

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 MATT KLABACKA AS
3 DISTRIBUTION TRUSTEE OF THE
4 ERIC L. NELSON NEVADA TRUST
5 DATED MAY 30, 2001;

6 Petitioner,

7 vs.

8 EIGHTH JUDICIAL DISTRICT COURT
9 OF THE STATE OF NEVADA, CLARK
10 COUNTY; THE HONORABLE
11 REGINA M. MCCONNELL,

12 Respondents,

13 LYNITA SUE NELSON, individually,
14 and in her capacity as Investment Trustee
15 of the Lynita S. Nelson Nevada Trust,
16 dated May 30, 2001,

17 and

18 ERIC L. NELSON,

19 Real Parties in Interest.

Electronically Filed
Dec 27 2023 11:39 AM
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Ct. No.:

District Ct. No: D-09-411537-D

**EMERGENCY WRIT UNDER
NRAP 27(e)**

**PETITION FOR WRIT OF
MANDAMUS**

APPENDIX VOLUME II

20
21 **SOLOMON DWIGGINS FREER & STEADMAN, LTD.**

22 JEFFREY P. LUSZECK, ESQ., NSB #9619

23 E-mail: jluszeck@sdfnlaw.com

24 9060 W. Cheyenne Avenue

25 Las Vegas, Nevada 89129

26 Telephone: (702) 853-5483

27 *Attorneys for Petitioner*

ALPHABETICAL INDEX

DOCUMENT	DATE	VOL	PAGE
Email from Department O rejecting Order Shortening Time to hear Motion for Reconsideration	12/06/2023	2	438
Ex Parte Application for an Order Shortening Time in Which to Hear the Plaintiff's Motion to Reconsider the Court's Order Vacating Hearing for Jurisdiction filed on November 13, 2023 and in the Alternative, Motion for a Huneycutt Order	12/05/2023	2	408-416
Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust's Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC	09/22/2023	2	248-336
Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust's Reply to Opposition to Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC and Opposition to Countermotion for Sanctions Pursuant to EDCR 5.219	10/13/2023	2	374-387
Motion to Reconsider the Court's Order Vacating Hearing for Jurisdiction filed on November 13, 2023 and in the Alternative, Motion for a Huneycutt Order	11/21/2023	2	417-429

1	Opposition to Matt Klabacka,			
2	Distribution Trustee of the Eric L.			
3	Nelson Nevada Trust's Motion to			
4	Convey Properties Titled in the Name	10/06/2023	2	351-358
5	of Pink Peonies, LLC/Pink Peonies-			
6	Wyoming, LLC and Southern			
7	Magnolia, LLC and Countermotion			
8	for Sanctions Pursuant to EDCR 5.219			
9	Opposition to Motion for Order			
10	Allowing Examination of Judgment			
11	Debtor Lynita S. Nelson, Individually,			
12	and in her Capacity as Investment	10/02/2023	2	337-344
13	Trustee of the Lynita S. Nelson			
14	Nevada Trust dated May 30, 2001 and			
15	Countermotion to Stay Execution of			
16	Judgment Pursuant to NRAP 8			
17	Opposition to Plaintiff Eric Nelson, in			
18	his Individual Capacity, Motion for an	10/02/2023	2	345-350
19	Equitable Offset			
20	Opposition to Plaintiff Eric Nelson's,			
21	in his Individual Capacity, Motion to			
22	Reconsider the Court's Order			
23	Vacating Hearing for Jurisdiction filed			
24	on November 13, 2023 and in the	12/05/2023	2	430-437
25	Alternative, Motion for a Huneycutt			
26	Order and ELN Trust's Joinder to			
27	Motion			
28	Order Vacating Hearing for			
	Jurisdiction	11/13/2023	2	404-407
	Reply to Opposition to Motion for			
	Order Allowing Examination of			
	Judgment Debtor Lynita S. Nelson,			
	Individually, and in her Capacity as	10/09/2023	2	359-373
	Investment Trustee of the Lynita S.			
	Nelson Nevada Trust dated May 30,			
	2001			
	Reply to Opposition to Plaintiff Eric			
	Nelson, in his Individual Capacity,	10/09/2023	2	388-403
	Motion for an Equitable Offset			

1	Reply to Opposition to Plaintiff Eric			
2	Nelson's, in his Individual Capacity,			
3	Motion to Reconsider the Court's			
4	Order Vacating Hearing for	12/11/2023	2	439-454
5	Jurisdiction filed on November 13,			
6	2023 and in the Alternative, Motion			
7	for a Huneycutt Order and ELN			
8	Trust's Joinder to Motion			

CHRONOLOGICAL INDEX

DOCUMENT	DATE	VOL	PAGE
Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust's Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC	09/22/2023	2	248-336
Opposition to Motion for Order Allowing Examination of Judgment Debtor Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001 and Countermotion to Stay Execution of Judgment Pursuant to NRAP 8	10/02/2023	2	337-344
Opposition to Plaintiff Eric Nelson, in his Individual Capacity, Motion for an Equitable Offset	10/02/2023	2	345-350
Opposition to Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust's Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC and Countermotion for Sanctions Pursuant to EDCR 5.219	10/06/2023	2	351-358

1	Reply to Opposition to Motion for			
2	Order Allowing Examination of			
3	Judgment Debtor Lynita S. Nelson,	10/09/2023	2	359-373
4	Individually, and in her Capacity as			
5	Investment Trustee of the Lynita S.			
6	Nelson Nevada Trust dated May 30,			
7	2001			
8	Reply to Opposition to Plaintiff Eric			
9	Nelson, in his Individual Capacity,	10/09/2023	2	388-403
10	Motion for an Equitable Offset			
11	Matt Klabacka, Distribution Trustee of			
12	the Eric L. Nelson Nevada Trust's			
13	Reply to Opposition to Motion to			
14	Convey Properties Titled in the Name	10/13/2023	2	374-387
15	of Pink Peonies, LLC/Pink Peonies-			
16	Wyoming, LLC and Southern			
17	Magnolia, LLC and Opposition to			
18	Countermotion for Sanctions Pursuant			
19	to EDCR 5.219			
20	Order Vacating Hearing for	11/13/2023	2	404-407
21	Jurisdiction			
22	Ex Parte Application for an Order			
23	Shortening Time in Which to Hear the			
24	Plaintiff's Motion to Reconsider the			
25	Court's Order Vacating Hearing for	12/05/2023	2	408-416
26	Jurisdiction filed on November 13,			
27	2023 and in the Alternative, Motion			
28	for a Huneycutt Order			
	Motion to Reconsider the Court's			
	Order Vacating Hearing for			
	Jurisdiction filed on November 13,	11/21/2023	2	417-429
	2023 and in the Alternative, Motion			
	for a Huneycutt Order			

1 Opposition to Plaintiff Eric Nelson's,
2 in his Individual Capacity, Motion to
3 Reconsider the Court's Order

4 Vacating Hearing for Jurisdiction filed
5 on November 13, 2023 and in the
6 Alternative, Motion for a Huneycutt
7 Order and ELN Trust's Joinder to
8 Motion

12/05/2023

2

430-437

9 Email from Department O rejecting
10 Order Shortening Time to hear Motion
11 for Reconsideration

12/06/2023

2

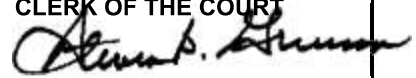
438

12 Reply to Opposition to Plaintiff Eric
13 Nelson's, in his Individual Capacity,
14 Motion to Reconsider the Court's
15 Order Vacating Hearing for
16 Jurisdiction filed on November 13,
17 2023 and in the Alternative, Motion
18 for a Huneycutt Order and ELN
19 Trust's Joinder to Motion

12/11/2023

2

439-454



Jeffrey P. Luszeck, Esq. (#9619)

jluszeck@sdfnlaw.com

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for 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

Oral Argument Requested?

☒ Yes ☐ No

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE

1 REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT
2 HEARING PRIOR TO THE SCHEDULED HEARING DATE.

3 MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L.
4 NELSON NEVADA TRUST'S MOTION TO CONVEY PROPERTIES
5 TITLED IN THE NAME OF PINK PEONIES, LLC/PINK PEONIES-
6 WYOMING, LLC AND SOUTHERN MAGNOLIA, LLC

7 Matt Klabacka, Distribution Trustee of THE ERIC L. NELSON NEVADA
8 TRUST dated May 30, 2001 ("ELN Trust"), by and through his Counsel of Record,
9 the Law Firm of Solomon Dwiggin Freer & Steadman, Ltd., hereby submits his
10 Motion to Convey Properties Titled in the name of PINK PEONIES, LLC/PINK
11 PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC ("Motion").

12 This Motion is made and based on all the papers and pleadings on file
13 herein, the Memorandum of Points an Authorities submitted herewith, the exhibits
14 provided, and any further evidence and argument as be adduced at the hearing on
15 this matter.
16

17 DATED this 22nd day of September, 2023.

18 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

19 /s/ Jeffrey P. Luszeck

20 By: _____

21 Jeffrey P. Luszeck, Esq. (#09619)

22 jluszeck@sdfnlaw.com

23 9060 West Cheyenne Avenue

24 Las Vegas, Nevada 89129

25 *Attorneys for Matt Klabacka, Distribution*
26 *Trustee of the ERIC L. NELSON NEVADA*
27 *Trust dated May 30, 2001*
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

On June 3, 2013, the Honorable Frank Sullivan entered his Decree of Divorce (“Divorce Decree”), a true and correct copy of which is on file herein. In said Divorce Decree, Judge Sullivan ordered that the following properties shall remain in, or be transferred to, THE LYNITA S. NELSON NEVADA TRUST dated May 30, 2001 (“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

See Divorce Decree at 47:16-27.

The ELN Trust and Eric L. Nelson (“Eric”) appealed this matter to the Nevada Supreme Court. On May 25, 2017, the Nevada Supreme Court filed its order, affirming, in part, and vacating, in part, the Decree of Divorce, as follows:

We conclude (1) the family court has subject-matter jurisdiction over the trust-related claims in the Nelsons' divorce; (2) the SPA and SSSTs are valid and unambiguous; (3) the district court erred in considering parol evidence to determine the parties' intent behind the SPA and SSSTs; (4) the district court erred in equalizing the trust

assets; (5) the district court erred in ordering Eric's personal obligations be paid by Eric's Trust; (6) the district court did not err in awarding Lynita a lump sum alimony award of \$800,000, but erred insofar that the alimony was awarded against Eric's Trust, and not Eric in his personal capacity; (7) the district court erred in making findings of unjust enrichment after the claim was dismissed; (8) the constructive trusts placed over the Russell Road and Lindell properties should be vacated; and (9) the June 8, 2015, order should be vacated to the extent it enforces or implements portions of the divorce decree relating to assets in Eric's Trust and Lynita's Trust and affirmed in all other respects.¹

Within months of the remand Lynita S. Nelson ("Lynita") transferred a substantial amount of real property titled in the name of the LSN Trust to a number of entities that she created without the knowledge or consent of Eric and/or the ELN Trust. Specifically, on or around July 12, 2017, Lynita, in her capacity as Investment Trustee of the LSN Trust transferred the following parcels of real property located in Mississippi to SOUTHERN MAGNOLIA, LLC,² copies of the deeds are collectively attached hereto as **Exhibit 2**:

APN:

1. 164F-0-18-003.000;
2. 164F-0-18-003.001;
3. 164F-0-18-003.002;
4. 164G-0-17-003.000;

¹ *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017).

² SOUTHERN MAGNOLIA, LLC, a Nevada limited liability company, is an LLC that Lynita created on or around October 13, 2010. A copy of the Articles of Organization of SOUTHERN MAGNOLIA, LLC is attached hereto as **Exhibit 1**. Because Lynita never produced a copy of SOUTHERN MAGNOLIA, LLC's Operating Agreement, despite the fact that she had a legal obligation to do so pursuant to NRCP 16.2, it is unclear whether the Member of SOUTHERN MAGNOLIA, LLC is Lynita, individually, or the LSN Trust.

1	5.	164K-0-20-001.000;
2	6.	164K-0-20-002.000;
3	7.	164K-0-20-003.000;
4	8.	164K-0-20-004.000;
5	9.	164K-0-20-005.000;
6	10.	164K-0-20-006.000;
7	11.	164K-0-20-007.000;
8	12.	164K-0-20-008.000;
9	13.	164K-0-20-009.000;
10	14.	164K-0-20-012.000;
11	15.	164K-0-28-014.000;
12	16.	164K-0-28-016.000;
13	17.	164K-0-28-017.000;
14	18.	164K-0-28-017.001;
15	19.	164K-0-28-018.000;
16	20.	164K-0-20-020.000;
17	21.	164K-0-20-022.000;
18	22.	164K-0-20-023.000;
19	23.	164K-0-20-023.001;
20	24.	164K-0-20-024.000;
21	25.	164K-0-20-028.000;
22	26.	164K-0-20-029.000;
23	27.	164K-0-20-030.000;
24	28.	164K-0-20-031.000;
25	29.	164K-0-20-032.000;
26	30.	164K-0-20-033.000;
27	31.	164K-0-20-034.000;
28	32.	164K-0-20-035.000;
	33.	164K-0-20-037.000;
	34.	164K-0-20-038.000;
	35.	164K-0-20-041.000;
	36.	164K-0-20-042.000;
	37.	164K-0-20-044.000;
	38.	164K-0-20-046.000;
	39.	164K-0-20-047.000;
	40.	164K-0-20-048.000;
	41.	164K-0-20-049.000;
	42.	164L-0-19-052.000;
	43.	164L-0-19-053.000;
	44.	164L-0-19-064.000;
	45.	164L-0-19-071.000;
	46.	164L-0-19-080.000;
	47.	164P-0-19-059.000;
	48.	164P-0-19-063.000;
	49.	164Q-0-20-015.000;
	50.	164Q-0-20-016.000;
	51.	176-0-13-086.001.

1 The aforementioned parcels of real property located in Mississippi is hereinafter
2 collectively referred to as “Mississippi Properties.”

3 Similarly, on or around November 5, 2015, Lynita, in her capacity as
4 Investment Trustee of the LSN Trust transferred approximately 217 acres of vacant
5 land and an easement in Wyoming to PINK PEONIES, LLC,³ copies of the deeds
6 are collectively attached hereto as **Exhibit 4**. The 217 acres of vacant land and
7
8 easement are hereinafter collectively referred to as “Wyoming Properties.”
9

10 On or around December 9, 2015, Lynita, in her capacity as Manager of
11 PINK PEONIES, LLC transferred the Wyoming Properties to PINK PEONIES-
12 WYOMING, LLC. Copies of the December 9, 2015 deeds are attached hereto as
13
14 **Exhibit 5**.

15 Ironically, around the same time that Lynita had transferred the Mississippi
16 Properties and Wyoming Properties, Lynita had the audacity to demand that Judge
17 Sullivan issue a Joint Preliminary Injunction precluding the Parties from
18 transferring assets from each respective Trust. Specifically, on July 31, 2017,
19
20 Lynita/the LSN Trust argued the following in their Countermotion for Final
21 Judgment Consistent with Nevada Supreme Court’s Remand, or in the Alternative,
22
23

24 ³ PINK PEONIES, LLC, a Nevada limited liability company, is an LLC that
25 Lynita created on or around December 22, 2016. A copy of the Articles of
26 Organization of PINK PEONIES, LLC is attached hereto as **Exhibit 3**. Because
27 Lynita never produced a copy of PINK PEONIES, LLC’s Operating Agreement,
28 despite the fact that she had a legal obligation to do so pursuant to NRCP 16.2, it is
unclear whether the Member of PINK PEONIES, LLC is Lynita, individually, or
the LSN Trust.

1 for Affirmation of Joint Preliminary Injunction, for a Receiver to Manager
2 Property Pending Final Judgment (“Counterpetition for Imposition of a JPI”) at
3 6:18-7:11.
4

5 ...the Court should expressly affirm the Joint Preliminary Injunction
6 previously entered, and require all parties to transfer their property to
7 a third-party receiver until a final decision is rendered in this matter.
8 EDCR 5.517 requires the issuance of a joint preliminary injunction
9 upon the request of any party, to prohibit all parties, and “their
10 officers, agents, servants or employees, or a person in active concert
11 or participation with them from: (1) Transferring, encumbering,
12 concealing, selling, or otherwise disposing of any of the joint,
13 common, or community property of the parties or any property that is
14 subject of a claim of community interest, except in the usual course
15 of conduct or for the necessities of life or for retention of counsel...”
16 NRS 125.050 requires the Court to “make such restraining order or
17 other order as appears necessary to prevent the act or conduct and
18 preserve the status quo pending final determination of the cause.” ...
19 The only way to ensure that the Court will be able to give effect to its
20 final Order is to affirm the joint preliminary injunction by issuing
21 another joint preliminary injunction of the Court, and by having the
22 parties transfer all property to a third-party receiver.”
23

24 In addition to her Counterpetition for Imposition of a JPI, Lynita demanded
25 that Judge Sullivan issue a JPI at hearings that proceeded on August 8, 2017,
26 January 31, 2018 and July 23, 2018. Lynita additionally requested the imposition
27 of a JPI in at least the following filings with the District Court Motion for
28 Reconsideration and Clarification of the Court’s Decision entered April 19, 2018 at
6:16-7:23 and Motion for Reconsideration and Clarification of the Court’s
Decision entered May 22, 2018. It is important to note that one of the reasons why
Judge Sullivan did not believe a JPI was necessary was because he believed that
the LSN Trust had sufficient assets to offset any deficiency once a final balance

1 and distribution amount was calculated. *See, e.g.*, Decision entered on April 19,
2 2018 attached hereto as **Exhibit 6** at 7:25-8:2 (this Court “has reviewed the assets
3 of both the ELN Trust and the LSN Trust and has determined that there are
4 sufficient assets in both trusts to offset any deficiency once a final balance and
5 distribution amount has been determined,”) and 8:2-5 (“This Court further held
6 that “[o]nce the tracing is finalized and a final balance sheet is received, this Court
7 will Order the proper funds to be transferred to each party accordingly.”).

