Klabacka v. Nelson*, 133 Nev. 164 (2017) the Nevada Supreme Court
2 never stated the District Court had to conduct a tracing of the assets as argued by the Defendant(s).

3 33. Despite the 2012 expert report and the District Court's decision of October 2021,
4 Lynita/the LSN Trust proceeded to trial, knowing they could not meet their legal burden. This was
5 in violation of EDCR 5.219 (a) and (b).
6

7 34. NRS 18.010(2)(b) allows the District Court to award attorney's fees when it finds
8 the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was
9 brought or maintained without reasonable ground or to harass the prevailing party. The court shall
10 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
11 appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant
12 to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure
13 in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses
14 because such claims and defenses overburden limited judicial resources, hinder the timely
15 resolution of meritorious claims and increase the costs of engaging in business and providing
16 professional services to the public.
17

18 35. As discussed *infra*, Lynita/the LSN Trust undertook a claim to an evidentiary
19 hearing/trial knowing they could not prevail. For the same reasons the ELN Trust is entitled to fees
20 pursuant to EDCR 5.219 (a) and (b), the ELN Trust is entitled to fees pursuant to NRS 18.010(2)(b).
21

22 36. Lynita/the LSN Trust have alleged the ELN Trust is not entitled to fees as the ELN
23 Trust has not filed a General Financial Disclosure Form. The Court has reviewed NRCP 16.2 and
24 NRCP 16.205 and finds the term "party" is vague.

25 37. Specifically, in reviewing NRCP 16.2 and NRCP 16.205, the term party in these
26 sections concerns an "individual" and not a "person" such as a husband, wife, mother, father, etc.
27
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NRCP 16.2 and NRCP 16.205 did not contemplate this type of litigation wherein a special trust pursuant to NRS 166.020 would be a party.

38. Interpreting the term “party” as written in NRCP 16.2 and NRCP 16.205 would provide an absurd result and was clearly unintended. *See Young v. Nev. Gaming Control Bd.*, 473 P.3d 1034 (2020). Pursuant to *Landreth v. Malik*, 127 Nev. Adv. Op. No. 16, 49732 (2011) a Family Court Judge has the same authority as a general jurisdiction Judge. Meaning, a Family Court Judge can hear “civil” and “criminal” matters.

39. If the ELN Trust had raised the same claims in a court of general jurisdiction, such as the civil division of the Eighth Judicial District Court, the ELN Trust would not be required to file a General Financial Disclosure Form to receive an award of fees. To treat the ELN Trust any differently than a civil litigant would be an absurd result and would encourage civil litigants to attempt to file claims in the Family Court to receive financial information that would otherwise not be required under local rules.

40. Finally, during the decade-long litigation post the entry of the decree of divorce, the LSN Trust has never filed a General Financial Disclosure Form. This is an admission by the LSN Trust that a General Financial Disclosure Form was not a requirement as now argued.

41. The ELN Trust filed its Brunzell Affidavit as part of its underlying motion for attorney’s fees filed on February 21, 2023. Thus, analysis required under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969); *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983); *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998), and EDCR 5.219 have been satisfied.

42. The fees charged by the ELN Trust counsel in this matter were necessary to the matter and are reasonable in the marketplace given the experience and qualities of the advocates in the amount granted by the court.

43. The ELN Trust provided the court with the following sworn testimony and other evidence in its “Declaration of Jeffrey P. Luszeck In Support of Motion for Attorney’s Fees.”

A. The Qualities of the Advocate.

44. Mark A. Solomon’s (“Mr. Solomon”) billable hourly rate of \$685.00, is commensurate with his experience, reputation and skill in all areas of trust, estate and business litigation. Mr. Solomon practiced law for over 45 years and was the senior founding partner of SDFS. Mr. Solomon was a long-standing member of the Trust and Estate Sections of the State Bar of Nevada and American Bar Association and was considered one Nevada’s premier trust and estate attorneys.

45. Mr. Luszeck has been a partner at SDFS for over seven years, and has been an active member of the State Bar of Nevada since 2005. He regularly litigates business, probate, and trust cases at the trial and appellate level in both state and federal court, and has also received numerous honors and accolades in the Nevada legal community.