10 Lynita ultimately appealed Judge Sullivan’s Orders wherein he denied the
11 imposition of a JPI and requested that the Nevada Supreme Court impose a JPI in
12 Supreme Court Case Nos.’ 77473 and 81564. A JPI was ultimately imposed by
13 Judge Sullivan on April 26, 2021.

15 At no time between 2017-2022 did Lynita advise Judge Sullivan, the Nevada
16 Supreme Court or Counsel for Eric or the ELN Trust that she had transferred the
17 Mississippi Properties or the Wyoming Properties to PINK PEONIES, LLC/PINK
18 PEONIES-WYOMING, LLC or SOUTHERN MAGNOLIA, LLC. In fact, it was
19 not until her deposition on March 10, 2022, that Lynita disclosed the fact, for the
20 first time, that she had transferred (1) the Mississippi Properties from the LSN
21 Trust to SOUTHERN MAGNOLIA, LLC or the Wyoming Properties from the
22 LSN Trust to PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC.
23 Specifically, as it relates to the Mississippi Properties Lynita testified as follows:
24
25
26
27
28

- 1 Q. Okay. And then similarly, what is Southern Magnolia,
2 LLC?
- 3 A. What do I hold in that? Is that what you're saying?
- 4 Q. Sure. What is --
- 5 A. When you ask what it is, it's an LLC.
- 6 Q. What is it -- what is the purpose of Southern Magnolia,
7 LLC?
- 8 A. It holds the properties and the land in Mississippi.
- 9 Q. All of the Mississippi properties?
- 10 A. Yes.
- 11 Q. And when was that founded?
- 12 A. I won't be able to give you dates on that. That's not
13 something that I remember.
- 14 Q. Was it founded prior to the decree of divorce that was
15 issued by Judge Sullivan?
- 16 A. No. I don't think so. I don't want to say "no" or "yes." I
17 don't know.
- 18 Q. Does Southern Magnolia, LLC, hold any other assets
19 other than Mississippi properties?
- 20 A. Just the -- just the Mississippi properties, that I know of.⁴

21 . . .

- 22 Q. So let's go back. Pink Peonies, LLC, is an LSN Trust
23 entity?
- 24 A. It's underneath.
- 25 Q. It's underneath what?
- 26 A. It's held underneath the trust.
- 27 Q. LSN Trust?
- 28 A. Uh-huh.
- 29 Q. Okay. What about Southern Magnolia, LLC?
- 30 A. They all are, yeah.
- 31 Q. Okay. They're all LSN Trust entities?
- 32 A. Well, they're held underneath that trust. That's -- I mean,
33 I could not do anything otherwise.
- 34 Q. Okay.
- 35 A. That would be the only honest thing to do.⁵

⁴ See Lynita's Deposition Transcript dated March 10, 2022, select portions of which are attached hereto as **Exhibit 7**, at 56:20-57:18.

⁵ See *id.* at 65:7-20.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

...

Q. Just so we're clear, we have the -- sorry. I need to pull up my notes -- Southern Magnolia, LLC?

A. Yes.

Q. That holds which property? I'm sorry. Is that the Mississippi property?

A. It's okay. Yeah.⁶

Similarly, in regards to PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC Lynita testified as follows:

Q. Do you -- have you formed any other LLCs? Do you currently have any other LLCs --

A. I have another, uh-huh.

Q. -- I guess would be proper.

A. Pink Peonies Wyoming.

Q. And what does Pink Peonies Wyoming hold?

A. The land in Wyoming.

Q. All of the Wyoming properties, or is it just one?

A. It's 200 acres plus. It's, like, 202-point-something. It's the land, you know.

Q. Does it hold anything else other than that 200 acres?

A. No.⁷

...

Q. And then the Wyoming properties, do you believe they went directly from Pink Peonies Wyoming to the -- I'm sorry. Do you think it went directly from LSN Trust to Pink Peonies Wyoming, LLC, or do you believe it went through the One Oak Tree Lane Trust?

A. You know, I don't think it did. I think just because Pebble Beach was here in town, I did that, but I would have to look it up myself, honestly.

Q. As you sit there today, are you certain that the Wyoming properties are held by Pink Peonies Wyoming, LLC, at this juncture?

⁶ See *id.* at 75:16-22.

⁷ See *id.* at 58:3-16.

- 1 A. Yeah. Do I believe, did you say? Or what did you say?
2 Q. Are you certain? I mean, do you know that they're
3 actually held by that LLC?
4 A. Yeah. I mean, the last time I looked, they were. It was
5 Pink Peonies, yeah -- Pink Peonies Wyoming.⁸

6 Although Lynita testified that the Mississippi Properties, which are titled in
7 the name of the SOUTHERN MAGNOLIA, LLC, and Wyoming Properties, which
8 are titled in the name of PINK PEONIES, LLC/PINK PEONIES-WYOMING,
9 LLC, were held under the umbrella of the LSN Trust, none of the documentation
10 that has been produced by Lynita confirms the same. As such, it is unclear
11 whether the LSN Trust is actually a Member that possesses interests in either
12 SOUTHERN MAGNOLIA, LLC or PINK PEONIES, LLC/PINK PEONIES-
13 WYOMING, LLC.
14

15 II. LEGAL ARGUMENT

16 1. REQUEST TO CONFIRM THE PROPERTIES CONSTITUTE 17 PROPERTY OF THE LSN TRUST.

18 NRS 164.015(1) provides, in part, that “[t]he court has exclusive jurisdiction
19 of proceedings ...and petitions for a ruling that property not formally titled in the
20 name of the trust or its trustees constitutes trust property pursuant to NRS 163.002.
21 Here, Lynita, in her capacity as Investment Trustee of the Trust, has already
22 testified that SOUTHERN MAGNOLIA, LLC and PINK PEONIES, LLC/PINK
23 PEONIES-WYOMING, LLC are held in, or underneath, the LSN Trust. As such,
24
25
26

27 ⁸ See *id.* at 75:15-76:9.
28

1 the ELN Trust respectfully requests an order from this Court confirming that the
2 assets titled in the name of SOUTHERN MAGNOLIA, LLC and PINK PEONIES,
3 LLC/PINK PEONIES-WYOMING, LLC are in fact assets of the LSN Trust.
4

5 2. THIS COURT MUST ORDER LYNITA, THE ACTING MANAGER
6 OF THE LLC'S TO TRANSFER THE PROPERTIES BACK TO
7 THE LSN TRUST.

8 NRS 153.031 grants this Court authority to: (f) "Settling the accounts and
9 reviewing the acts of the trust, including the exercise of discretionary powers;" (g)
10 "Instruction the Trustee;" and (q) "Compelling compliance with the terms of the
11 trust or other applicable law." Further, NRS 164.015 confirms that this Court has
12 "exclusive jurisdiction of proceedings initiated by the petition of an interested
13 person concerning the internal affairs of a nontestamentary trust . . . including
14 petitions with respect to a nontestamentary trust for any appropriate relief provided
15 with respect to a testamentary trust in NRS 153.031 and petitions for a ruling that
16 property not formally tiled in the name of a trust or its trustee constitutes trust
17 property pursuant to NRS 163.002."
18
19
20

21 Here, Lynita has testified under the penalty of perjury that PINK PEONIES,
22 LLC/PINK PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC
23 are "held underneath the [LSN Trust]." As such, the ELN Trust respectfully
24 requests that this Court enter an order finding that the PINK PEONIES, LLC/PINK
25 PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC are assets of
26 the LSN Trust. Alternatively, the ELN Trust respectfully requests that this Court
27
28

1 compel Lynita, in her capacity as Investment Trustee, to transfer the Mississippi
2 Properties from SOUTHERN MAGNOLIA, LLC to the LSN Trust and the
3 Wyoming Properties from PINK PEONIES, LLC/PINK PEONIES-WYOMING,
4 LLC to the LSN Trust, and if Lynita fails/refuses to sign the deeds to instruct the
5 Clerk of the Court to execute the necessary deeds to effectuate said transfer.
6

7 3. PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC AND
8 SOUTHERN MAGNOLIA, LLC ARE THE ALTER EGO OF
9 LYNITA/THE LSN TRUST.

10 The Alter Ego Doctrine applies “when there is such unity between a
11 corporation and an individual that the separateness of the corporation has ceased.”
12 See § 41.10. Alter ego or mere instrumentality doctrine, 1 FLETCHER CYC. CORP. §
13 41.10. Nevada courts permit a plaintiff to “pierce the corporate veil” if the
14 plaintiff can prove that the individual is using the corporation as an “alter ego.”
15 *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 902-03, 8 P.3d 841, 845-46
16 (2000). By piercing the corporate veil, a plaintiff may disregard the limited
17 liability provided by a corporation and assert liability against the individual
18 controlling the alter ego. *Id.* Nevada courts may apply the Alter Ego Doctrine to
19 an LLC, as well as a corporation.⁹ To prove an alter ego exists, the plaintiff must
20 establish, by a preponderance of the evidence, that:
21

- 22 (1) the [LLC] must be influenced and governed by the person asserted
23 to be the alter ego; (2) there must be such unity of interest and
24

25
26
27 ⁹ See *Gardner v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 735-36, 405 P.3d 651,
28 655-56 (2017).

1 ownership that one is inseparable from the other; and (3) the facts
2 must be such that adherence to the corporate fiction of a separate
3 entity would, under the circumstances, sanction [a] fraud or promote
4 injustice.¹⁰

5 For the first factor, courts often first analyze whether the subsidiary
6 corporation or LLC exercises decision making independent of the parent
7 corporation.¹¹ Failure to demonstrate independent decision making fulfills this
8 first element.¹² Furthermore, a mere showing of common management of the
9 parent and subsidiary, as well as evidence of the parent's whole ownership of the
10 subsidiary, however, is insufficient to prove the Alter Ego Doctrine applies.¹³

11 As to the second factor, Nevada courts look to the following factors to
12 determine if the individual and LLC are "inseparable:" (1) commingling of funds;¹⁴
13
14

15 ¹⁰ *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846-
16 47 (2000) (quoting *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d
17 884, 886 (1987)).

18 ¹¹ *See, e.g. Flame S.A. v. Freight Bulk Pte. Ltd.*, 807 F.3d 572, 588 (4th Cir.
19 2015); *Rasmussen v. General Motors Corp.*, 335 Wis.2d 1, 24 (2011).

20 ¹² *Id.*

21 ¹³ *See VFS Financing, Inc. v. Falcon Fifty LLC*, 17 F.Supp.3d 372 (S.D.N.Y.
22 2014).

23 ¹⁴ Nevada courts will also look to whether the parent entity comingles its assets
24 with the subsidiary entity and vice versa. *See LFC Marketing Group, Inc. v.*
25 *Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 847 (2000). Improper comingling occurs
26 where: (1) the parent freely transfers or withdraws assets to or from the subsidiary
27 entity, and vice versa, without formal documentation; *see In re Aoki*, 323 B.R. 803,
28 812 (B.A.P. 1st Cir. 2005). (2) using a parent or subsidiary solely to avoid tax
consequences; *see Contractors, Laborers, Teamsters & Engineers Health and*
Welfare Plan v. Hroch, 757 F.2d 184, 191, f.n. 9 (8th Cir. 1985); or (3) the parent
entity siphoning all or most of the assets from the subsidiary. *See In re Erdman*,
236 B.R. 904 (Bankr. D. N.D. 1999).

(2) undercapitalization;¹⁵ (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities.¹⁶ The Nevada Supreme Court has emphasized, however, that no exact

¹⁵ Failure to adequately capitalize a corporation (or LLC) is such a major factor in veil piercing that some courts have held that undercapitalization alone is sufficient to veil pierce. *See, e.g. Minton v. Cavaney*, 56 Cal. 2d 576, 15 Cal. Rptr. 641, 364 P.2d 473 (1961); *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1986). Often, courts equitably pierce undercapitalized corporations because of the desire to protect third-parties who have no way of knowing that the corporation is undercapitalized. *See, e.g. White v. Winchester Land Development Corp.*, 584 S.W.2d 56, 27 U.C.C. Rep. Serv. 158 (Ky. Ct. App. 1979), 27 U.C.C. Rep. Serv. (CBC) 158 (Ky. Ct. App. 1979). Courts may differ on their exact definition of undercapitalization, however, all definitions embody a similar concept: "a corporation is undercapitalized if the capital is illusory or trifling compared with the business to be done and the risks of loss." 114 Am. Jur. Proof of Facts 3d 403; *see also Remme v. Herzog*, 222 Cal. App. 2d 863, 35 Cal. Rptr. 586 (3d Dist. 1963); *Automotriz Del Golfo De California S. A. De C. V. v. Resnick*, 47 Cal. 2d 792, 306 P.2d 1, 63, 63 A.L.R.2d 1042 (1957).

¹⁶ *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 847 (2000) (emphasis added). As mentioned above, failure to observe corporate formalities is highly likely to result in veil piercing. While this is a major factor when analyzing corporations, court's place less emphasis on this factor as it pertains to LLCs because, by definition, "fewer such formalities are legally required" by LLCs when compared to corporations. *NetJets Aviation, Inc. v. LHC Communications, LLC*, 537 F.3d 168, 178 (2nd Cir. 2008). For LLCs, observing the proper corporate formalities include: (1) filing separate federal tax returns; *see EBG Holdings LLC v. Vredezicht's Gravenhage 109 B.V.*, 2008 W.L. 4057745, at *12 (Del. Ch. Sept. 2, 2008); (2) maintaining separate books and records;¹⁶ (3) distributing profits pursuant to state statutes; *see Gould v. Cty. of Stamford*, 331 Conn. 289, 300-01 (2019); and (4) compliance with all other state statutes regarding the management of the LLC. *See generally, Global Commodities Group, LLC v. National Union Fire Ins. Co. of Pittsburgh, PA*, 2013 WL 4713547, at *4 (S.D.N.Y. Aug. 29, 2013) (When LLCs are analyzed through an alter ego lens, "[l]esser weight should be afforded the element of domination and control and adherence to corporate formalities, because the statute authorizing limited liability companies expressly authorizes managers and members to operate the firm.") (quoting *D.R. Horton Inc.—New Jersey v. Dynastar Dev., LLC*, 2005 WL

1 bright-line test exists to prove the existence of an alter ego and depends on the
2 circumstances of each case. *Id.*

3 Here, the ELN Trust is informed and believes that PINK PEONIES,
4 LLC/PINK PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC
5 was influenced, directed, controlled and governed by Lynita. Further, there has
6 been such a unity of interest and ownership between Lynita and PINK PEONIES,
7 LLC/PINK PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC
8 that one is inseparable from the other. Pursuant to NRS 86.376, the ELN Trust
9 seeks a declaratory judgment that the veil of PINK PEONIES, LLC/PINK
10 PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC are the assets
11 of Lynita/the LSN Trust and that such assets must be transferred back to the LSN
12 Trust.
13
14
15
16

17 4. THE MISSISSIPPI PROPERTIES AND WYOMING PROPERITES
18 WERE FRAUDULENTLY CONVEYED TO PINK PEONIES,
19 LLC/PINK PEONIES-WYOMING, LLC AND SOUTHERN
20 MAGNOLIA, LLC.

21 As indicated *supra*, Lynita, in her capacity as Investment Trustee of the LSN
22 Trust, testified, under the penalty of perjury, that PINK PEONIES, LLC/PINK
23 PEONIES-WYOMING, LLC and SOUTHERN, MAGNOLIA LLC were “held
24 underneath the [LSN Trust].” To the extent that is not the case, this Court should
25

26 1939778, at *20–21 (N.J.Super.Law.Div.2005)). Therefore, an LLC observes
27 Nevada’s statutory corporate formalities where it is managed by its Manager or
28 Managing Member in compliance with NRS 86.291.

1 find Lynita perjured herself and order that the Mississippi Properties and Wyoming
2 Properties were fraudulently conveyed to PINK PEONIES, LLC/PINK PEONIES-
3 WYOMING, LLC and SOUTHERN MAGNOLIA, LLC.
4

5 Under NRS 112.180(1)(a), a “transfer made . . . is fraudulent as to a creditor
6 . . . if the debtor made the transfer or incurred the obligation . . . [w]ith actual intent
7 to hinder, delay, or defraud any creditor of the debtor.” NRS 112.180(2) provides
8 a list of non-exhaustive factors to be considered in assessing “actual intent,
9 including, but not limited to, the following: (1) the transfer was to an insider, (2)
10 the debtor retained possession or control of the property transferred after the
11 transfer, (3) the transfer was concealed, (4) before the transfer was made the debtor
12 had been sued or threatened with suit, (5) the transfer was substantially all of the
13 debtor’s assets, (6) the debtor concealed assets, (7) the debtor became insolvent
14 shortly after the transfer was made, (8) the transfer occurred shortly before a
15 substantial debt was incurred.
16
17
18

19 Here, to carry out her fraudulent scheme to impede the ELN Trust’s
20 collection efforts of the substantial amounts due and owing post-remand, Lynita, in
21 her capacity as Investment Trustee of the LSN Trust transferred the Mississippi
22 Properties to the SOUTHERN MAGNOLIA, LLC and Wyoming Properties to
23 PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC to hinder, delay and
24 defraud the ELN Trust’s interest in the Mississippi Properties and Wyoming
25 Properties and any rents, issues and proceeds resulting therefrom. Each of the
26
27
28

1 transfers were made without receipt of consideration, or if any, said consideration
2 was illusory.