46. To ensure resources, and to minimize legal expenses, SDFS delegated tasks and to quality employees who have a lower billable rate, namely, Craig D. Friedel (“Mr. Friedel”) and Joshua M. Hood (“Mr. Hood”). Mr. Friedel has been an associate attorney at SDFS since 2015. Mr. Friedel earned his JD in or around 2015 from William S. Boyd School of Law and has practiced law for several years. Mr. Hood was an associate attorney at SDFS from 2013 – 2022. Mr. Hood earned his JD in or around 2010 from Valparaiso University School of Law. Similarly, Sherry Keast (“Ms. Keast”) has been a paralegal at SDFS since 2005. Ms. Keast earned her Paralegal Certificate in or around 1991 and has worked in the legal field for over twenty-five (25) years

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B. Character of Work Performed.

47. The character of the work of SDFS has performed was important and necessary. The underlying facts of this case presented an issue regarding whether the ELN Trust held any community property.

C. Work Performed.

48. The work performed in this matter included, but is not limited to:

- i. Between May 25, 2017 to present, there were over a hundred filings, of which Undersigned Counsel filed sixty (60). Said filings include, but are not limited to: (1) Motion to Dismiss and a renewed Motion to Dismiss in 2019; (2) Writ of Mandamus; (3) numerous orders; (4) Motion for Summary Judgment; (5) Motions in Limine; and (6) Oppositions to Lynita/the LSN Trust's Motions in Limine;
- ii. Preparing for and attending numerous hearings between 2018-2022;
- iii. Various consultations, emails, and telephone conferences with opposing counsel, client, and co-counsel;
- iv. Research on substantive issues;
- v. Preparing for, and taking/defending multiple depositions, including, Eric, Lynita, Anthem Forensics and Doug Winters;
- vi. Preparing for and participating in an eight (8) day trial; and
- vii. Drafting the instant Motion.⁴

D. Result.

49. The quality and outcome of SDFS's representation is reflected in this Court's June 29, 2022 Order and January 31, 2023 Order as the ELN Trust was a prevailing party.

50. The District Court also reviewed the Billing Statements provided by the ELN Trust and found the billing statements to be fair and reasonable.

1 NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND
2 CONCLUSIONS,

3 IT IS HEREBY ORDERED that the ELN Trust's Motion for Attorneys' Fees is
4 GRANTED in the total amount of \$239,772.30.

5 IT IS FURTHER ORDERED that a judgment shall be entered in favor of the ELN Trust
6 and against the LSN Trust in the amount of \$239,772.30 as and for an award of attorney's fees.
7 The amount of \$239,772.30 is reduced to judgment, shall collect interest at the legal rate, and shall
8 be collectible by any lawful means.

9 IT IS FURTHER ORDERED a judgment shall be entered in favor of the ELN Trust and
10 against Lynita Nelson, Individually in the amount of \$239,772.30 as and for an award of attorney's
11 fees. The amount of \$239,772.30 is reduced to judgment, shall collect interest at the legal rate, and
12 shall be collectible by any lawful means.
13
14

15 Dated this 27th day of July, 2023

16 

17 Respectfully submitted by:

18 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

3DD E35 E723 2C46
Regina M. McConnell
District Court Judge

LS

19 /s/ Jeffrey P. Luszeck

20 By: _____

21 Jeffrey P. Luszeck, Esq. (#09619)
22 jluszeck@sdfnvlaw.com
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

23 *Attorneys for Matt Klabacka, Distribution Trustee of*
24 *the ERIC L. NELSON NEVADA Trust dated May 30,*
25 *2001*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/27/2023

15 Jeffrey Luszeck

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jjj@jimmersonlawfirm.com

18 "Rhonda K. Forsberg, Esq." .

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19 Kimberly Stewart .

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20 Larry Bertsch .

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21 Mandi Weiss- Legal Assistant .

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22 Nick Miller .

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24 Shari Aidukas .

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25 The Dickerson Karacsonyi Law Group .

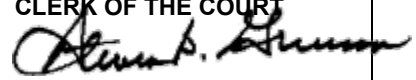
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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 7/28/2023

| | |
|-----------------|--|
| James Jimmerson | 415 South Sixth St., Ste 100 Las Vegas, NV, 89101 |
|-----------------|--|

EXHIBIT N



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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

Case No.: D-09-411537-D
Dept.: O

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants

MATT KLABACKA, Distribution Trustee
of the ERIC L. NESLON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order After Hearing Granting the ELN Trust's Motion for Immediate Payment of Funds Belonging to ELN Trust* was entered in the above-entitled matter on August 2, 2023, a true and correct copy of which is attached hereto.