3 Any analysis of the factors identified in NRS 112.180(2) confirm that
4 Lynita's actions constitute a fraudulent transfer. First, the transfers were made to
5 entities in which Lynita is the sole member. Second, as sole Manager and Member
6 Lynita has retained control of the Mississippi Properties and Wyoming Properties.
7 Third, Lynita concealed the transfers from the ELN Trust, Judge Sullivan and the
8 Nevada Supreme Court. Fourth, the transfer was made during the pendency of the
9 Divorce Proceeding immediately after the Nevada Supreme Court remanded the
10 matter to Judge Sullivan. Fifth, the transfers entailed valuable property the
11 cumulative value of which upon information and belief exceeds \$2,000,000.
12 Finally, the transfer occurred at a time that Lynita knew, or should have known,
13 that the LSN Trust would owe the ELN Trust a substantial amount of money.

14 For these reasons, the ELN Trust respectfully requests that this Court find
15 that Lynita's actions constitute a fraudulent transfer and enter an order compelling
16 her to transfer the Mississippi Properties and Wyoming Properties back to the LSN
17 Trust, and if Lynita fails/refuses to sign the deeds to instruct the Clerk of the Court
18 to execute the necessary deeds to effectuate said transfer.

19 ///

20 ///

1 5. THE MISSISSIPPI PROPERTIES AND WYOMING PROPERTIES
2 WERE TRANSFERRED IN VIOLATION OF THE JPI.

3 In the event that this Court does not believe that Section 1 or 2 are applicable
4 to the issue at hand, the ELN Trust respectfully request that this Court find that the
5 LSN Trust violated the JPI and order that Lynita, in her capacity as Manager of
6 PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC and SOUTHERN
7 MAGNOLIA, LLC to transfer the Mississippi Properties and Wyoming Properties
8 back to the LSN Trust. As indicated *supra*, Lynita repeatedly argued before Judge
9 Sullivan and the Nevada Supreme Court that a JPI should be re-issued post
10 remand. Notwithstanding, during this timeframe neither Lynita nor her Counsel
11 advised Judge Sullivan or the Nevada Supreme Court that Lynita, in her capacity
12 as Investment Trustee of the LSN Trust, had already transferred the Mississippi
13 Properties to SOUTHERN MAGNOLIA, LLC or the Wyoming Properties to
14 PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC.
15
16
17
18

19 As such, the ELN Trust respectfully requests that this Court enter an order
20 compelling her to transfer the Mississippi Properties and Wyoming Properties back
21 to the LSN Trust, and if Lynita fails/refuses to sign the deeds to instruct the Clerk
22 of the Court to execute the necessary deeds to effectuate said transfer.
23

24 **III. CONCLUSION**

25 Based upon the foregoing, the ELN Trust respectfully requests that this
26 Court grant confirm that PINK PEONIES, LLC/PINK PEONIES-WYOMING,
27
28

1 LLC and SOUTHERN MAGNOLIA, LLC are assets of the LSN Trust.
2 Alternatively, the ELN Trust respectfully requests that this Court grant the Motion
3 to Convey Properties Titled in the name of PINK PEONIES, LLC/PINK
4 PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC in its entirety
5 by entering an order compelling Lynita to transfer the Mississippi Properties and
6 Wyoming Properties back to the LSN Trust, and if Lynita fails/refuses to sign the
7 deeds to instruct the Clerk of the Court to execute the necessary deeds to effectuate
8 said transfer.
9

10
11 **DATED** this 22nd day of September, 2023.

12
13 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

14 */s/ Jeffrey P. Luszeck*

15 By: _____

16 Jeffrey P. Luszeck, Esq. (#09619)

17 jluszeck@sdfnlaw.com

18 9060 West Cheyenne Avenue

19 Las Vegas, Nevada 89129

20 *Attorneys for Matt Klabacka, Distribution*
21 *Trustee of the ERIC L. NELSON NEVADA*
22 *Trust dated May 30, 2001*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on September 22, 2023, I caused to be served a true and correct copy of the MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST'S MOTION TO CONVEY PROPERTIES TITLED IN THE NAME OF PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC AND SOUTHERN MAGNOLIA, LLC 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:

Michelle A. Hauser, Esq.
HAUSER FAMILY LAW
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
michelle@hauserfamilylaw.com

Stacy Howlett, Esq.
Michael Whittaker, Esq.
Michaelson Law
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Las Vegas, Nevada 89134
info@thedklawgroup.com

/s/ Alexandra Carnival

An Employee of SOLOMON DWIGGINS FREER
& STEADMAN, LTD.

EXHIBIT 1

EXHIBIT 1

**ARTICLES OF ORGANIZATION
OF
SOUTHERN MAGNOLIA, LLC**

The undersigned organizers hereby form a limited-liability company pursuant to N.R.S. 86 and adopt as the Articles of Organization of such limited-liability company the following:

I. NAME. The name of the limited-liability company (hereinafter referred to as the "Company"):

SOUTHERN MAGNOLIA, LLC

II. DURATION.

A. The Company shall have perpetual existence.

B. Notwithstanding Section A, above, the Company shall be dissolved and its affairs wound up:

1. upon the occurrence of an event specified in the operating agreement; or
2. by the unanimous written agreement of all Members.

III. PURPOSE. The Company is organized to engage in and to do any lawful act concerning any and all lawful business, other than insurance, for which a limited-liability company may be organized.

IV. REGISTERED AGENT. The name and business address of the Company's Registered Agent in Nevada for service of process is:

BOYCE & GIANNI, LLP
1701 N. GREEN VALLEY PKWY., SUITE 8-A
HENDERSON, NEVADA 89074

V. ORGANIZER. The name and address of the Organizer of the Company is:

LYNITA NELSON
3675 S. RAINBOW BLVD., #107-312
LAS VEGAS, NEVADA 89103

VI. MEMBERS. The interest and rights of each Member (including the right to vote and the right to share in the Company's profits, losses and capital) shall be set forth in an Operating Agreement.

VII. MANAGEMENT. The Company will be operated by a Board of Managers whose name and address is:

<u>Name</u>	<u>Address</u>
LYNITA NELSON	3675 S. RAINBOW BLVD., #107-312 LAS VEGAS, NEVADA 89103

A. The Board of Managers shall have the right to contract debts and acquire property on behalf of the limited-liability company or delegate such right to officers or Members of the Company.

B. Instruments and documents providing for the acquisition, mortgage or disposition of property of the Company are valid and binding on the Company if executed by one or more Managers of the Company.

C. In furtherance and not in limitation of the powers conferred by the laws of the State of Nevada, the Board of Managers are expressly authorized and empowered:

1. Subject to the applicable provisions of the Operating Agreement then in effect, to determine, from time to time, whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Company, or any of them, shall be open to Member inspection;

2. To authorize and issue, without Member consent, obligations of the Company, secured and unsecured, under such terms and conditions as Management, in its sole discretion, may determine, and to pledge or mortgage, as security therefore, any real or personal property of the Company, including after-acquired property;

3. To establish bonus, profit-sharing, or other types of incentive compensation plans for the employees, including management of the Company, and to fix the amount of profits to be shared or distributed, and to determine the persons to participate in any such plans and the amount of their respective participations;

4. To designate, by resolution or resolutions passed by a majority of the whole Board of Managers one or more committees, each consisting of two or more Members, which, to the extent permitted by law and authorized by the resolution or the Operating Agreement, shall have and may exercise the powers of management;

5. To provide for the reasonable compensation of its Board of Managers by Operating Agreement or Resolution, approved by a majority in interest of the Members, and to fix the terms and conditions upon which such compensation will be paid;

6. In addition to the powers and authority hereinbefore, or by statute, expressly conferred upon it, the management may exercise all such powers and do all such acts and things as may be exercised or done by the Company, subject, nevertheless, to the provisions of the laws of the State of Nevada, of these Articles of Organization, and of the Operating Agreement of the Company.

D. No contract or transaction between this Company and any of its Managers, or between this Company and any other corporation, firm, association, or other legal entity shall be invalidated by reason of the fact that the Managers of the Company have a direct or indirect interest, pecuniary or otherwise, in such corporation, firm, association, or legal entity, or because the interested Manager was present at the meeting of the Board of Managers which acted upon or in reference to such contract or transaction, or because he participated in such action, provided that: (i) the interest of each such Manager shall have been disclosed to or known by management; and (ii) a disinterested majority of the Managers shall have, nonetheless, ratified and approved such contract or transaction (such interested Manager or Managers may be counted in determining whether a quorum is present for the meeting at which such ratification or approval is given).

E. The Managers shall make all decisions by a vote of fifty-one percent (51%) or more, with each Manager having one vote.

VIII. POWERS OF COMPANY. The powers of the limited-liability company shall be those powers granted by Chapter 86 of the Nevada Revised Statutes and all other corporate powers not inconsistent with Nevada law.

IX. PLACE OF MEETING; COMPANY BOOKS. Subject to the laws of the State of Nevada, the Members and the Managers shall have power to hold their meetings, and the Managers shall have power to have an office or offices and to maintain the books of the Company outside the State of Nevada, at such place or places as may from time to time be designated in the Operating Agreement or by appropriate resolution.

X. AMENDMENT OF ARTICLES. The provisions of these Articles of Organization may be amended, altered or repealed from time to time to the extent and in the manner prescribed by the laws of the State of Nevada, and as permitted by the Operating Agreement of the Company.

XI. LIMITED LIABILITY OF MANAGERS. Except as hereinafter provided, the Managers of the Company shall not be personally liable to the Company or its Members for damages for breach of fiduciary duty as a Manager. This limitation on personal liability shall not apply to acts or omissions which involve intentional misconduct, fraud, knowing violation of law, or any other unlawful act prohibited by Nevada Revised Statutes.

XII. SERIES LLC. The Company will have one or more series of members and the debts and liabilities of any series are to be enforceable against that series of assets only and not against the assets of another series or the Company generally. A new series may be formed at any time and any series may be dissolved at any time with no effect on the existence or continued existence of any other series or the Company generally. Rights and duties of Managers and Members will be in the Company Operating Agreement. The Company is being formed pursuant to Nevada Revised Statutes, Title 7, Chapter 86.

IN WITNESS WHEREOF, the undersigned, verifies that she, as the organizer, executed these Articles of Organization this 13 day of October, 2010.



LYNITA NELSON

EXHIBIT 2

EXHIBIT 2

2015 10341
Recorded in the Above
Deed Book & Page
09-30-2015 08:57:09 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Index In:
Lots 13, 14, 17, 19 & 20, Block 104
Gulfview Subdivision.

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST**, dated May 30, 2001, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

Lots 13, 17, 20 and the East half of Lot 14, and the East half of Lot 19, Block 104, GULFVIEW SUBDIVISION, Hancock County Mississippi, as per the official map or plat of said subdivision on file and of record in the office of the Chancery Clerk of Hancock County, Mississippi.

Being the same property by deed dated February 14, 1980, as recorded in Book AA49, Page 766 and 767, deed records of Hancock County, Mississippi.

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, and

covenants and easements.

2015 10342
Deed Book & Page

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas

NOTARY PUBLIC

My commission expires: 10-26-17



Hancock County
I certify this instrument was filed on PAPP0276
09-30-2015 08:57:09 AM
and recorded in Deed Book

2015 10343
Recorded in the Above
Deed Book & Page
09-30-2015 08:58:24 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Index In:
Lots 1 & 2, Block 92 Gulfview
Subdivision

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

Lots 1 and 2, Block 92, GULFVIEW, a subdivision of Hancock County, Mississippi.

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST

PAPP0277

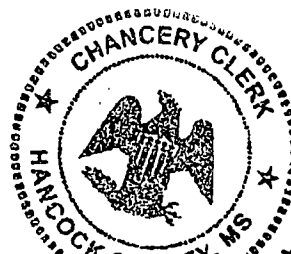
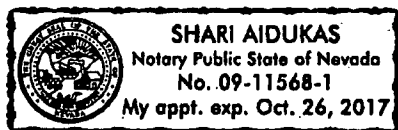
2015 10344
Deed Book & Page

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.


NOTARY PUBLIC

My commission expires: 10-26-17



Hancock County
I certify this instrument was filed on
09-30-2015 08:58:24 AM
and recorded in Deed Book
2015 at Pages 10344 & 10345
Timothy A Kellar

2015 10334
Recorded in the Above
Deed Book & Page
09-30-2015 08:52:40 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Index In:
Part of Block 104, S20-T9S-R14W
Gulfview Subdivision.

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, LSN NEVADA TRUST u/a/d 5/30/01, Grantor, does hereby quitclaim unto SOUTHERN MAGNOLIA, LLC, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

See Exhibit "A" Attached

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 25th day of September, 2015.

PAPP0279

2015 10335
Deed Book & Page

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust, u/a/d 5/30/01**, and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas
NOTARY PUBLIC

My commission expires: 10-26-17



EXHIBIT "A"

PARCEL 1:

Beginning at the N. E. corner of the intersection of Ontario Street and Lakeshore Road, GULFVIEW SUBDIVISION, Hancock County, Mississippi, and run East along the Northern right-of-way of Lakeshore Road for 1175.0 feet, thence run North for 225.0 feet to an iron pin for the place of beginning; thence run East for 182.0 feet to the Western right-of-way of Beach Blvd.; thence run North 22 degrees 00 minutes East along the western right-of-way of Beach Blvd. for 54.5 feet; thence run North 76 degrees 25 minutes West for 207.5 feet; thence run South for 100.0 feet to the place of beginning. Being a part of Block #104, Gulfview Subdivision, Hancock County, Mississippi.

PARCEL 2:

The Grantor herein quitclaims all of her right, title and interest in and to that portion of Block #104, of said GULFVIEW SUBDIVISION which lies immediately East and Southeast of the land hereinabove described, and South and North of the boundary lines in the described parcel, being a continuation of the South and North boundary lines of the described parcel hereinabove.

The Grantor conveys and quitclaims unto the Grantee whatever right, title and interest she may own in the unopened 20 foot alley adjacent to the above described property.



2015 10356
Recorded in the Above
Deed Book & Page
09-30-2015 09:41:02 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Index In:
Lots 9, 10, 11 Block 92
Lots 15 & 16 Block 83
and part of abandoned Michigan St.

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

PARCEL 1:

Lots 9, 10 and 11, Block 92, and Lots 15 and 16, Block 83, Gulfview Subdivision, Hancock County, Mississippi, as per the official map or plat of said subdivision on file in the office of the Chancery Clerk of Hancock County, Mississippi.

PARCEL 2:

That part of abandoned Michigan Street which lies between Lot 16, Block 83 and Lot 9, Block 92 of Gulfview Subdivision, Hancock County, Mississippi, as

PAPP0282

Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST
u/a/d 5/30/01

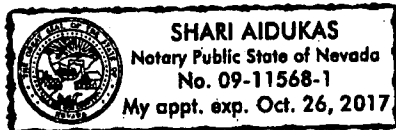
Lynita Sue Nelson
Lynita Sue Nelson, Trustee

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust, u/a/d 5/30/01**, and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas
NOTARY PUBLIC

My commission expires: 10-26-17



2015 10329
Recorded in the Above
Deed Book & Page
09-30-2015 08:49:12 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Index In:

Parcel 1: Lots 9-12, Block 104
Gulfview Subdivision.
Parcels 2&3: Part of Block 104,
Gulfview Subdivision.

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LYNITA SUE NELSON, TRUSTEE OF LSN NEVADA TRUST, u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 25th day of September, 2015.

PAPP0284

2015 10330
Deed Book & Page

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas

NOTARY PUBLIC

My commission expires: 10-26-17



EXHIBIT "A"

PARCEL 1: Beginning at the NE corner of the intersection of Ontario Street and Lakeshore Road, Gulfview Subdivision, Hancock County, Mississippi, and run East along the North R.O.W. of Lakeshore Road for 1,175.0 feet, thence run North 150.0 feet to an iron pin; thence run East 50.0 feet to an iron pin for the point of beginning; thence run East 103.5 feet to an iron pin set on the Western R.O.W. of Beach Blvd.; thence run North 20 degrees 31 minutes East along the western R.O.W. of Beach Blvd. for 53.4 feet to an iron pin, thence run West 122.7 feet to an iron pin, thence run South 50.0 feet to the point of beginning. Being a part of Block #104, Gulfview Subdivision, Hancock County, Mississippi.

PARCEL 2: Beginning at the Northeast corner of Ontario Street and Lakeshore Road, GULFVIEW SUBDIVISION, Hancock County, Mississippi, and run East along the North R.O.W. of Lakeshore Road 1,175 feet; thence run North 100.0 feet; thence run 50 feet East to the Point of Beginning; thence run 85.2 feet to the western right-of-way of Beach Boulevard; thence run North 20 degrees 10 minutes East along the Western right-of-way of Beach Boulevard a distance of 53.4 feet to an iron pin on the western right-of-way of Beach Boulevard, thence run West 103.0 feet to an iron pin; thence run South 50.0 feet, more or less, to the point of beginning. Being a part of Block #104, Gulfview Subdivision, Hancock County, Mississippi.

PARCEL 3: Beginning at the Northeast corner of Ontario Street and Lakeshore Road, GULFSIDE SUBDIVISION, Hancock County, Mississippi, and run East along the North right-of-way line of Lakeshore Road for 1,175 feet; thence run North 100.0 feet to a point for the point of beginning; thence continue North 100.0 feet to an iron pin; thence run East 50.0 feet to an iron pin; thence run South 101.0 feet, more or less, to a point which is due East of the point of beginning; thence run West 50.0 feet to the point of beginning; Being part of Block #104, GULFVIEW SUBDIVISION, Hancock County, Mississippi.

PARCEL 4: The Grantor herein quitclaims all of his right, title and interest in and to that portion of Block #104, of, said GULFVIEW SUBDIVISION, which lies immediately East and Southeast of the land hereinabove described First, and the South and North boundary lines of the Second described parcel being a continuation of the South and North boundary lines of the thirdly described parcel hereinabove.

PARCEL 5: For the above mentioned consideration, the Grantors herein do hereby convey and quitclaim unto the Grantee herein, whatever right, title and interest they may own in the unopened alley and that portion of the property that is under fence and has been for more than ten (10) years.

2015 10337
Recorded in the Above
Deed Book & Page
09-30-2015 08:55:12 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3611 S. Lindell Rd., Ste 201
Las Vegas, NV 89103
Ph 702-362-3030

Index In:
Blocks 88, 89, 90, 91, 105, 107, 108, 109,
110, 111, 112, 113 & 115 AND
Lots 1-14 Block 106 AND
Lots 12, 21, 22, & 23, Block 104
in Sec 20-T9S-R12W.

Grantee: Southern Magnolia, LLC
3611 S. Lindell Rd., Ste 201
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

[SEE EXHIBIT "A" ATTACHED]

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST
U/A/D 5/30/01

PAPP0287

Timothy A. Kellar

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Nelson**, who acknowledged that she is **Trustee of the LSN Nevada Trust u/a/d 5/30/01**, and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas
NOTARY PUBLIC

My commission expires: 10-26-17

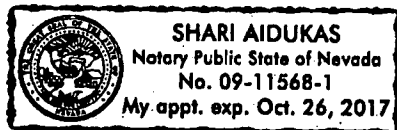


EXHIBIT "A"

PARCEL 1: All of Blocks 88, 89, 90, 91, 105, 107, 108, 109 and 115, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official plat of said subdivision on file in the office of the Clerk of the Chancery Court of Hancock County, Mississippi.

PARCEL 2: Lots 1 through 14, inclusive, Block 106, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official plat of said subdivision on file in the office of the Clerk of the Chancery Court of Hancock County, Mississippi.

PARCEL 3: All of Block 110, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official plat of said subdivision on file in the office of the Clerk of the Chancery Court of Hancock County, Mississippi; LESS AND EXCEPT that part of said Block previously conveyed by Grace A. Ortte, by deed dated January 12, 1952 and recorded in Book I-9, Page 133 and deed dated August 7, 1978 and recorded in Book AA-26, Page 487, Deed Records of Hancock County, Mississippi.

PARCEL 4: All of Block 111, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official plat of said subdivision on file in the office of the Clerk of the Chancery Court of Hancock County, Mississippi; LESS AND EXCEPT that part of said Block previously conveyed by Grace A. Ortte, by deed dated January 12, 1952 and recorded in Book I-9, Page 133 and deed dated April 22, 1954, and recorded in Book J-8, page 495, Deed Records of Hancock County, Mississippi.

PARCEL 5: All of Block 112, lying Northwest of Beach Boulevard in GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official plat of said subdivision on file in the office of the Clerk of the Chancery Court of Hancock County, Mississippi; LESS AND EXCEPT that part previously conveyed by Grace A. Ortte to N.S. Hunt, by deed dated March 16, 1960 and recorded in Book M-7, Page 91, Deed Records of Hancock County, Mississippi.

PARCEL 6: All that part of Block 113, lying Northwesterly of Beach Boulevard, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official plat of said subdivision on file in the office of the Clerk of the Chancery Court of Hancock County, Mississippi.

PARCEL 7: All of Grantor's right, title and interest in and to all alleyways, streets and avenues which have been previously abandoned by governmental action or which have been abandoned by implication.

PARCEL 8: All of Grantor's right, title and interest, including riparian rights, in and to any property lying East and Southeast of Beach Boulevard and East and Southeast of any of parcels of property described above.

Together with all and singular the rights, privileges, improvements and appurtenances to the same belonging or in any wise appertaining.

For the same consideration as above mentioned, the Grantor herein does also convey and quitclaim unto the Grantee herein, all of its right, title and interest in and to the following described property located in Hancock County, Mississippi, and being more particularly described as follows, to-wit:

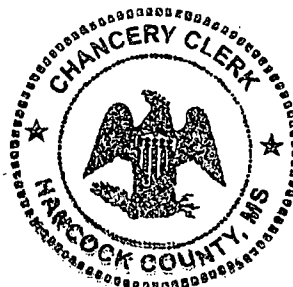
PARCEL 1: A parcel of land situated in part of Blocks 105 and 112, GULFVIEW SUBDIVISION, Hancock County, Mississippi, and being more fully described as follows:

75 feet to the place of beginning. Containing 24,703 square feet of land, more or less. LESS AND EXCEPT that portion previously conveyed to Norman Du'Rapau on September 2, 1971, and recorded in Book W-9, Page 271, Deed Records of Hancock County, Mississippi.

PARCEL 2: All that part of Lots 12, 21, 22 and 23, Block 104, GULFVIEW SUBDIVISION not previously sold.

PARCEL 3: All of the Lots, Blocks and Abandoned Streets in Gulfview Subdivision whether or not correctly described above which are bounded on the North by the North line of Section 20, Township 9 South, Range 14 West; on the West by the West line of Section 20, Township 9 South, Range 14 West; on the South by Central Avenue; and on the East or Southeast by Beach Boulevard.

Together with all and singular the rights, privileges, improvements and appurtenances to the same belonging or in any wise appertaining, and including riparian and/or littoral rights adjacent to the above described property.



Hancock County
I certify this instrument was filed on
09-30-2015 08:55:12 AM
and recorded in Deed Book
2015 at pages 10337 - 10340
Timothy A Kellar

Shelia Daniels
PAPP0290

2015 10363
Recorded in the Above
Deed Book & Page
09-30-2015 09:44:02 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Index In:
Lots 4 & 5, Square 40A
Chalona Beach Addition.

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LYNITA SUE NELSON, TRUSTEE OF LSN NEVADA TRUST, u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

A certain Lot or Parcel of ground lying or being situated in Hancock County, Mississippi, located in Square 40A of CHALONA BEACH ADDITION adjacent to Clermont Harbor, and situated in Section 17, Township 9 South, Range 14 West, Hancock County, Mississippi, which land is designated as Lots 4 and 5.

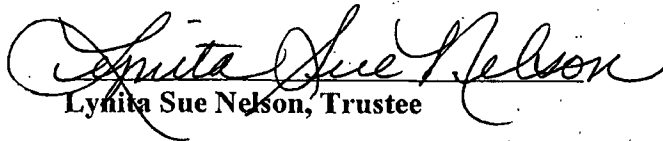
Parcel #164G-0-17-053.000

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

PAPP0291

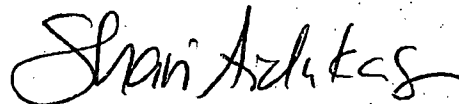
Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST, u/a/d 5/30/01


Lynita Sue Nelson, Trustee

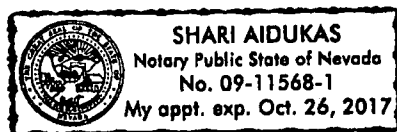
STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust u/a/d 5/30/01** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.



NOTARY PUBLIC

My commission expires: 10-26-17



2015 10361
Recorded in the Above
Deed Book & Page
09-30-2015 09:42:23 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Index In:
Lots 3 & 4, Block 92
Gulfview Subdivision.

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST, u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

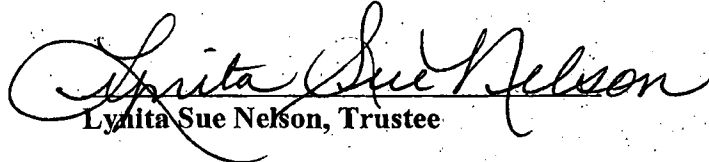
Lots 3 & 4, Block 92, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official map or plat of said subdivision on file in the office of the Chancery Clerk of Hancock County, Mississippi.

Parcel #164K-0-20-006.000
Parcel #164K-0-20-007.000

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements. **Page 293**

Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST, u/a/d 5/30/01

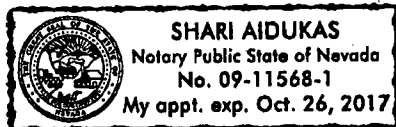

Lynita Sue Nelson, Trustee

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust u/a/d 5/30/01** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.


NOTARY PUBLIC

My commission expires: 10-26-17



2015 10327
Recorded in the Above
Deed Book & Page
09-30-2015 08:47:27 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Neil B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Index In:
Lot 14, Block 92,
Gulfview Subdivision.

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

Lots 14, Block 92, GULFVIEW SUBDIVISION, Hancock County, Mississippi, as per the official map or plat of said subdivision on file in the office of the Chancery Clerk of Hancock County, Mississippi.

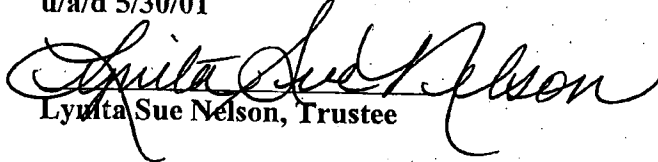
Parcel #164K-0-20-012.000

PAPP0295

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations,

Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST
u/a/d 5/30/01

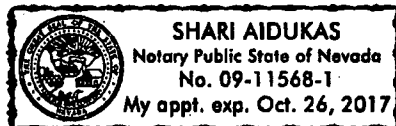

Lynita Sue Nelson, Trustee

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust, u/a/d. 5/30/01**, and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.


NOTARY PUBLIC

My commission expires: 10-26-17



2015 10332
Recorded in the Above
Deed Book & Page
09-30-2015 08:51:09 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Index In:
Lots 1-4 and Lots 13-16 inclusive
Block 70 Gulfview Subdivision and
all of Block 61 in S20-T9S-R14W

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, LSN NEVADA TRUST u/a/d 5/30/01, Grantor, does hereby quitclaim unto SOUTHERN MAGNOLIA, LLC, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

Parcel #164L-0-19-052
Parcel #164L-0-19-053
Parcel #164L-0-19-064

Lots 1 through 4 and Lots 13 through 16, all inclusive, Block 70, GULFVIEW SUBDIVISION, in Section 20, Township 9 South, Range 14 West, in Hancock County, Mississippi.

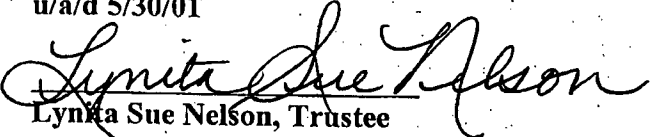
All of Block 61, in GULFVIEW SUBDIVISION, in Section 20, Township 9PAPP0297 South, Range 14 West, in Hancock County, Mississippi.

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 15th day of September, 2015.

LSN NEVADA TRUST

u/a/d 5/30/01


Lynita Sue Nelson, Trustee

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 15th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.



NOTARY PUBLIC

My commission expires: 10-26-17



2015 10365
Recorded in the Above
Deed Book & Page:
09-30-2015 09:45:26 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Index In:
Lots 9,10,11 & 12, Block 82
Gulfview Subdivision

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LYNITA SUE NELSON, TRUSTEE OF LSN NEVADA TRUST u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

Lots 9, 10, 11 and 12, Block 82, GULFVIEW SUBDIVISION, Lakeshore, Hancock County, Mississippi, as per the official map or plat of said subdivision on file in the office of the Chancery Clerk of Hancock County, Mississippi.

Parcel #164P-0-19-059.000

This conveyance is subject to any and all recorded rights-of-way, restrictions, easements, covenants and easements.

Witness my signature, this the 25th day of September, 2015.

LSN NEVADA TRUST
u/a/d 5/30/01

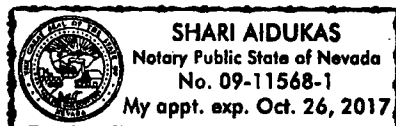
Lynita Sue Nelson
Lynita Sue Nelson, Trustee

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust, u/a/d 5/30/01**, and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas
NOTARY PUBLIC

My commission expires: 10-26-17



PAPP0300

Hancock County
I certify this instrument was filed on

2015 10651
Recorded in the Above
Deed Book & Page
10-08-2015 09:43:26 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Index In:
Lot 14, Block 112, S20-T9S-R14W
Gulfview Subdivision.

Grantor: LSN Nevada Trust
u/a/d 5/30/01
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

Grantee: Southern Magnolia, LLC
3316 Chesterbrook Court
Las Vegas, NV 89103
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LSN NEVADA TRUST**, u/a/d 5/30/01, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC**, a Nevada limited liability company, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 25th day of September, 2015.

PAPP0301

LSN NEVADA TRUST, u/a/d 5/30/01

2015 10652
Deed Book & Page

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 25th day of September, 2015, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust u/a/d 5/30/01** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Shari Aidukas
NOTARY PUBLIC

My commission expires: 10-26-17

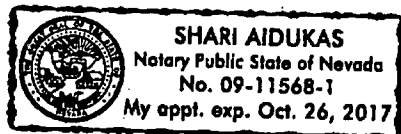


EXHIBIT "A"

~~PARCEL 1:~~
Commencing at the intersection of the Northerly line of Central Avenue and the Northwestern line of Front Street and running thence Northeasterly 695 feet along the Northwestern line of Front Street to a hickory stake on the Northeast corner of Lot 14 of Square 112; of Gulfview Subdivision for the place of beginning of the land hereby conveyed; thence North 65 1/2 degrees West ONE HUNDRED AND FIFTY (150) feet to the Southerly line of an ally; thence South 24 1/2 degrees West Fifty (50) feet; thence South 65 1/2 degrees EAST ONE HUNDRED AND FIFTY (150) feet to the Northwestern line of Front Street; thence Northeasterly along the line of Front Street fifty (50) feet to the place of beginning.

Being all of Lot 14 of Block 112 of Gulfview Subdivision of Hancock County, Mississippi. Said lot 14 of Block 112 is further described and shown on a plat of file with the Deed from Grace Ortte to John B. Clark dated March 30th, 1953, and recorded in Book J-3, pages 267-269 of the Deed Records of Hancock County, Mississippi, together with all improvements, buildings and structures situated thereon.

PARCEL 2: ~~h/c~~
A strip of land fifty (50) feet wide between parallel lines running from the Eastern Gulf side, the Beach or Front Road and out into the water of the Gulf of Mexico. The side line of said beach lot being a continuation of the side lines (North and South line) of the Lot described as Parcel 1. This lot conveyed being the beach lot directly in front of the fifty (50) foot lot hereinabove described as Parcel 1, together with all improvements, buildings, and structures situated thereon.

PARCEL 3:
Commencing at the intersection of the Northerly line of Central Avenue and the Northwestern line of Front Street and running thence Northeasterly along the Northwestern line of Front Street Six Hundred and Twenty (620) feet to a point where the center or middle of Lot 13 intersects Front Street; Thence North 65 1/2 degrees West 150 feet; Thence North 24 1/2 degrees East 25 feet; Thence South 65 1/2 degrees East 150 feet to the Northwestern line of Front Street; Thence Southwesterly along Front Street 25 feet to the Place of

~~Beginning of the land hereby conveyed. Being a Part of Block 112, Gulfview Subdivision, Hancock County, Mississippi. Together with all improvements, buildings and structures situated thereon.~~

PARCEL 4:
A strip of land twenty five (25) feet wide between parallel lines running from the East or Gulf side of the Beach or Front Road and out into the waters of the Gulf of Mexico. The sidelines of said Beach lot being a continuation of the side lines (North and South lines) of the lot described above as "Third Parcel". This lot hereby conveyed being the beach lot directly in front of the twenty five (25) foot lot hereinabove described as "Parcel Three", Together with all improvements, buildings and structures situated thereon.



2017 7853
Recorded in the Above
Deed Book & Page
07-12-2017 09:54:33 AM
Timothy A Kellar
Hancock County

Prepared By & Return To:
Je'Nell B. Blum MSB#100466
2909 13th Street - Suite 601
Gulfport, MS 39501
Ph 228-868-1111
File No.: 2809.0001

Grantor: LSN Nevada Trust
u/a/d 5/30/01
10170 W. Tropicana Ave.
Suite #156/#164
Las Vegas, NV 89147
Ph 702-362-3030

Index In:
Part of Block 104
Gulfview Subdivision.

Grantee: Southern Magnolia, LLC
10170 W. Tropicana Ave.
Suite #156/#164
Las Vegas, NV 89147
Ph 702-362-3030

STATE OF MISSISSIPPI
COUNTY OF HANCOCK

QUITCLAIM DEED

FOR AND IN CONSIDERATION of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, **LYNITA SUE NELSON, TRUSTEE OF LSN NEVADA TRUST, u/a/d 5/30/01**, Grantor, does hereby quitclaim unto **SOUTHERN MAGNOLIA, LLC, a Nevada limited liability company**, Grantee, any and all interest that it may hold in the following described real property situated in the Hancock County, Mississippi, and being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED

This conveyance is subject to any and all recorded rights-of-way, restrictions, reservations, covenants and easements.

Witness my signature, this the 29th day of June, 2017.

PAPP0304

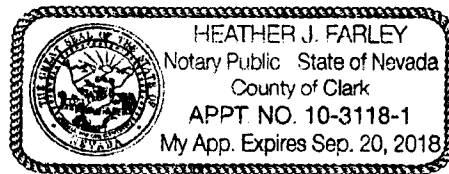
2017 7854
Deed Book & Page

STATE OF NEVADA
COUNTY OF Clark

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, on this 29th day of June, 2017, within my jurisdiction, the within named **Lynita Sue Nelson**, who acknowledged that she is the **Trustee of the LSN Nevada Trust** and in said representative capacity she executed the above instrument, after first having been duly authorized so to do.