DATED this 2nd day of August, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

Jeffrey P. Luszeck, Esq. (#9619)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on August 2, 2023, I caused to be served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** to the following in the manner set forth below:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Return Receipt Request
- ☒ E-Service through Odyssey eFileNV as follows:

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/s/ Sherry J. Curtin-Keast

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff

vs.

LYNITA SUE NELSON, MATT KLABACKA,
as Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Defendants

Case No.: D-09-411537-D
Dept.: O

MATT KLABACKA, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated May
30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**ORDER AFTER HEARING GRANTING THE ELN TRUST'S MOTION FOR
IMMEDIATE PAYMENT OF FUNDS BELONGING TO ELN TRUST**

THIS MATTER having come before the District Court for oral argument on May 30, 2023
and then for a Decision on its Chambers Calendar on July 24, 2023, on MATT KLABACKA,
DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001

1 (“ELN TRUST”), “Motion for Immediate Payment of Funds Belonging to ELN Trust” filed on
2 February 21, 2023.

3 **FINDINGS OF FACT**

4 1. Eric (“Eric”) and Lynita (“Lynita”) Nelson were married on September 17, 1983.

5 2. In 1993, Eric and Lynita entered into a valid separate property agreement (the
6 “SPA”) which transmuted their community property into each Parties’ respective separate
7 property.
8

9 3. The property equally divided by the SPA contemporaneously funded each Parties’
10 1993 separate property trust. Eric’s Separate Property Trust is hereinafter referred to as “Eric’s
11 SPT,” and Lynita’s Separate Property Trust is hereinafter referred to as “Lynita’s SPT.”

12 4. In 2001, Eric and Lynita converted each of their respective 1993 separate property
13 trusts into valid self-settled spendthrift trusts – respectively, the Eric L. Nelson Nevada Trust
14 (“ELN Trust”) and the Lynita S. Nelson Nevada Trust (“LSN Trust”) (collectively, the “Trusts”).
15

16 5. On May 6, 2009, Eric filed his Complaint for Divorce in the instant matter.

17 6. On June 24, 2011, Eric filed a motion seeking to join the ELN Trust as a necessary
18 party in the instant matter.

19 7. On June 3, 2013, over five years after the original Complaint for Divorce was
20 filed, a Decree of Divorce (“Decree”) was entered after multiple trials and hearings on the matter.
21

22 8. On June 5, 2013, two days after this Court entered the Decree, Lynita/the LSN
23 Trust filed a Motion for Payment of Funds Belonging to the Defendant Pursuant to Court’s
24 Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert,
25 wherein Lynita/the LSN Trust demanded the transfers ordered in the Decree be made
26 immediately.
27

28 ///

1 9. The ELN Trust filed a Countermotion to Stay Payments and Transfer Property
2 Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ.

3 10. The ELN Trust's Countermotion was denied. In the Order entered on September
4 3, 2013, the District Court stated:

5 The release of funds at issue will not put the ELN Trust at risk; that there
6 are sufficient assets in the LSN Trust to act as collateral for the payment of
7 the funds at issue; and there has been nothing presented to the Court which
8 would make the Court believe that Mrs. Nelson would try to get rid of
9 funds and not pay any funds if the Supreme Court overturned this Court's
10 decision.

11 11. On June 4, 2014, the District Court entered an Order for Payment of Funds from
12 Blocked Account ("Order for Payment"), which provides, in part:

13 IT IS HEREBY ORDERED that Bank of Nevada shall release/pay to
14 Defendant LYNITA SUE NELSON ("Lynita"), the amount of Three
15 Hundred Twenty-Four Thousand (\$324,000.00) from the funds on deposit
16 in Account No. 7502338705 (the account previously frozen and blocked
17 by this Court)." The account at Bank of Nevada was titled in the name of
18 the ELN Trust and/or an entity owned by the ELN Trust. Said Three
19 Hundred Twenty-Four Thousand (\$324,000.00) payment was secured by
20 properties titled in the name of the LSN Trust.

21 12. The District Court also ordered "Lindell and Banone properties are to be
22 transferred to the LSN Trust. The Lindell and Banone properties are NOT to be sold or otherwise
23 encumbered."