Heather J. Farley
NOTARY PUBLIC

My commission expires: 9/20/2018



2017 7855

Deed Book & Page

PARCEL 1:

Commencing at the Northeast corner of Ontario Street and Lakeshore Road, Hancock County, Mississippi, and run East along the Northern right-of-way of Lakeshore Road for 1175.0 feet to an iron pipe; thence run North 89 degrees 23 minutes East along the Northern right-of-way of Lakeshore Road for 97.6 feet to an iron pipe on the Northern line of Beach Boulevard; thence run along the Northern line of Beach Boulevard North 19 degrees 34 minutes East along the Northern line of Beach Boulevard for 53.37 feet to an iron pipe, which is the point of beginning; thence run South 89 degrees 11 minutes West for 115.4 feet to an iron pipe; thence run North 49.5 feet to an iron pin; thence run North 89 degrees 11 minutes East for 132.7 feet to an iron pin; Thence South 19 degrees 34 minutes West 52.47 feet to the place of beginning; being Part of Block 104, Gulfview Subdivision, Hancock County, Mississippi.

PARCEL 2:

The Grantors herein quitclaim all of their right, title and interest in and to that portion of Block 104, of said Gulfview Subdivision, which lies immediately East and Southeast of the land hereinabove described firstly, and South and North of the boundary lines in the described parcel, being a continuation of the South and North boundary lines of the firstly described parcel hereinabove. As well as all of the riparian and littoral rights.

All of the above property being a part of Block 104, Gulfview Subdivision, Hancock County, Mississippi.

This conveyance is made subject to a prior reservation of all oil, gas and/or other minerals in, on and under the hereinabove described property.

Hancock County

I certify this instrument was filed on

07-12-2017 09:54:33 AM

and recorded in Deed Book

2017 at pages 7853 - 7855

Timothy A Kellar



EXHIBIT 3

EXHIBIT 3

**ARTICLES OF ORGANIZATION
OF
PINK PEONIES, LLC**

The undersigned organizers hereby form a limited-liability company pursuant to N.R.S. 86 and adopt as the Articles of Organization of such limited-liability company the following:

I. NAME. The name of the limited-liability company (hereinafter referred to as the "Company"):

PINK PEONIES, LLC

II. DURATION.

A. The Company shall have perpetual existence.

B. Notwithstanding Section A, above, the Company shall be dissolved and its affairs wound up:

1. upon the occurrence of an event specified in the operating agreement; or
2. by the unanimous written agreement of all Members.

III. PURPOSE. The Company is organized to engage in and to do any lawful act concerning any and all lawful business, other than insurance, for which a limited-liability company may be organized.

IV. REGISTERED AGENT. The name and business address of the Company's Registered Agent in Nevada for service of process is:

BOYCE & GIANNI, LLP
1701 N. Green Valley Pkwy., Suite 8-A
Henderson, Nevada 89074

V. **ORGANIZER.** The name and address of the Organizer of the Company is:

LYNITA NELSON
3316 Chesterbrook Court
Las Vegas, Nevada 89135

VI. **MEMBERS.** The interest and rights of each Member (including the right to vote and the right to share in the Company's profits, losses and capital) shall be set forth in an Operating Agreement.

VII. **MANAGEMENT.** The Company will be operated by a Board of Managers whose name and address is:

<u>Name</u>	<u>Address</u>
LYNITA NELSON	3316 Chesterbrook Court Las Vegas, Nevada 89135

A. The Board of Managers shall have the right to contract debts and acquire property on behalf of the limited-liability company or delegate such right to officers or Members of the Company.

B. Instruments and documents providing for the acquisition, mortgage or disposition of property of the Company are valid and binding on the Company if executed by one or more Managers of the Company.

C. In furtherance and not in limitation of the powers conferred by the laws of the State of Nevada, the Board of Managers are expressly authorized and empowered:

1. Subject to the applicable provisions of the Operating Agreement then in effect, to determine, from time to time, whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Company, or any of them, shall be open to Member inspection;

2. To authorize and issue, without Member consent, obligations of the Company, secured and unsecured, under such terms and conditions as Management, in its sole discretion, may determine, and to pledge or mortgage, as security therefore, any real or personal property of the Company, including after-acquired property;

3. To establish bonus, profit-sharing, or other types of incentive compensation plans for the employees, including management of the Company, and to fix the amount of profits to be shared or distributed, and to determine the

persons to participate in any such plans and the amount of their respective participations;

4. To designate, by resolution or resolutions passed by a majority of the whole Board of Managers one or more committees, each consisting of two or more Members, which, to the extent permitted by law and authorized by the resolution or the Operating Agreement, shall have and may exercise the powers of management;

5. To provide for the reasonable compensation of its Board of Managers by Operating Agreement or Resolution, approved by a majority in interest of the Members, and to fix the terms and conditions upon which such compensation will be paid;

6. In addition to the powers and authority hereinbefore, or by statute, expressly conferred upon it, the management may exercise all such powers and do all such acts and things as may be exercised or done by the Company, subject, nevertheless, to the provisions of the laws of the State of Nevada, of these Articles of Organization, and of the Operating Agreement of the Company.

D. No contract or transaction between this Company and any of its Managers, or between this Company and any other corporation, firm, association, or other legal entity shall be invalidated by reason of the fact that the Managers of the Company have a direct or indirect interest, pecuniary or otherwise, in such corporation, firm, association, or legal entity, or because the interested Manager was present at the meeting of the Board of Managers which acted upon or in reference to such contract or transaction, or because he participated in such action, provided that: (i) the interest of each such Manager shall have been disclosed to or known by management; and (ii) a disinterested majority of the Managers shall have, nonetheless, ratified and approved such contract or transaction (such interested Manager or Managers may be counted in determining whether a quorum is present for the meeting at which such ratification or approval is given).

E. The Managers shall make all decisions by a vote of fifty-one percent (51%) or more, with each Manager having one vote.

VIII. POWERS OF COMPANY. The powers of the limited-liability company shall be those powers granted by Chapter 86 of the Nevada Revised Statutes and all other corporate powers not inconsistent with Nevada law.

IX. PLACE OF MEETING; COMPANY BOOKS. Subject to the laws of the State of Nevada, the Members and the Managers shall have power to hold their meetings, and the Managers shall have power to have an office or offices and to maintain the books of the

Company outside the State of Nevada, at such place or places as may from time to time be designated in the Operating Agreement or by appropriate resolution.

X. AMENDMENT OF ARTICLES. The provisions of these Articles of Organization may be amended, altered or repealed from time to time to the extent and in the manner prescribed by the laws of the State of Nevada, and as permitted by the Operating Agreement of the Company.

XI. LIMITED LIABILITY OF MANAGERS. Except as hereinafter provided, the Managers of the Company shall not be personally liable to the Company or its Members for damages for breach of fiduciary duty as a Manager. This limitation on personal liability shall not apply to acts or omissions which involve intentional misconduct, fraud, knowing violation of law, or any other unlawful act prohibited by Nevada Revised Statutes.

XII. SERIES LLC. The Company will have one or more series of members and the debts and liabilities of any series are to be enforceable against that series of assets only and not against the assets of another series or the Company generally. A new series may be formed at any time and any series may be dissolved at any time with no effect on the existence or continued existence of any other series or the Company generally. Rights and duties of Managers and Members will be in the Company Operating Agreement. The Company is being formed pursuant to Nevada Revised Statutes, Title 7, Chapter 86.

IN WITNESS WHEREOF, the undersigned, verifies that she, as the organizer, executed these Articles of Organization this 10th day of December, 2013.

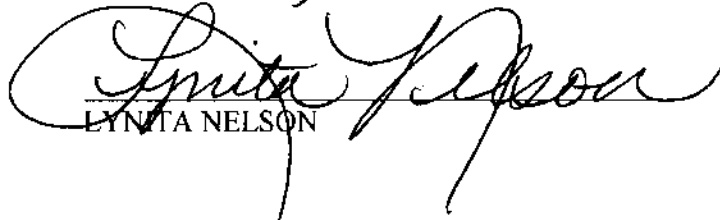

LYNITA NELSON

EXHIBIT 4

EXHIBIT 4

QUITCLAIM DEED

Lynita S. Nelson, as trustee of the LSN Nevada Trust under agreement dated May 30, 2001, Grantor, whose mailing address is 3316 Chesterbrook Ct., Las Vegas, Nevada 89135 for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, in hand paid, receipt whereof is hereby acknowledged, CONVEYS AND FOREVER QUITCLAIMS and by these presents does for its successors and assigns, remise, release and forever quitclaim unto Pink Peonies LLC, a Nevada limited liability company whose mailing address is 3316 Chesterbrook Ct., Las Vegas, Nevada 89135, Grantee, the following described real estate, situate in Uinta County and State of Wyoming, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State, to-wit:

Those lands described on Exhibit "A" attached hereto.

TOGETHER WITH all improvements, appurtenances, hereditaments and all other things thereunto belonging or in anywise appertaining.

SUBJECT, HOWEVER, to all easements, rights-of-way, covenants, reservations and restrictions of record or visible upon inspection.

WITNESS my hand this 5th day of November, 2015.

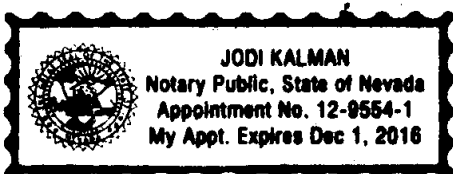
Doc:1010832 Book:1031 Page:513-514
Filed At 09:20 ON 11/17/15 Fees: 15.00
Lana L. Wilcox County Clerk By AR

By: Lynita S. Nelson
Lynita S. Nelson, Trustee of the LSN Nevada Trust
under agreement dated May 30, 2001

STATE OF Nevada)
)ss.
COUNTY OF Clark)

This instrument was acknowledged to before me this 5th day of November, 2015 by Lynita S. Nelson, Trustee of the LSN Nevada Trust under agreement dated May 30, 2001.

WITNESS my hand and official seal.



513

John Kalman
Signature of Notarial Official

~~Notary Public~~ PAPP0313
Title

My Commission Expires:

Exhibit "A"

A tract of land in the E ½ of Section 2, T16N, R121 W, 6th P.M., Uinta County, Wyoming, said tract being more particularly described as follows:

BEGINNING at the Northeast corner of said Section 2, thence S 0°16'09" E, 3617.57 feet along the East line of said Section to the Northeast corner of that tract of land described in the deed recorded in Book 810 Page 746 of the Uinta County Records, said corner being the point of beginning of a non-tangent curve concave to the North, from which the radius point bears N 0°11'02" W, 646.41 feet;

thence, the following 6 courses along said tract, Westerly 207.98 along the arc of said curve, through a central angle of 18°26'03", the long chord of which bears N 80°57'56" W, 207.08 feet;

thence N 71°44'55" W, 136.22 feet to the Point of Curvature of a curve concave to the South and having a radius of 577.93 feet;

thence Westerly 188.40 feet along the arc of said curve, through a central angle of 18°40'56", the long chord of which bears N 81°05'23" W, 187.61 feet;

thence S 89°34'09" W, 1756.98 feet;

thence S 1°04'57" E, 900.20 feet,

thence S 89°34'09" W 350.02 feet to a point on the West line of said East 1/2;

thence N 1°04'57" W 3889.10 feet along the West line of said East ½ of said Section 2;

thence N 89°26'29" E, 218.99 feet;

thence N 29°19'31" E, 608.55 feet to a point lying on the North line of said Section;

thence N 89°48'19" E, 1088.47 feet along said North line;

thence N 89°45'51" E, 1060.15 feet along said North line to the **POINT OF BEGINNING**.

Said tract containing 217.196 acres, more or less.

EXCEPTING AND EXCLUDING THEREFROM, those lands conveyed in a General Warranty Deed dated August 24, 2006 and recorded on August 30, 2006 in Book 871 pages 278-280.


ASSIGNMENT OF ACCESS EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lynita S. Nelson, as Trustee of the LSN Nevada Trust, under agreement dated May 30, 2001 ("Assignor"), whose address is 3316 Chesterbrook Ct., Las Vegas, Nevada 89135, does hereby grant, bargain, sell, assign and convey unto Pink Peonies, LLC ("Assignee") A Nevada limited liability company, whose address is 3316 Chesterbrook Ct., Las Vegas, Nevada 89135, that certain access easement described in Exhibit "A" attached hereto and made a part hereof, over the following described lands in Uinta County, Wyoming:

TO HAVE AND TO HOLD unto the said Assignee, his or its heirs, successors and assigns, forever. For the same consideration above recited, Assignor agrees to warrant and defend title to the interest herein assigned unto Assignee, his or its heirs, successors and assigns, from and against the lawful claims and demands of all persons claiming by, through or under Assignor, but not otherwise.

EXECUTED this 5th day of November, 2015

Doc:1010834 Book:1031 Page:515-516
Filed At 09:21 ON 11/17/15 Fees: 15.00
Lana L. Wilcox County Clerk By AR

By 
Lynita S. Nelson, Trustee of the LSN Nevada Trust
Under agreement dated May 30, 2001

STATE OF Nevada)
)ss.
COUNTY OF Clark)

This instrument was acknowledged before me on this 5th day of November, 2015, by Lynita S. Nelson, as Trustee of the LSN Nevada Trust, under agreement dated May 30, 2001.

Witness my hand and official seal.



Josh Kalman
Signature of Notarial Officer

Notary Public

Exhibit "A"

A tract of land in the E1/2 of Section 2, T16N, R121W, 6th P.M., Uinta County, Wyoming said tract being more particularly described as follows:

BEGINNING at a point on the West line of the above described tract, said point lying N 1°04'57" W, 1380.00 feet from the South one-quarter corner of said Section 2;

thence N 1°04'57" W, 80.00 feet along said West line;

thence N 88°55'03" E, 290.00 feet;

thence N 1°04'57" W, 1896.91 feet to a point on the North line of the above described tract;

thence N 89°34'09" E, 1660.69 feet along said North line;

thence S 0°25'51" E, 60.00 feet;

thence S 89°34'09" W, 1600.00 feet;

thence 1°04'57" E, 1916.22 feet;

thence S 88°55'03" W, 350.00 feet to the POINT OF BEGINNING.

EXHIBIT 5

EXHIBIT 5

RECORDING REQUESTED BY:

BOYCE & GIANNI, LLP
1701 N. Green Valley Pkwy., Suite 8-A
Henderson, Nevada 89074

WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:
PINK PEONIES-WYOMING, LLC
3316 Chesterbrook Court
Las Vegas, Nevada 89135-2809

Doc:1012021 Book:1032 Page:511-513

Filed At 14:10 ON 12/15/15 Fees: 18.00

Lana L. Wilcox Uinta County Clerk By AR



QUITCLAIM DEED

For the consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged,

PINK PEONIES, LLC, a Nevada limited-liability company (Grantor's address: 3316 Chesterbrook Court, Las Vegas, Nevada 89135), does hereby quitclaim to

PINK PEONIES-WYOMING, LLC, a Nevada series limited-liability company (Grantee's address: 3316 Chesterbrook Court, Las Vegas, Nevada 89135), the following described real property in the State of Wyoming, County of Uinta:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"
AND INCORPORATED HEREIN BY REFERENCE

Subject To:

1. Taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights of Way and Easements now of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED this 9th day of December 2015.

PINK PEONIES, LLC, a Nevada limited-liability
company


LYNITA NELSON, Manager

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

On this 9 day of December, 2015, before me, a notary public, personally appeared LYNITA NELSON who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.



NOTARY PUBLIC

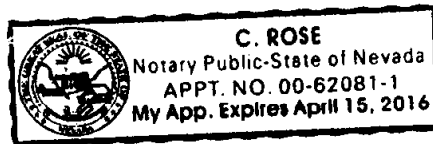


EXHIBIT "A"
Legal Description

A TRACT OF LAND IN THE E ½ OF SECTION 2, T16N, R121 W, 6th P.M., UINTA COUNTY, WYOMING, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST SCORNER OF SAID SECTION 2, THENCE S 0°16'09" E, 3617.57 FEET ALONG THE EAST LINE OF SAID SECTION TO THE NORTHEAST CORNER OF THAT TRACT OF LAND DESCRIBED IN THE DEED RECORDED IN BOOK 810 PAGE 746 OF THE UINTA COUNTY RECORDS, SAID CORNER BEING THE POINT OF BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH, FROM WHICH THE RADIUS POINT BEARS N 0°11'02" W, 646.41 FEET;

THENCE, THE FOLLOWING 6 COURSES ALONG SAID TRACT, WESTERLY 207.98 ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°26'03", THE LONG CHORD OF WHICH BEARS N 80°57'56" W, 207.08 FEET;

THENCE N 71°44'55" W, 136.22 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 577.93 FEET;

THENCE WESTERLY 188.40 FEET ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°40'56", THE LONG CHORD OF WHICH BEARS N 81°05'23" W, 187.61 FEET;

THENCE S 89°34'09" W, 1756.98 FEET;

THENCE S 1°04'57" E, 900.20 FEET;

THENCE S 89°34'09" W 350.02 FEET TO A POINT ON THE WEST LINE OF SAID EAST ½;

THENCE N 1°04'57" W 3889.10 FEET ALONG THE WEST LINE OF SAID EAST ½ OF SAID SECTION 2;

THENCE N 89°26'29" E, 218.99 FEET;

THENCE N 29°19'31" E, 608.55 FEET TO A POINT LYING ON THE NORTH LINE OF SAID SECTION;

THENCE N 89°48'19" E, 1088.47 FEET ALONG SAID NORTH LINE;

THENCE N 89°45'51" E, 1060.15 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

SAID TRACT CONTAINING 217.196 ACRES, MORE OR LESS.

EXCEPTING AND EXCLUDING THEREFROM, THOSE LANDS CONVEYED IN A GENERAL WARRANTY DEED DATED AUGUST 24, 2006 AND RECORDED ON AUGUST 30, 2006 IN BOOK 871 PAGES 278-280.

RECORDING REQUESTED BY:

BOYCE & GIANNI, LLP
1701 N. Green Valley Pkwy., Suite 8-A
Henderson, Nevada 89074

WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:

PINK PEONIES-WYOMING, LLC
3316 Chesterbrook Court
Las Vegas, Nevada 89135-2809

Doc:1012023 Book:1032 Page:514-516 ✓
Filed At 14:11 ON 12/15/15 Fees: 18.00
Lana L. Wilcox Uinta County Clerk By AR



ASSIGNMENT OF ACCESS EASEMENT

For good and valuable consideration, the receipt of which is hereby acknowledged,

PINK PEONIES, LLC, a Nevada limited-liability company ("Assignor")
(Assignor's address: 3316 Chesterbrook Court, Las Vegas, Nevada 89135), does hereby grant,
bargain, sell, assign and convey unto

PINK PEONIES-WYOMING, LLC, a Nevada series limited-liability company ("Assignee")
(Assignee's address: 3316 Chesterbrook Court, Las Vegas, Nevada 89135), that certain access
easement described in **Exhibit "A"** attached hereto and made a part hereof, over the following
described lands in the State of Wyoming, County of Uinta:

TO HAVE AND TO HOLD unto the said Assignee, his or its heirs, successors and assigns, forever.
For the same consideration above recited, Assignor agrees to warrant and defend title to the interest
herein assigned unto Assignee, his or its heirs, successors and assigns, from and against the lawful
claims and demands of all persons claiming by, through or under Assignor, but not otherwise.

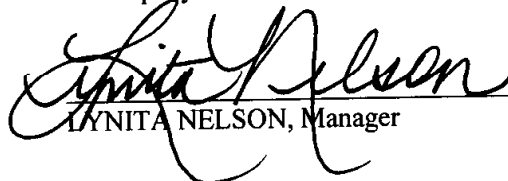
Subject To:

1. Taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights of Way and Easements now of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

DATED this 9th day of December 2015.

PINK PEONIES, LLC, a Nevada limited-liability
company


LYNITA NELSON, Manager

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

On this 9 day of December, 2015, before me, a notary public, personally appeared LYNITA NELSON who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.



NOTARY PUBLIC

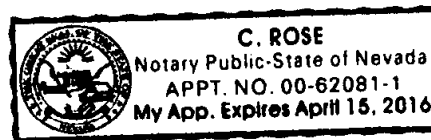


EXHIBIT "A"

A TRACT OF LAND IN THE E ½ OF SECTION 2, T16N, R121W, 6th P.M., UINTA COUNTY, WYOMING, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE ABOVE DESCRIBED TRACT, SAID POINT LYING N 1°04'57" W, 1380.00 FEET FROM THE SOUTH ONE-QUARTER CORNER OF SAID SECTION 2;

THENCE N 1°04'57" W, 80.00 FEET ALONG SAID WEST LINE;

THENCE N 88°55'03" E, 290.00 FEET;

THENCE N 1°04'57" W, 1896.91 FEET TO A POINT ON THE NORTH LINE OF THE ABOVE DESCRIBED TRACT;

THENCE N 89°34'09" E, 1660.69 FEET ALONG SAID NORTH LINE;

THENCE S 0°25'51" E, 60.00 FEET;

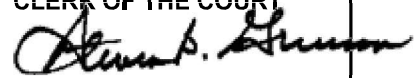
THENCE S 89°34'09" W, 1600.00 FEET;

THENCE 1°04'57" E, 1916.22 FEET;

THENCE S 88°55'03" W, 350.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT 6

EXHIBIT 6



**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.

Case No.: D-09-411537-D

Dept. No.: O

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

DECISION

This matter was before the Court on January 31, 2018, pursuant to Plaintiff's Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs. The Court, having reviewed all

1
2 Motions, Oppositions, Countermotions, and Replies filed in this matter between
3 July 10, 2017 and August 22, 2017, and having heard arguments of counsel,
4 based thereon and good cause appearing therefor:
5

6 **CONCLUSIONS OF LAW**

7 On May 25, 2017, the Nevada Supreme Court filed an Order which
8 affirmed in part and vacated in part this Court's June 3, 2013 Divorce Decree, and
9 remanded the matter back to this Court. On July 10, 2017, the Plaintiff, Eric
10 Nelson ("Mr. Nelson") filed a Motion to compel the Defendants, Lynita Nelson
11 ("Ms. Nelson") and Matt Klabacka ("ELN Trustee"), to follow the Supreme
12 Court's Order. Several Oppositions, Countermotions, and Replies were filed by
13 all parties prior to a hearing before this Court on January 31, 2018, to address all
14 pending matters, the most important being the interpretation of the Nevada
15 Supreme Court's Opinion with regard to the tracing of property within the trusts.
16
17
18

19 A. The Tracing of Property Contained Within the Eric L. Nelson Nevada Trust
20 and the Lynita S. Nelson Nevada Trust

21 In its May 25 Order, the Nevada Supreme Court concluded that this Court
22 erred by "not tracing the assets contained within the trusts, either through a
23 reliable expert or other available means."¹ The Nevada Supreme Court also held
24 that both the Eric L. Nelson Nevada Trust ("ELN Trust") and the Lynita S.
25
26
27
28

¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

1
2 Nelson Nevada Trust ("LSN Trust") "are valid and the trusts were funded with
3 separate property stemming from a valid separate property agreement."²
4

5 In accordance with the Nevada Supreme Court's decision, this Court must
6 Order the tracing of property in both the trusts. In order for an accurate
7 accounting of the property in both the ELN and LSN Trusts to occur, this Court
8 must determine the correct date to commence tracing of the property in the trusts.
9
10 The Nevada Supreme Court held that both the ELN and LSN Trusts were funded
11 with separate property stemming from the 1993 Separate Property Agreement.³
12 As such, the proper date to begin the tracing would be May 30, 2001, the date
13 both the ELN and LSN Trusts were executed.
14

15 The Nevada Supreme Court concluded that the assets in the trusts need to
16 be traced through a reliable expert.⁴ In order for the trusts to be properly traced,
17 this Court shall appoint Larry L. Bertsch, CPA ("Mr. Bertsch") to perform the
18 tracing. In the interest of fairness in regards to payment, both parties will be
19 required to split the cost of Mr. Bertsch's tracing, beginning with a \$5,000
20 payment from each party for Mr. Bertsch's initial retainer. The initial retainer
21 payment to Mr. Bertsch shall be paid within thirty days of the date of this Order.
22
23

24 B. The Lindell Property and Banone, LLC Properties
25
26

27 ² *Klabacka*, 394 at 947.
28 ³ *Id.*

⁴ *Id.* at 948

1
2 In its May 25 Order, the Nevada Supreme Court vacated the Constructive
3 Trust held over the Lindell Property.⁵ The Nevada Supreme Court also held that
4 “the issue of unjust enrichment was not tried by implied consent and, therefore,
5 [this Court] erred in considering it when fashioning its remedies.”⁶
6

7 As the Nevada Supreme Court vacated the Constructive Trust held over the
8 Lindell Property, the LSN Trust must transfer its 50% interest in the Lindell
9 Property to the ELN Trust via Quitclaim Deed. Additionally, the LSN Trust shall
10 provide to the ELN Trust copies of any and all tenant leases for the Lindell
11 Property for the period of June 3, 2013 to the present. The LSN Trust shall also
12 provide to the ELN Trust quarterly accountings for the Lindell Property,
13 including any and all supporting documentation, for the period of June 3, 2013 to
14 the present. Supporting documentation is to include records as to gross profits
15 and expenses related thereto, including, but not limited to; general upkeep,
16 management fees, administrative fees/wages, and maintenance fees/wages.
17
18
19
20

21 As the Nevada Supreme Court held that this Court’s finding of unjust
22 enrichment was in error, the LSN Trust must transfer its 100% interest in the
23 Banone, LLC Properties to the ELN Trust via Quitclaim Deed. The LSN Trust
24 shall also provide to the ELN Trust quarterly accountings for the Banone, LLC
25 Properties, including any and all supporting documentation, for the period of
26
27
28

⁵ *Id.* at 953

⁶ *Id.*

1 June 3, 2013 to the present. Supporting documentation is to include records as to
2 gross profits and expenses related thereto, including, but not limited to; general
3 upkeep, management fees, administrative fees/wages, and maintenance
4 fees/wages.
5

6
7 C. Sale of the Brian Head Cabin

8 The ELN and LSN Trusts each own a 50% interest in the Brian Head
9 Cabin ("Cabin") in Utah. Upon the request of Ms. Nelson for funds to pay her
10 litigation costs and other general expenses, this Court shall Order that the Cabin
11 be sold. This Court previously Ordered that "both parties shall have the right of
12 first refusal should either Trust decide to sell its interest in the Brian Head
13 [C]abin."⁷
14

15 In order to properly ensure that both parties are receiving the fair market
16 value of the Cabin, Mr. Bertsch will be appointed to conduct the assessment of
17 the property value via a property appraiser of his choosing. To avoid concerns
18 raised as to the objectiveness of the upcoming appraisal, Mr. Bertsch shall select
19 a property appraiser other than the previous property appraiser, if available. In the
20 interest of fairness in regards to payment, both parties will be required to split the
21 cost of the property assessment.
22
23
24
25
26
27
28

⁷ Divorce Decree filed June 3, 2013, pg. 46

1
2 Upon receipt of a fair market value price for the Cabin, the ELN Trust is to
3 be given the right of first refusal and allowed to purchase the 50% interest owned
4 by the LSN Trust. In the event that a fair market value price for the Cabin cannot
5 be agreed upon by the parties, the Cabin is to be placed on the open market until
6 a valid offer is received. The ELN Trust will then be allowed to match the price
7 of the valid offer to purchase the 50% interest owned by the LSN Trust.
8
9

10 In the event that the ELN and LSN Trusts cannot agree on the value of a
11 valid offer, a realtor of Mr. Bertsch's choosing shall determine the validity of the
12 offer and conduct the sale of the property accordingly. All fees and costs
13 associated with the sale of the Cabin shall be shared equally between the ELN
14 and LSN Trusts.
15

16 D. \$720,000 in Bank of Nevada Account 7502338705
17

18 In its May 25, 2017 Order, the Nevada Supreme Court found that this Court
19 erred in Ordering the ELN Trust to pay the personal obligations of Mr. Nelson
20 with regard to alimony payments.⁸
21

22 On November 15, 2013, this Court Ordered the ELN Trust to transfer
23 \$1,068,000 to Bank of Nevada Account 7502338705. This account, which was
24 set up as a blocked account to assist in paying Mr. Nelson's personal obligations
25 with regard to alimony and child support, still holds \$720,000. As the Nevada
26
27

28 ⁸ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).

1
2 Supreme Court held that this Court erred in ordering the ELN Trust to pay Mr.
3 Nelson's personal obligations, and as these funds are still readily available to be
4 dispersed, this Court will Order the \$720,000 to be transferred from the Bank of
5 Nevada blocked account to an account of the ELN Trust's choosing.
6

7 E. All Remaining Financial Issues
8

9 Both the ELN and LSN Trusts have requested numerous financial transfers
10 based on both this Court's June 3, 2013 Divorce Decree, as well as the Nevada
11 Supreme Court's May 25, 2017 Order, including but not limited to: rents
12 allocated from both the Banone, LLC and Lindell Properties; \$324,000 paid to
13 Lynita Nelson from the Bank of Nevada blocked account; a \$6,050 security
14 deposit paid to the LSN Trust by the ELN Trust; payments collected by the LSN
15 Trust pursuant to the Farmouth Circle Note; and \$75,000 paid to the LSN Trust
16 by Banone-AZ, LLC.
17
18

19 However, the Nevada Supreme Court concluded that the matter of tracing
20 needs to occur to make an accurate accounting of property in both trusts.⁹
21

22 Therefore, it is this Court's opinion that before any financial transfers are to take
23 place, the tracing of both trusts must occur to ensure the proper transfers occur.
24

25 This Court has reviewed the assets of both the ELN and LSN Trusts and has
26 determined that there are sufficient assets in both trusts to offset any deficiency
27

28

⁹ *Klabacka*, 394 P.3d at 948.

1
2 once a final balance and distribution amount has been determined. Once the
3 tracing is finalized and a final balance sheet is received, this Court will Order the
4 proper funds to be transferred to each party accordingly.
5

6 **ORDER**

7 Based thereon:

8 **IT IS HEREBY ORDERED** that Larry Bertsch, CPA is to trace the
9 property in both the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
10 Nevada Trust beginning from the execution date of May 30, 2001 through the
11 date of the Divorce Decree, June 3, 2013.
12

13 **IT IS FURTHER ORDERED** that the tracing services provided by Larry
14 Bertsch, CPA is to be paid equally by both Eric Nelson and Lynita Nelson,
15 beginning with an initial payment of \$5,000 each. This payment shall be made
16 within thirty days of the date of this Order.
17

18 **IT IS FURTHER ORDERED** that the Lynita S. Nelson Nevada Trust
19 execute Quitclaim Deeds to transfer the Lindell Rd. and Banone, LLC Properties
20 to the Eric L. Nelson Nevada Trust. The transfer of the property shall be
21 completed within thirty days of the date of this Order
22

23 **IT IS FURTHER ORDERED** that Larry Bertsch, CPA is to acquire an
24 appraisal for the Brian Head Utah Cabin from an appraiser of his choosing. Mr.
25 Bertsch is to select an appraiser different from the original appraiser, if different
26
27
28

1
2 appraiser is available. Once received, the Eric L. Nelson Nevada Trust has the
3 right of first refusal on any offer on the property with the ability to purchase the
4 Lynita S. Nelson Nevada Trust's 50% interest.
5

6 **IT IS FURTHER ORDERED** that in the event that the Eric L. Nelson
7 Nevada Trust and the Lynita S. Nelson Nevada Trust cannot agree on a valid
8 offer, Larry Bertsch, CPA, is to retain a realtor to place the property on the open
9 market for a fair market offer. Once the realtor determines that a fair offer has
10 been received, the Eric L. Nelson Nevada Trust has the right of first refusal on
11 any offer on the property with the ability to purchase the Lynita S. Nelson
12 Nevada Trust's 50% interest.
13
14

15 **IT IS FURTHER ORDERED** that any appraisal and realtor costs
16 associated with the Brian Head Utah Cabin sale will be paid equally by both Eric
17 L. Nelson Nevada Trust and the Lynita S. Nelson Nevada Trust.
18

19 **IT IS FURTHER ORDERED** that the \$720,000.00 being held in Bank of
20 Nevada Account 7502338705 be released to an account of the Eric L. Nelson
21 Nevada Trust's choosing.
22

23 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.
24

25 DATED this 19th day of April, 2018.
26

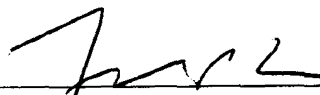
27 
28 Honorable Frank P. Sullivan
District Court Judge – Dept. O

EXHIBIT 7

EXHIBIT 7

1 MR. KARACSONYI: Objection. Asked and
2 answered, but just -- I'm letting the questions go, but
3 she does have an attorney-client privilege, so --

4 MR. CARMAN: I'm not asking what was said.
5 She told me what was said. I didn't --

6 MR. KARACSONYI: No, I know. I know. I
7 just don't want -- I want to advise her she has an
8 attorney-client privilege, so --

9 THE WITNESS: So ask me again.

10 BY MR. CARMAN:

11 Q. Just, I assume Mr. Boyce provided that
12 advice in relation to the LLC as well as the trust.

13 A. Yes. That's who I would state on all of
14 that, in that situation.

15 MR. CARMAN: Okay. I was just --

16 MR. KARACSONYI: Yeah, that would be fine.

17 MR. CARMAN: -- doing it step-by-step.

18 MR. KARACSONYI: I understand.

19 BY MR. CARMAN:

20 Q. Okay. And then similarly, what is
21 Southern Magnolia, LLC?

22 A. What do I hold in that? Is that what
23 you're saying?

24 Q. Sure.

25 What is --

1 A. When you ask what it is, it's an LLC.

2 Q. What is it -- what is the purpose of
3 Southern Magnolia, LLC?

4 A. It holds the properties and the land in
5 Mississippi.

6 Q. All of the Mississippi properties?

7 A. Yes.

8 Q. And when was that founded?

9 A. I won't be able to give you dates on that.
10 That's not something that I remember.

11 Q. Was it founded prior to the decree of
12 divorce that was issued by Judge Sullivan?

13 A. No. I don't think so. I don't want to
14 say "no" or "yes." I don't know.

15 Q. Does Southern Magnolia, LLC, hold any
16 other assets other than Mississippi properties?

17 A. Just the -- just the Mississippi
18 properties, that I know of.

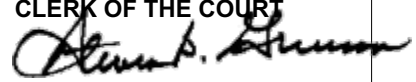
19 Q. And Pink Peonies, I assume, doesn't hold
20 any assets other than the Pebble --

21 A. Just here in Las Vegas, uh-huh.

22 Q. When you say "just here in Las Vegas,"
23 what are you referring to?

24 A. Pebble Beach, 5913 Pebble Beach.

25 Q. I just want to make sure that's the only



OPPS
Stacy Howlett, Esq.
Nevada Bar No. 8502
Email: stacy@michaelsonlaw.com
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
Email: matthew@michaelsonlaw.com
MICHAELSON LAW
1746 W. Horizon Ridge Parkway
Henderson, Nevada 89012
Ph: (702) 731-2333
Fax: (702) 731-2337
*Attorneys for the Lynita S.
Nelson Nevada Trust Dated May 30, 2001*

**DISTRICT COURT
FAMILY DIVISION
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

District Court Case No.: D-09-411537-D

**OPPOSITION TO MOTION FOR
ORDER ALLOWING EXAMINATION
OF JUDGMENT DEBTOR, LYNITA S.
NELSON, INDIVIDUALLY, AND IN
HER CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S. NELSON
NEVADA TRUST DATED MAY 30, 2001,
AND
COUNTERMOTION TO STAY
EXECUTION OF JUDGMENT
PURSUANT TO NRAP 8**

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Cross-claimant,

LYNITA SUE NELSON,

Cross-defendant

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE
CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR
RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE

1 A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR
2 RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING
3 GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED
4 HEARING DATE.