24 13. After the transfers of the Banone properties and Lindell Office, Lynita/the LSN
25 Trust collected substantial rent from said properties from which she retained 100% of the
26 proceeds. This Court also ordered the ELN Trust to remit payment to the LSN Trust in the amount
27 of \$75,000.00, the payment of which was effectuated on June 30, 2014.

28 14. The ELN Trust also paid the LSN Trust a \$6,050.00 security deposit relating to the
Banone, LCC Properties.

///

1 15. After the entry of the Decree, the ELN Trust filed a Notice of Appeal to the
2 Nevada Supreme Court on October 20, 2014.

3 16. On May 25, 2017, the Nevada Supreme Court issued its Decision. As it relates to
4 the pending issues before this Court, the Nevada Supreme Court held:

5 Both the [separate property agreement] and the parties' respective SSSTs
6 were signed, written agreements. We hold the written instruments at issue
7 here are all valid and the terms therein are unambiguous.

8 ...

8 We conclude the [separate property agreement] is a valid transmutation
9 agreement, and the plain terms of the [separate property agreement]
10 indicate it remains in effect during divorce.

11 ...

11 We conclude the [separate property agreement] is a valid transmutation
12 agreement and the parties' community property was converted into
13 separate property.

14 ...

14 [W]e conclude the [separate property agreement] was valid, and the
15 parties' property was validly separate into their respective separate
16 property trusts.

17 ...

17 [W]e hold that the SSSTs are valid and the trusts were funded with
18 separate property stemming from a valid separate property agreement.

19 ...

19 The parties contest whether the assets within the SSSTs remained separate
20 property or whether, because of the many transfers of property between
21 the trusts, the assets reverted back to community property. In a divorce
22 involving trust assets, the district court must trace those assets to
23 determine whether any community property exists within the trusts – as
discussed below, the parties' respective separate property in the SSSTs
would be afforded the statutory protections against court ordered
distribution, while any community property would be subject to the
district court's equal distributions. We conclude the district court did not
trace the assets in question. . . . Without proper tracing, the district court is
left with only the parties' testimony regarding the characterization of the
property, which carries no weight.

24 ...

24 Separate property contained within the spendthrift trusts is not subject to
25 attachment or execution, as discussed below. However, if community
26 property exists within the trusts, the district court shall make an equal
distribution of that community property.

27 ...

27 Having concluded the district court had subject- matter jurisdiction, the
28 written instrument at issue are valid, and the district court must trace trust

assets to determine whether any community property exists within the trusts.

17. On April 19, 2018, the District Court entered its Decision wherein it ordered, in part, that the LSN Trust must transfer its 50% interest in the Lindell Office and its 100% interest in the Banone, LLC Properties to the ELN Trust via Quitclaim Deed.” The District Court also ordered the LSN Trust to provide quarterly accountings for the properties to the ELN Trust “including any and all supporting documentation,” for the period of June 3, 2013 through April 2018.

18. Although it ordered the LSN Trust to transfer the aforementioned real property back to the ELN Trust, it did not rule on the following financial issues:

- Rents the LSN Trust collected from the Banone, LLC Properties;
- Rents the LSN Trust collected from the Lindell Office;
- \$324,000.00 paid to Lynita/the LSN Trust;
- \$6,050.00 security deposit paid to the LSN Trust from the ELN Trust;
- Payments collected by the LSN Trust pursuant to the Farmouth Circle Note; and
- \$75,000.00 paid to the LSN Trust by Banone-AZ, LLC.

See Decision entered on April 19, 2018 at 7:9-18.

19. In its Decision, the District Court indicated that it was not inclined to order the LSN Trust to make any financial transfers until a tracing of both trusts occurred. The District Court further stated, “[it] has reviewed the assets of both the ELN and LSN Trusts and has determined that there are sufficient assets in both trusts to offset any deficiency once a final balance and distribution amount has been determined.” *Id.* at 7:25-8:2. The District Court further held that “[o]nce the tracing is finalized and a final balance sheet is received, this Court will Order the proper funds to be transferred to each party accordingly.” *Id.* at 8:2-5.

1 20. After Lynita and the LSN Trust rested her case-in-chief, this Court issued an order
2 on June 29, 2022, granting the ELN Trust/Eric's Motion for Judgment on Partial Findings
3 pursuant to NRCP 52(c) after hearing evidence over 8 days of testimony.

4 21. On January 31, 2023, the District Court entered its "Decision Regarding the
5 Characterization of Management Fees" and "Decision Denying Plaintiff's Motion to Correct,
6 Clarify, Alter, or Amend; and Denying Defendant's Motion to Correct, Clarify, and/or
7 Reconsider."

8 22. On February 21, 2023, the ELN Trust filed "Motion for Immediate Payment of
9 Funds Belonging to ELN Trust."

10 23. On March 22, 2023, Defendant filed "Defendant/Cross-Defendant, Lynita S.
11 Nelson's, Opposition to Motion for Immediate Payment of Funds Belonging to ELN Trust, and
12 Countermotion for Final Determination of Alimony Issue, and Payment of Monies Owed by ELN
13 Trust to LSN Trust" and "Appendix of Exhibits in Support of Defendant/Cross-Defendant, Lynita
14 S. Nelson's, Opposition to Motion for Immediate Payment of Funds Belonging to ELN Trust, and
15 Countermotion for Final Determination of Alimony Issue, and Payment of Monies Owed by ELN
16 Trust to LSN Trust" Volumes 1 through 3.

17 24. On April 28, 2023, the ELN Trust filed its "Reply to Defendant/Cross- Defendant,
18 Lynita S. Nelson's, Opposition to Motion for Immediate Payment of Funds Belonging to ELN
19 Trust and Opposition to Countermotion for Final Determination of Alimony Issue, and Payment
20 of Monies Owed by ELN Trust to LSN Trust."

21 25. The District Court heard oral arguments on the pending motion on May 30, 2023.
22 The hearing commenced at 1:33 p.m. and concluded at 5:01 p.m. During the lengthy hearing, the
23 District Court heard arguments regarding the pending issues before the Court.

1 26. The District Court determined at the May 30, 2023, hearing it needed additional
2 information from the parties and required the parties to provide additional briefing as it related to
3 the rents and expenses for Banone, LLC and the Lindell Office.

4 27. An order was entered and served on all parties on June 9, 2023, providing the
5 Briefing schedule. The order specifically provided:
6

7 A. **IT IS HEREBY FURTHER ORDERED** that if they so desire to
8 further brief the issue, the Parties have until June 20, 2023, to file briefs
9 regarding the rents collected from BANONE, LLC and the Lindell Office;
and

10 B. **IT IS HEREBY FURTHER ORDERED** that the Parties will
11 have until July 5, 2023, to file responses to briefs regarding rents collected
from the BANONE, LLC and the Lindell Office.

12 28. The Notice of Entry of Order entered on June 9, 2023, states Lynita Nelson was
13 served via electronic service at sunnysidelsen@gmail.com and via mail at P.O. Box 156-164,
14 10170 West Tropicana Avenue Las Vegas, Nevada 89147. Curtis Rawlings, Esq. who
15 represented the Defendant(s) at the May 30, 2023, hearing was served via electronic service at
16 curtis@pecoslawgroup.com. Also, The Dickerson Karacsonyi Law Group was served at
17 info@thedklawgroup.com.
18

19 29. During the hearing conducted on May 30, 2023, Defendant's counsel participated
20 in the discussions regarding the timing of the Briefs and made representations he would be filing
21 a Brief. *See* Video Transcript at 4:49:15 through 5:01:38.

22 30. On June 20, 2023, the ELN Trust filed its "Supplement to Motion for Immediate
23 Payment of Funds Belonging to ELN Trust Pursuant to Court Order Entered on June 9, 2023" and
24 "Appendix of Exhibits to Supplement to Motion for Immediate Payment of Funds Belonging to
25 ELN Trust Pursuant to Court Order Entered on June 9, 20-3" Volume I through II.
26

27 31. Neither Lynita Nelson nor the LSN Trust filed a Brief on June 20, 2023, pursuant
28 to the District Court's order entered on June 9, 2023.

32. Pursuant to the Order entered on June 9, 2023, the parties were to file reply briefs on July 5, 2023. Neither Lynita Nelson nor did the LSN Trust file a reply brief on July 5, 2023.

33. Since the hearing was conducted on May 30, 2023, Lynita Nelson nor has the LSN Trust filed any further pleadings, papers, etc.