5 The Lynita S. Nelson Nevada Trust Dated May 30, 2001 (“LSN Trust”) by and through its
6 attorneys, Stacy Howlett, Esq. and Matthew D. Whittaker, Esq. of Michaelson Law, hereby
7 submits this Opposition to Motion for Order Allowing Examination of Judgment Debtor, Lynita
8 S. Nelson, Individually, and in Her Capacity as Investment Trustee of the Lynita S. Nelson Nevada
9 Trust Dated May 30, 2001, and Countermotion to Stay Execution of Judgment Pursuant to NRAP
10 8.

11 This Opposition and Countermotion is made and based on the papers and pleadings on file
12 in the above-captioned case, the Memorandum of Points and Authorities below, and upon such
13 oral argument as the Court may entertain at the hearing on this matter.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF FACTS**

16 The parties are where they are today because Mr. Nelson is an abusive ex-husband. The
17 entire reason why the court ordered ELN Trust to pay Mr. Nelson’s debts to Ms. Nelson is because
18 the trial court did not find Mr. Nelson to be an honest and outstanding guy. The court found Mr.
19 Nelson to be “at the very least . . . less than truthful with this Court” about the ELN Trust’s financial
20 position. *See* Decree of Divorce at 24:3. The court found that Mr. Nelson attempted to circumvent
21 the injunction and “clearly reflect that Mr. Nelson lacks credibility.” *Id.*, 24:16-17. The court
22 further found that “Mr. Nelson’s behavior and conduct during the course of these proceedings has
23 been deplorable. This Court has observed Mr. Nelson angrily bursting from the courtroom
24 following hearings.” *Id.*, 25:7-9. Mr. Nelson also exhibited “inappropriate conduct towards
25 opposing counsel . . . including cursing at him, leave bulgar voice messages on his office phone
26 and challenging him to a fight in the parking lot of his office.” *Id.*, 25:9-12. The court then set off
27 the last decade of litigation in this matter because it ordered Mr. Nelson’s trust to pay Mr. Nelson’s
28 debts to Ms. Nelson because the Court believed Mr. Nelson would simply deplete his own personal

1 assets to avoid paying Ms. Nelson. *Id.*, 39:6-26.

2 Now, Mr. Nelson seeks revenge against Ms. Nelson because she exercised her right to an
3 appeal and refused Nelson's invitation by text message to agree to a very lopsided child support
4 settlement – a child support settlement that Mr. Nelson pushes because his failure to pay child
5 support is causing gaming license issues for his business ventures.

6 Instead of doing the honest thing and simply paying the child support, Mr. Nelson seeks to
7 make Ms. Nelson's life until she yields to his demands. In other words, their marriage may have
8 ended years ago but Mr. Nelson still seeks abusive power and dominion over his ex-wife to get his
9 way.

10 Mr. Nelson and his trust wish to proceed executing on the very orders and judgments at
11 issue in the pending appeal.

12 This Court ordered Lynita Nelson and the LSN Trust to pay attorney's fees to both Eric
13 Nelson and the ELN Trust for going to trial and losing. This Court found that, although the Court
14 sided with Lynita Nelson at the summary judgment stage, Ms. Nelson unreasonably proceeded
15 with trial on the issue of tracing community property. Accordingly, the Court granted attorney's
16 fees to both Eric Nelson and ELN Trust pursuant to NRS 18.010 and EDCR 5.219.

17 This Court also ordered Lynita Nelson and the LSN Trust to pay interest to ELN Trust on
18 income and rent money after remand from the Nevada Supreme Court – even in light of the
19 incredible amount of money that Mr. Nelson still owes Ms. Nelson and Mr. Nelson's own
20 disobedience of a court order to pay rent on the Lindell building.

21 Lynita Nelson, individually and as trustee of the LSN Trust, timely filed a Notice of Appeal
22 from those orders. In those appeals, Ms. Nelson contends that the Court misapplied and
23 misinterpreted Nevada rules and laws and otherwise abused its discretion in entering those orders.

24 **II. LEGAL ARGUMENT AGAINST ALLOWING JUDGMENT DEBTOR**
25 **EXAM AND IN FAVOR OF MOTION TO STAY EXECUTION OF**
26 **JUDGMENT**

26 Nevada Rule of Appellate Procedure 8(a)(1) allows a party to move the trial court for stay
27 of the judgment or order of, or proceedings in, a district court pending appeal to the Supreme Court
28 or Court of Appeal.

The court is to apply four tests when considering whether to grant a stay:

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

See Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see also* NRAP 8(c).

The object of the appeal would be defeated if the stay is denied. As the Nevada Supreme Court held as law of this case, trusts are not to be held liable for a settlor's personal debts. *See Klabacka v. Nelson*, 133 Nev. 164, 177, 394 P.3d 940, 950 (2017). Yet, LSN Trust is being held liable for attorney's fees incurred by Mr. Nelson and ELN Trust for Ms. Nelson proceeding to trial on her individual, personal right to division of any and all community property. Because the right was personal to Ms. Nelson, LSN Trust could not proceed to trial unreasonably or with intent to harass ELN Trust because LSN Trust did not go to trial on any issues. Therefore, the object of holding this court to mandatory Nevada precedence would be defeated should LSN Trust have to pay debts personal to Ms. Nelson.

Ms. Nelson and the LSN Trust would be irreparably harmed if the stay is denied. Irreparable harm is harm for which compensatory damages would be inadequate, such as the sale of a home, because real property is unique. *See Hansen v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 658, 6 P.3d 982, 986–87 (2000) citing and quoting *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987). ELN Trust seeks information regarding Ms. Nelson and LSN Trust's real property holdings to execute the judgment against. Such real property is unique and therefore harm would exist upon execution that clouds title to such property.

ELN Trust will not suffer irreparable harm should the stay be granted. Due to the Nevada Supreme Court's decisions, ELN Trust's assets are vastly large and more significant than LSN Trust's assets.

Appellant is likely to prevail on the merits of the appeal. ELN Trust is only entitled to attorney's fees pursuant to NRS 18.010 and EDCR 5.219 if Ms. Nelson and LSN Trust proceeded

1 to trial unreasonably or with an intent to harass ELN Trust. As LSN Trust did not proceed to trial
2 on any claims, LSN Trust could not unreasonably proceed to trial or otherwise intend to harass
3 ELN Trust. Additionally, the court sided with Ms. Nelson at the summary judgment stage and the
4 court's ultimate decision from the trial rested on testimony from the trial. Further, the Nevada
5 Supreme Court ordered this court to complete the community property tracing. *See Klabacka v.*
6 *Nelson*, 133 Nev. at 173 (finding that the district court "must still perform[]" the tracing of trust
7 assets and mandating the district court that it "shall make an equal distribution of community
8 property" if community property exists in the trusts).

9 Additionally, LSN Trust will prevail on the issue of interest owed to ELN Trust because
10 the Court's order violates NRAP 37. NRAP 37(b) explicitly states that if the appellate court
11 reverses or modifies a judgment that a money judgment be entered in the district court, the mandate
12 must contain instructions about the allowance of interest. The appellate decision had no such
13 instructions.

14 Finally, ELN Trust's requests go beyond the statutory allowance of NRS 21.270. ELN
15 Trust requests documents about entities not party to or privy to this matter or the judgments.
16 Namely, all Articles of Organization, Operating Agreements, lists of members and managers,
17 meeting minutes, resolutions, and other documentary evidence of Southern Magnolia LLC and
18 Pink Peonies LLC – none of which are reasonably calculated to identify executable assets of Ms.
19 Nelson or LSN Trust. Accordingly, such requests are meant only to harass Ms. Nelson and her
20 trust.

21 Ms. Nelson will post a supersedeas bond pursuant to NRCP 62 should the court grant the
22 stay of execution.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

III. CONCLUSION

Based on the foregoing, this Court should deny the Motion for Order Allowing Examination of Judgment Debtor and grant the Countermotion to stay execution of the judgment pursuant to NRAP 8.

Dated this 2nd day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Ph: (702) 731-2333
*Attorneys for the Lynita S. Nelson Nevada
Trust Dated May 30, 2001*

**DECLARATION OF COUNSEL SUPPORTING OPPOSITION TO MOTION FOR
ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S.
NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE
OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND
COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8**

Matthew D. Whittaker, being first duly sworn, deposes and says:

That I have been recently retained by Lynita Nelson on behalf of the Lynita S. Nelson Nevada Trust dated May 30, 2001. I have read the **OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8**, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

SIGNED UNDER THE PENALTY OF PERJURY.

Dated this 2nd day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Ph: (702) 731-2333
*Attorneys for the Lynita S. Nelson Nevada
Trust Dated May 30, 2001*

CERTIFICATE OF SERVICE

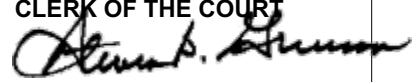
Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on October 2, 2023, a copy of the **OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001, AND COUNTERMOTION TO STAY EXECUTION OF JUDGMENT PURSUANT TO NRAP 8** was e-served and/or mailed by US Priority Mail in Henderson, Nevada to the following individuals and/or entities at the following addresses:

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>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 curtis@pecoslawgroup.com <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

/s/ Michelle Ekanger

An Employee of Michaelson Law



OPPS

Stacy Howlett, Esq.
Nevada Bar No. 8502
Email: stacy@michaelsonlaw.com
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
Email: matthew@michaelsonlaw.com
MICHAELSON LAW
1746 W. Horizon Ridge Parkway
Henderson, Nevada 89012
Ph: (702) 731-2333
Fax: (702) 731-2337

**DISTRICT COURT
FAMILY DIVISION
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,

LYNITA SUE NELSON,

Cross-defendant

District Court Case No.: D-09-411537-D

**OPPOSITION TO PLAINTIFF ERIC
NELSON, IN HIS INDIVIDUAL
CAPACITY, MOTION FOR AN
EQUITABLE OFFSET**

Lynita Nelson as investment Trustee of The Lynita S. Nelson Nevada Trust Dated May 30, 2001 ("LSN Trust") by and through its attorneys, Stacy Howlett, Esq. and Matthew D. Whittaker, Esq. of Michaelson Law, hereby submits this Opposition to Plaintiff Eric Nelson, in His Individual Capacity, Motion for an Equitable Offset.

This Opposition is made and based on the papers and pleadings on file in the above-captioned case, the Memorandum of Points and Authorities below, and upon such oral argument

as the Court may entertain at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By judgment in this case, Mr. Nelson owes Ms. Nelson over \$1 million in alimony, child support arrears, and attorney's fees. Yet, Mr. Nelson has the audacity to file this motion for an "equitable offset" where his requested relief is anything but equitable. Child support orders cannot be subject to equitable offset. Even if not, any equitable offset should apply to the over \$1 million Mr. Nelson owes to Ms. Nelson in alimony.

II. STATEMENT OF FACTS

The parties are where they are today because Mr. Nelson is an abusive ex-husband. The entire reason why the court ordered ELN Trust to pay Mr. Nelson's debts to Ms. Nelson is because the trial court did not find Mr. Nelson to be an honest and outstanding guy. The court found Mr. Nelson to be "at the very least . . . less than truthful with this Court" about the ELN Trust's financial position. *See* Decree of Divorce at 24:3. The court found that Mr. Nelson attempted to circumvent the injunction and "clearly reflect that Mr. Nelson lacks credibility." *Id.*, 24:16-17. The court further found that "Mr. Nelson's behavior and conduct during the course of these proceedings has been deplorable. This Court has observed Mr. Nelson angrily bursting from the courtroom following hearings." *Id.*, 25:7-9. Mr. Nelson also exhibited "inappropriate conduct towards opposing counsel . . . including cursing at him, leave bulgar voice messages on his office phone and challenging him to a fight in the parking lot of his office." *Id.*, 25:9-12. The court then set off the last decade of litigation in this matter because it ordered Mr. Nelson's trust to pay Mr. Nelson's debts to Ms. Nelson because the Court believed Mr. Nelson would simply deplete his own personal assets to avoid paying Ms. Nelson. *Id.*, 39:6-26.

In 2013, this Court issued a Decree of Divorce awarding Ms. Nelson alimony in the amount of \$800,000, child support arrears in the amount of \$87,775, and attorney's fees in the amount of \$144,967.00 (for a total of \$1,032,742.00) against Mr. Nelson. All of which was to be paid by Mr. Nelson within 30 days of the entry of the Decree of Divorce.

As of January 18, 2022, this Court ordered that Mr. Nelson owed Ms. Nelson

1 \$1,181,380.91 in spousal support (calculated as \$800,000 plus \$381,380.91 in interest), or
2 alternatively, \$719,978.24 in spousal support (calculated as \$800,000 less the \$324,000 previously
3 paid by ELN Trust plus \$247,978.24 in interest). As the \$324,000 was never credited to Mr.
4 Nelson's judgment owed, the \$1,181,380.91 is the appropriate number.

5 As Mr. Nelson concedes in his motion, he did not obey the Decree of Divorce and pay the
6 money to Ms. Nelson. The \$87,775 has grown to \$181,057.31 due to the accrual of interest.

7 Mr. Nelson's debt for spousal support, child support arrears, and attorney's fees continues
8 to grow through interest. Accordingly, Mr. Nelson owes Ms. Nelson well over \$1 million.

9 Mr. Nelson's real motivation for filing this motion is gaming license related. Instead of
10 doing the honest thing and paying his debts, Mr. Nelson seeks an "equitable offset" only for the
11 child support arrears due to gaming license issues in his business ventures.

12 **III. LEGAL ARGUMENT**

13 **A. Child Support Arrears Cannot be Offset**

14 NRS 125B.140(1)(a) provides:

15 If an order issued by a court provides for payment for the support of a child, that
16 order is a judgment by operation of law on or after the date a payment is due. Such
17 a judgment may not be retroactively modified or adjusted and may be enforced in
the same manner as other judgments of this State.

18 NRS 425.560(2) provides only a few ways that a person in child support arrears may come
19 current:

20 2. A person who is in arrears in the payment for the support of one or more children
may satisfy the arrearage by:

21 (a) Paying all of the past due payments;

22 (b) If the person is unable to pay all past due payments:

23 (1) Paying the amounts of the overdue payments for the preceding 12 months
which a court has determined are in arrears; or

24 (2) Entering into and complying with a plan for the repayment of the arrearages
which is approved by the district attorney or other public agency enforcing the order; or

25 (c) If the arrearage is for a failure to provide and maintain medical insurance, providing
proof that the child is covered under a policy, contract or plan of medical insurance.

26 Accordingly, this Court's order providing for payment for child support in arrears cannot be
27 modified by equitable offset because the amount in arrears cannot be retroactively modified or
28

1 adjusted. Therefore, the Court lacks jurisdiction and authority to entertain and grant Mr. Nelson's
2 Motion.

3 **B. Eric's Requested Relief is Anything but Equitable**

4 Even if the Court entertains the motion, Equitably offsets are to be just that – equitable.
5 *See John W. Muije, Ltd. v. A N. Las Vegas Cab Co.*, 106 Nev. 664, 666, 799 P.2d 559, 560 (1990)
6 (quoting *Salaman v. Bolt*, 74 Cal.App.3d 907, 141 Cal.Rptr. 841 (1977) for the proposition that
7 equitable offset “rests upon the inherent power of the court to do justice to the parties before it”).

8 Mr. Nelson's requested relief is far from equitable. Mr. Nelson has only been making
9 payments on the child support arrears because it has been under the purview of the Clark County
10 District Attorney's Office. Mr. Nelson has made no payments on the alimony or attorney's fees.
11 Accordingly, any equitable offset should be applied towards the alimony – the \$800,000 plus
12 interest portion of the judgment against Mr. Nelson that he is likely to never voluntarily pay.

13 **IV. CONCLUSION**

14 Based on the foregoing, this Court should deny Plaintiff Eric Nelson, in His Individual
15 Capacity, Motion for an Equitable Offset.

16 Dated this 2nd day of October, 2023.

17 MICHAELSON LAW

18 */s/ Matthew D. Whittaker*

19 _____
20 Stacy Howlett, Esq.
21 Nevada Bar No. 8502
22 Matthew D. Whittaker, Esq.
23 Nevada Bar No. 13281
24 1746 W. Horizon Ridge Parkway
25 Henderson, NV 89012
26 Ph: (702) 731-2333

27 *Attorneys for Lynita Nelson, individually and*
28 *as investment trustee the Lynita S. Nelson*
Nevada Trust Dated May 30, 2001

DECLARATION OF COUNSEL SUPPORTING OPPOSITION TO PLAINTIFF ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR AN EQUITABLE OFFSET

Matthew D. Whittaker, being first duly sworn, deposes and says:

That I have been recently retained by Lynita Nelson on behalf of the Lynita S. Nelson Nevada Trust dated May 30, 2001. I have read the **OPPOSITION TO PLAINTIFF ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR AN EQUITABLE OFFSET**, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

SIGNED UNDER THE PENALTY OF PERJURY.