34. The District Court considered all papers, pleadings, and appendix exhibits filed and the oral arguments of counsel.

35. If any of these findings of fact are more appropriately designated Conclusions of law, they shall be so deemed.

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction and personal jurisdiction over the parties to this action.

2. On June 3, 2013, the District Court entered a Decree of Divorce (“Decree”) wherein he ordered, in part, that certain assets be transferred from the ELN Trust to the Lynita S. Nelson Nevada Trust dated May 30, 2001 (“LSN Trust”).

3. On June 5, 2013, two days after the District Court entered the Decree, Lynita/the LSN Trust filed a Motion for Payment of Funds Belonging to the Defendant Pursuant to Court’s Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert, wherein they demanded the transfers ordered in the Decree be made immediately.

4. The ELN Trust filed a Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ.

5. The Countermotion was denied due to the District Court’s belief that:

The release of funds at issue will not put the ELN Trust at risk; that there are sufficient assets in the LSN Trust to act as collateral for the payment of the funds at issue; and there has been nothing presented to the Court which would make the Court believe that Mrs. Nelson would try to get rid of funds and not pay any funds if the Supreme Court overturned this Court’s decision. *See* Order Denying Countermotion to Stay Payments and

1 Transfer Property Pending Appeal and/or Resolution to the Nevada
2 Supreme Court for an Extraordinary Writ entered on September 3, 2013,
at 2:14-18.

3 6. On June 4, 2014, the District Court entered an Order for Payment of Funds from
4 Blocked Account (“Order for Payment”), which ordered, in part, that the “Lindell and Banone
5 properties are to be transferred to the LSN Trust. The Lindell and Banone properties are NOT to
6 be sold or otherwise encumbered.” *See* Court Minutes entered on June 4, 2014.

7
8 7. After the transfers of the Banone properties and Lindell Office, Lynita/the LSN
9 Trust collected substantial rent from said properties from which she retained 100% of the
10 proceeds.

11 8. On May 25, 2017, the Nevada Supreme Court issued its Opinion that provides, in
12 relevant part, “the district court erred in ordering Eric’s personal obligations be paid by Eric’s
13 Trust.”

14
15 9. On April 19, 2018, the District Court entered its Decision, wherein, in part, the
16 LSN Trust must transfer its 50% interest in the Lindell Office and its 100% interest in the
17 Banone, LLC Properties to the ELN Trust via Quitclaim Deed.”

18 10. The District Court also ordered Lynita/the LSN Trust to provide quarterly
19 accountings for the properties to the ELN Trust “including any and all supporting
20 documentation,” for the period of June 3, 2013 through April 2018.

21
22 11. Although the District Court ordered the LSN Trust to transfer the aforementioned
23 real property back to the ELN Trust (and Lynita, in her capacity as Investment Trustee of the LSN
24 Trust did in fact transfer said assets back to the ELN Trust), the District Court did not rule on the
25 following financial issues:

- 26
- Rents Lynita/the LSN Trust collected from the Banone, LLC Properties;
 - Rents Lynita/the LSN Trust collected from the Lindell Office.
- 27
28

- \$324,000.00 paid to Lynita/the LSN Trust from the ELN Trust;
- \$6,050.00 security deposit paid to the LSN Trust from the ELN Trust;
- Payments collected by the LSN Trust pursuant to the Farmouth Circle Note; and
- \$75,000.00 paid to the LSN Trust by Banone-AZ, LLC

See Decision entered on April 19, 2018 at 7:9-18.

12. In its Decision, the District Court held that “[o]nce the tracing is finalized and a final balance sheet is received, this Court will Order the proper funds to be transferred to each party accordingly.” *Id.* at 8:2-5.

13. The District Court ruled on all outstanding issues in its Decision and Order entered on June 29, 2022, and Decision Regarding Characterization of Management Fees entered on January 31, 2023.

14. Based upon the law of the case, once the District Court has completed the tracing analysis the District Court would order the proper funds to be transferred.

15. Based upon the pleadings filed with the District Court, it is not disputed the ELN Trust has yet to receive the rental proceeds for the Banone Properties and its share of the Lindell property.

16. Thus, the District Court must resolve the pending issues, and requested additional briefing from the parties.

17. In dispute is the proper deductions Lynita and the LSN Trust should receive from the net rental proceeds it received.

18. It is also in dispute whether Lynita and the LSN Trust provided source documentation as required by the District Court’s previous orders.

///

1 19. The District Court reviewed the documentation provided by Lynita and the LSN
2 Trust in its Appendix filed on March 22, 2023, and the arguments raised in the ELN Trust's
3 briefs.

4 20. NRS 52.275 provides:

5 1. The contents of voluminous writings, recordings or photographs
6 which cannot conveniently be examined in court may be presented in the
7 form of a chart, summary or calculation.

8 2. The originals shall be made available for examination or copying,
9 or both, by other parties at a reasonable time and place. The judge may
order that the originals be produced in court.

10 21. In reviewing the documents provided by Lynita and the LSN Trust, the District
11 Court notes the information provided were summary charts and no source documentation was
12 provided such as receipts, invoices, etc.

13 22. The ELN Trust understands it does not have the source documentation and it is
14 entitled to the same. However, the ELN Trust as stated in its Supplement filed on June 20, 2023,
15 has indicated that in order to avoid the cost of a fourth trial, it will accept the information
16 provided by Lynita and the LSN Trust.

17 23. Additionally, if the matter were to proceed to a fourth evidentiary hearing/trial, the
18 ELN Trust would request economic damages, instead of a simple interest calculation as requested
19 in the Briefs filed with the court.

20 24. The evidentiary hearing/trial cost the ELN Trust more than \$600,000.00, and five
21 years to litigate. The District Court is concerned that a fourth trial would be costly and would
22 delay a final resolution which is not in the best interest of the parties.

23 25. As the ELN Trust is willing to forego the requirement for source documentation
24 and economic damages, the District Court will rule on the pleadings provided by the parties.
25
26
27
28

26. Banone, LLC, an entity that was owned/titled in the name of the ELN Trust, owned a number of rental properties in Las Vegas located on the following streets: Anaconda, Baxter, Cambria, Churchill, Clover Blossom, Compass Rose, Concord Village, Guadalupe, Heather Ridge, Marnell, Rusty Ridge, Sawyer and Terra Bella.

27. Pursuant to the District Court's order, Banone, LLC transferred 100% of its interest to the LSN Trust. In or around May 2018, the LSN Trust relinquished its interest in Banone, LLC.

28. Lynita/the LSN Trust has admitted to collecting the following rent from the following properties titled in the name of BANONE, LLC between July 1, 2014 - April 2018:

- Anaconda: \$52,900.00
- Baxter: \$10,700.00
- Cambria: \$36,003.00
- Churchill: \$41,569.00
- Clover Blossom: \$46,000.00
- Compass Rose: \$42,000.00
- Concord Village: \$38,281.50
- Guadalupe: \$37,300.00
- Heather Ridge: \$33,390.004
- Marnell: \$38,310.00
- Rusty Ridge: \$42,345.00
- Sawyer: \$39,650.00
- Terra Bella: \$46,800.00

29. The District Court has reviewed Lynita/the LSN Trusts Second Post Appeal Disclosure of Documents at LSN000315. The District Court concludes the expenses for Legal Fees, Accounting, Automobile Expenses, Telephone, Interest Expenses, and Bank Charges are not reasonable expenses to maintain the rental properties. Moreover, Lynita/the LSN Trust did not provide source documentation for these expenditures. As it relates to the Legal Fees, the "Dickerson Law Group" was paid \$159,810.00 to prosecute this action which is not a reasonable expense to maintain the rental properties.

1 30. The \$3,652.72 listed by Lynita and the LSN Trust was paid to Rochelle McGowan
2 for her attorneys' fees and costs associated with a lawsuit that Lynita filed against Rochelle. *See*
3 Arbitrator's Decision on Request for Fees/Costs filed on December 2, 2016, in the matter entitled
4 LYNITA SUE NELSON v. ROCHELLE A. MCARTHUR, Clark County Case No. A15-726599-
5 C. There was no benefit to Banone for the payment of this expense from the rental proceeds.

6
7 31. The District Court has reviewed the ELN Trust Calculation for the rents owed to it
8 as provided in Exhibit 14. The District Court notes, that despite the LSN Trust and Lynita not
9 providing an accrual accounting of the monies received minus the appropriate expenses for the
10 properties, the ELN Trust has undertaken this task on a monthly basis for all of the Banone
11 Properties.

12 32. Lynita/the LSN Trust has not objected to Exhibit 14 as provided in the ELN Trust
13 Supplemental Briefing.

14 33. Lynita/the LSN Trust admits that she collected \$347,784.50 in rent between July 1,
15 2014 - September 2019.

16 34. Lynita/The LSN Trust further admits it collected rents for Lindell in the amount of
17 \$97,395.95 between October 1, 2019 - December 2020.

18 35. Lynita/the LSN Trust further admits it collected rents for Lindell \$14,490.40 for
19 January and February 2021.

20 36. Lynita/the LSN Trust has not objected to ELN Trust Exhibit 18 which indicates
21 Lynita/the LSN Trust owes \$296,381.84 to the ELN Trust for its share of the Lindell rents.

22 37. The ELN Trust paid the LSN Trust \$6,050.00 for a security deposit. This is not
23 disputed by the LSN Trust, and this amount was previously awarded to ELN Trust at the May 30,
24 2023 Hearing.

1 38. The LSN Trust/Lynita owes money to the ELN Trust for monies it received for
2 Farmouth Circle in the amount of \$88,166.00, which amount was previously awarded to ELN
3 Trust at the May 30, 2023 Hearing.

4 39. The LSN Trust owes the ELN Trust \$75,000.00 for the principal paid by Banone-
5 AZ, LLC. The LSN Trust has not disputed it received \$75,000 from Banone-AZ, LLC, which
6 amount was previously awarded to ELN Trust at the May 30, 2023 Hearing.

7
8 **NOW, THEREFORE, BASED UPON THE ABOVE FINDINGS AND**
9 **CONCLUSIONS,**

10 **IT IS HEREBY ORDERED** that the ELN'S TRUST MOTION FOR IMMEDIATE
11 PAYMENT OF FUNDS BELONGING TO ELN TRUST is hereby GRANTED;

12 **IT IS FURTHER ORDERED** the LSN Trust and/or Lynita Nelson shall repay the ELN
13 Trust the for the rents collected from BANONE, LLC in the amount of \$435,260.15 plus interest
14 from May 26, 2017 through July 31, 2023 in the amount of \$177,601.10, for a total of
15 \$612,861.25. The amount of \$612,861.25 is reduced to judgment, shall collect interest at the
16 legal rate, and shall be collectible by any lawful means;

17
18 **IT IS FURTHER ORDERED** that Lynita/the LSN Trust shall repay the ELN Trust the
19 for 50% of the rents collected from the Lindell Office in the amount of \$147,667.90 plus interest
20 from May 26, 2017 through July 31, 2023 in the amount of \$60,253.58, for a total of \$207,921.48.
21 The amount of \$207,921.48 is reduced to judgment, shall collect interest at the legal rate, and
22 shall be collectible by any lawful means; and

23
24 **IT IS FURTHER ORDERED** that along with the previous order for repayment of
25 \$324,000.00, Lynita/the LSN Trust shall repay the ELN Trust \$132,203.13 in interest from May
26 26, 2017 through July 31, 2023. The total amount of \$456,203.13 is reduced to judgment, shall
27 collect interest at the legal rate, and shall be collectible by any lawful means.
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Eric L Nelson, Plaintiff

CASE NO: D-09-411537-D

7 vs.

DEPT. NO. Department O

8 Lynita Nelson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/2/2023

15 Jeffrey Luszeck

jluszeck@sdfnvlaw.com

16 Sherry Curtin-Keast

skeast@sdfnvlaw.com

17 "James J. Jimmerson, Esq." .

jjj@jimmersonlawfirm.com

18 "Rhonda K. Forsberg, Esq." .

Rforsberg@forsberg-law.com

19 Kimberly Stewart .

ks@jimmersonlawfirm.com

20 Larry Bertsch .

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21 Mandi Weiss- Legal Assistant .

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22 Nick Miller .

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23 Shahana Polselli .

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| 18 | | |
| 19 | Susan Pinjuv | susan@hauserfamilylaw.com |
| 20 | Efile Notice | efilenotification@hauserfamilylaw.com |

21
22 If indicated below, a copy of the above mentioned filings were also served by mail
23 via United States Postal Service, postage prepaid, to the parties listed below at their last
24 known addresses on 8/3/2023

| | | |
|----|-----------------|------------------------------|
| 24 | James Jimmerson | 415 South Sixth St., Ste 100 |
| 25 | | Las Vegas, NV, 89101 |
| 26 | | |
| 27 | | |
| 28 | | |