Dated this 2nd day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Ph: (702) 731-2333

*Attorneys for Lynita Nelson, individually and
as investment trustee the Lynita S. Nelson
Nevada Trust Dated May 30, 2001*

CERTIFICATE OF SERVICE

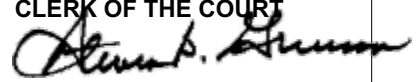
Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on October 2, 2023, a copy of the **OPPOSITION TO PLAINTIFF ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR AN EQUITABLE OFFSET** was e-served and/or mailed by US Priority Mail in Henderson, Nevada to the following individuals and/or entities at the following addresses:

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>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 curtis@pecoslawgroup.com <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

/s/ Matthew Whittaker

An Employee of Michaelson Law



OPPC

Stacy Howlett, Esq.
Nevada Bar No. 8502
Email: stacy@michaelsonlaw.com
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
Email: matthew@michaelsonlaw.com
MICHAELSON LAW
1746 W. Horizon Ridge Parkway
Henderson, Nevada 89012
Ph: (702) 731-2333
Fax: (702) 731-2337

*Attorneys for Lynita Nelson, individually and
as investment trustee the Lynita S. Nelson Nevada Trust Dated May 30, 2001*

**DISTRICT COURT
FAMILY DIVISION
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,

LYNITA SUE NELSON,

Cross-defendant

District Court Case No.: D-09-411537-D

**OPPOSITION TO MATT KLABACKA,
DISTRIBUTION TRUSTEE OF THE
ERIC L. NELSON NEVADA TRUST'S
MOTION TO CONVEY PROPERTIES
TITLED IN THE NAME OF PINK
PEONIES, LLC/PINK PEONIES-
WYOMING, LLC AND SOUTHERN
MAGNOLIA, LLC
AND
COUNTERMOTION FOR SANCTIONS
PURSUANT TO EDCR 5.219**

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE
CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR
RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE
A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR
RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING

1 GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED
2 HEARING DATE.

3 Lynita Nelson, individually and as investment trustee of the Lynita S. Nelson Nevada Trust
4 Dated May 30, 2001 ("LSN Trust") by and through attorneys, Stacy Howlett, Esq. and Matthew
5 D. Whittaker, Esq. of Michaelson Law, hereby submits this Opposition to Matt Klabacka,
6 Distribution Trustee of The Eric L. Nelson Nevada Trust's Motion to Convey Properties Titled in
7 the Name of Pink Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC and
8 Countermotion for Sanctions Pursuant to EDCR 5.219.

9 This Opposition and Countermotion are made and based on the papers and pleadings on
10 file in the above-captioned case, the Memorandum of Points and Authorities below, and upon such
11 oral argument as the Court may entertain at the hearing on this matter.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 Matt Klabacka filed this motion without statutory and legal standing to do so and therefore
15 should not only have this motion denied but also sanctioned for his harassing conduct. Mr.
16 Klabacka's motion is primarily brought pursuant to NRS 164.015 and NRS 153.031. Nevada law
17 expressly limits who is authorized to bring petitions pursuant to those statutes. Mr. Klabacka is
18 aware that he is not one of the statutorily authorized persons. Mr. Klabacka's alternative request
19 to find third party entities as the alter ego of Ms. Nelson and LSN Trust is similarly rejected by the
20 Nevada Supreme Court as a violation of due process rights. Similarly, Mr. Klabacka's fraudulent
21 transfer claim is time barred. Accordingly, his egregious and intentional misstatement of law in
22 his motion proves he filed the motion only to harass Ms. Nelson.

23 **II. STATEMENT OF FACTS AND LEGAL ARGUMENT**

24 Mr. Klabacka's Motion asks the Court to determine that certain property is the property of
25 LSN Trust or, alternatively, third-party entities are the alter egos of Ms. Nelson and/or LSN Trust
26 and any property transferred to those third-party entities in 2015 and 2017 was either fraudulent
27 or in violation of the Joint Preliminary Injunction. All arguments fail explicitly as a matter of law
28 and fact. First, Mr. Klabacka lacks statutory standing to bring a motion pursuant to NRS Chapters

1 153 and 164. Second, Mr. Klabacka's alter ego claim violates the due process rights for the third-
2 party entities and has been expressly rejected by the Nevada Supreme Court. Third, Mr. Klabacka's
3 fraudulent transfer claims are time barred. Fourth, Mr. Klabacka failed to allege a violation of the
4 JPI.

5 **A. Mr. Klabacka lacks statutory authorization and standing to file this motion.**

6 Mr. Klabacka filed this motion pursuant to NRS 164.015 that authorizes only interested
7 persons concerning the internal affairs of a nontestamentary trust to petition the court "for a ruling
8 that property not formally titled in the name of a trust or its trustee constitutes trust property." *See*
9 NRS 164.015.

10 Mr. Klabacka is not an interested person of LSN Trust and therefore lacks statutory
11 standing to bring this motion. NRS Chapter 164 expressly defines an "'interested person' [to mean]
12 a settlor, trustee, beneficiary or any other person to whom the court directs that notice be given."
13 *See* NRS 164.037. Mr. Klabacka is not the settlor, trustee, beneficiary, or person that a court has
14 directed that notice be given.

15 Even more egregious is Mr. Klabacka's reliance on NRS 153.031 as the basis for asking
16 the court to review the acts of the LSN Trust. NRS 153.031 explicitly provides that only "a trustee
17 or beneficiary" may petition the court pursuant to that statute. Mr. Klabacka is not a trustee or
18 beneficiary of the LSN Trust and therefore has no standing to bring a petition pursuant to NRS
19 153.031.

20 **B. Likewise, Mr. Klabacka's request for this Court to find third party entities to**
21 **be the alter ego of Lynita Nelson and the LSN Trust explicitly violates**
22 **Nevada's due process laws and must be summarily rejected.**

23 Alternatively to the misplaced requests above, Mr. Klabacka takes another step in the
24 wrong direction by asking this Court to find that third party entities are the alter ego of Ms. Nelson
25 and LSN Trust. This request expressly violates Nevada law.

26 The Nevada Supreme Court unequivocally rejected Mr. Klabacka's position in *Callie v.*
27 *Bowling*, 123 Nev. 181, 160 P.3d 878 (2007). In that case, the judgment creditor attempted to do
28

1 exactly what Mr. Klabacka does here – ask the court to add third party entities as judgment debtors
2 pursuant to an alter ego theory. The Nevada Supreme Court reversed the trial court’s order granting
3 the relief and stated that “judgment creditors who wish to assert an alter ego claim must do so in
4 an independent action against the alleged alter ego.” *Id.*, at 182, 160 P.3d at 879. The Nevada
5 Supreme Court stated it is a violation of the nonparty’s due process rights to do exactly what Mr.
6 Klabacka asks here. *Id.*

7 Accordingly, it is reversible error and a violation of due process laws for this Court to
8 entertain Mr. Klabacka’s request to find nonparties to be the alter ego of Ms. Nelson and LSN
9 Trust.

10 **C. With a similar fate, Mr. Klabacka’s fraudulent transfer claim is time barred.**

11 Mr. Klabacka alleges that LSN Trust fraudulently transferred property to third party entities
12 in 2015 and 2017 with the actual intent to defraud ELN Trust from pursuing collection of a
13 judgment that was not entered until July 2023.

14 Mr. Klabacka’s request six to eight years after the fact makes this motion untimely. A
15 fraudulent transfer claim is only timely if brought within four years after the transfer¹. *See* NRS
16 112.230(1)(a). Accordingly, Mr. Klabacka’s claims are two to four years past the four-year statute
17 of limitation.

18 Mr. Klabacka may attempt to argue that the four-year statute of limitations was tolled
19 because he did not discover the transfer until Ms. Nelson’s deposition in March 2022. Even if true,
20 the statute of limitations would have expired one year from the date of discovery. *See* NRS
21 112.230(1)(a). Ms. Nelson’s deposition occurred on March 10, 2022. Mr. Klabacka did nothing
22 until filing this Motion on September 22, 2023. Even in this scenario, Mr. Klabacka’s fraudulent
23

24
25 ¹ The statute also references when the “obligation was incurred” as measurement for when the time
26 period begins to run. *See* NRS 112.230(1)(a). Mr. Klabacka may attempt to wrongfully claim that
27 “obligation” refers to the judgment ELN Trust has against Ms. Nelson or LSN Trust. Such a
28 definition for “obligation” would also be incorrect. In NRS Chapter 112, “obligation” refers to an
obligation the judgment debtor incurred with an intent to hinder, delay, or defraud the creditor or
without reasonably equivalent value. *See* NRS 112.180(1). It is not in reference to an obligation to
pay the judgment creditor.

1 transfer claim is more than six months after the statute of limitations.

2 **D. Ms. Nelson, individually or on behalf of the LSN Trust, did not violate the**
3 **Joint Preliminary Injunction because one did not exist at the time of transfer.**

4 Mr. Klabacka provides few details about his allegation that Ms. Nelson and the LSN Trust
5 violated the Joint Preliminary Injunction because Mr. Klabacka is fully aware that no such
6 violation occurred.

7 At the time of transfers in 2015 and 2017, there was no JPI in place. The Court issued the
8 initial JPI on May 8, 2010. Upon remand, Ms. Nelson filed a motion for a new JPI on July 31,
9 2017. The Court did not issue another JPI until May 22, 2018 when it ordered a JPI only on the
10 Lindell properties and the Banone properties. Ms. Nelson then filed for reconsideration to expand
11 all property listed in the divorce decree. The Court denied the Motion. The Nevada Supreme Court
12 granted Ms. Nelson's Petition for Writ of Mandamus on April 1, 2021 and directed the clerk to
13 enter a JPI over all trust property until the court made a ruling on community property in the trusts.

14 Additionally, the only evidence before the Court precludes a finding that Ms. Nelson or
15 LSN Trust violated the JPI. The only evidence Mr. Klabacka produces is Ms. Nelson's deposition
16 testimony that LSN Trust owns the entities that then own the properties at issue and deeds that say
17 the transfers occurred.

18 **III. COUNTERMOTION FOR SANCTIONS PURSUANT TO EDCR 5.219**

19 EDCR 5.219(a) provides that a party may be sanctioned, after notice and an opportunity to
20 be heard, for unexcused intentional or negligent conduct including presenting a position that is
21 obviously frivolous, unnecessary, or unwarranted.

22 Mr. Klabacka should be sanctioned because he filed this motion that is replete with
23 argument after argument that is obviously frivolous. His entire legal basis for filing the motion
24 (pursuant to NRS Chapter 153 and 164, alter ego law, and fraudulent transfer statutes) are
25 obviously frivolous because Nevada law so resoundingly and explicitly provides that Mr. Klabacka
26 lacked the standing, forum, or statute of limitations to bring all of those claims. Because Mr.
27 Klabacka did so, the intent of his motion can only reasonably be assumed to harass Mr. Nelson.
28 For that reason, Ms. Nelson asks the Court to sanction Mr. Klabacka in the amount of fees and

costs incurred by Ms. Nelson to oppose the Motion – to be supported by the necessary analysis and invoices submitted once Ms. Nelson realizes the full cost of defeating this frivolous motion.

IV. CONCLUSION

Based on the foregoing, this Court should deny Matt Klabacka, Distribution Trustee of The Eric L. Nelson Nevada Trust’s Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC and grant Ms. Nelson’s counter-motion for sanctions against Mr. Blabacka pursuant to EDCR 5.219.

Dated this 6th day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Ph: (702) 731-2333

*Attorneys for Lynita Nelson, individually and
as investment trustee the Lynita S. Nelson
Nevada Trust Dated May 30, 2001*

**DECLARATION OF COUNSEL SUPPORTING OPPOSITION TO MATT KLABACKA,
DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST'S MOTION
TO CONVEY PROPERTIES TITLED IN THE NAME OF PINK PEONIES, LLC/PINK
PEONIES-WYOMING, LLC AND SOUTHERN MAGNOLIA, LLC AND
COUNTERMOTION FOR SANCTIONS PURSUANT TO EDCR 5.219**

Matthew D. Whittaker, being first duly sworn, deposes and says:

That I have been retained by Lynita Nelson. I have read the **OPPOSITION TO MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST'S MOTION TO CONVEY PROPERTIES TITLED IN THE NAME OF PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC AND SOUTHERN MAGNOLIA, LLC AND COUNTERMOTION FOR SANCTIONS PURSUANT TO EDCR 5.219**, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

SIGNED UNDER THE PENALTY OF PERJURY.

Dated this 6th day of October, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Ph: (702) 731-2333

*Attorneys for Lynita Nelson, individually and
as investment trustee the Lynita S. Nelson
Nevada Trust Dated May 30, 2001*

CERTIFICATE OF SERVICE

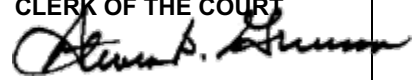
Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on October 6, 2023, a copy of the **OPPOSITION TO MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST'S MOTION TO CONVEY PROPERTIES TITLED IN THE NAME OF PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC AND SOUTHERN MAGNOLIA, LLC AND COUNTERMOTION FOR SANCTIONS PURSUANT TO EDCR 5.219** was e-served and/or mailed by US Priority Mail in Henderson, Nevada to the following individuals and/or entities at the following addresses:

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>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 curtis@pecoslawgroup.com <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

/s/ Matthew Whittaker

An Employee of Michaelson Law



Jeffrey P. Luszeck, Esq. (#9619)
jluszeck@sdfnvlaw.com
SOLOMON DWIGGINS FREER & STEADMAN, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

*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

Oral Argument Requested?

☒ Yes ☐ No

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**REPLY TO OPPOSITION TO MOTION FOR ORDER ALLOWING
EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON,
INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE
OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001;
AND OPPOSITION TO COUNTERMOTION TO STAY EXECUTION OF
JUDGMENT PURSUANT TO NRAP 8**

Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 (the “ELN Trust” or “Judgment Creditor”), hereby submits this Opposition to Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in Her Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001, and Opposition to Countermotion to Stay Execution of Judgment Pursuant to NRAP 8.

This Reply and Opposition are based on the following Memorandum of Points and Authorities, the papers and pleadings on file and upon such oral argument as the Court may entertain at the hearing on this matter.

DATED this 9th day of October, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Jeffrey P. Luszeck

By: _____

Jeffrey P. Luszeck, Esq. (#09619)

jluszeck@sdfnvlaw.com

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*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RESPONSE TO THE LSN TRUST'S FALSE AND MISLEADING STATEMENT OF FACTS

The Opposition's Statement of Facts makes it appear as if the LSN Trust's new Counsel did not read the Motion for Order Allowing Examination of Judgment Debtor, or have a firm grasp regarding the procedural history in this matter. It is important to note that Lynita, individually, did not file an Opposition to the Motion for Order Allowing Examination of Judgment Debtor, and such a failure to

In case there is any misunderstanding, the Motion for Order Allowing Examination of Judgment Debtor has nothing to do with Eric's individual obligations, or the LSN Trust's reliance on certain findings in the Honorable Frank Sullivan's June 3, 2013, Divorce Decree, which were largely reversed and remanded in *Klabacka v. Nelson*, 133 Nev. Adv. Op. 24 (May 25, 2017). The Motion for Order Allowing Examination of Judgment Debtor merely requested the production of certain documentation/information and the ability to conduct a judgment debtor examination pursuant to NRS 21.270 for the \$1,748,279.06 owed by Lynita/the LSN Trust to the ELN Trust.

Indeed, a debtor examination is being request not as a result of "revenge," but the fact that Lynita and the LSN Trust owe the ELN Trust \$1,748,279.06, which is broken down as follows:

- \$493,216.00, *see* Motion for Debtor Examination at Ex. 1, June 8, 2023 Order;

- \$62,935.08, *see* Motion for Debtor Examination at Ex. 2, July 27, 2023 Cost Order;
- \$239,772.30, *see* Motion for Debtor Examination at Ex. 3, July 27, 2023 Attorneys' Fees Order; and
- \$952,355.68, *see* Motion for Debtor Examination at Ex. 4, August 2, 2023 Order.

TOTAL: \$1,748,279.06

It is important to note that the LSN Trust did not appeal the June 8, 2023 Order (in the amount of \$493,216.00) or the July 27, 2023 Cost Order (in the amount of \$62,935.08). Further, although the LSN Trust appealed the August 2, 2023 Order, said appeal is limited to the interest in the amount of \$370,057.81, not principal in the amount of \$582,928.05, that Lynita/the LSN Trust were ordered to pay.

In conclusion, although there are judgments against Lynita/the LSN Trust in favor of the ELN Trust in the cumulative amount of \$1,748,279.06, the LSN Trust has only appealed \$609,830.11 of said judgments (\$239,772.30 in attorneys' fees, *see* Motion for Debtor Examination at Ex. 3, July 27, 2023 Attorneys' Fees Order, and \$370,057.81 in interest, *see* Motion for Debtor Examination at Ex. 4, August 2, 2023 Order). Therefore, even if the LSN Trust succeeds on its appeal, the LSN Trust will still owe the ELN Trust \$1,138,448.95 pursuant to the June 8, 2023 Order and July 27, 2023 Cost Order, neither of which were appealed, and the principal amount identified in the August 2, 2023 Order.

///

///

///

II. LEGAL ARGUMENT

A. THE LSN TRUST'S CONTENTION THAT THE REQUEST FOR DEBTOR EXAMINATION GOES "BEYOND THE STATUTORY ALLOWANCE OF NRS 21.270 IS FACTUALLY AND LEGAL ERRONEOUS.

The LSN Trust's only real objection to the debtor examination proceeding is that the judgment debtor examination goes "beyond the statutory allowance of NRS 21.270" because of its mistaken belief that neither SOUTHERN MAGNOLIA, LLC nor PINK PEONIES, LLC are "privy to this matter or the judgments" or "are reasonably calculated to identify executable assets of Ms. Nelson or LSN Trust." The LSN Trust's argument regarding this issue is intellectually dishonest as Ms. Nelson testified that said entities were in fact owned by the LSN Trust. Indeed, during her deposition on March 10, 2022, Lynita testified that she had transferred (1) the Mississippi Properties from the LSN Trust to SOUTHERN MAGNOLIA, LLC or the Wyoming Properties from the LSN Trust to PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC. Specifically, as it relates to the Mississippi Properties Lynita testified as follows:

Q. Okay. And then similarly, what is Southern Magnolia, LLC?

A. What do I hold in that? Is that what you're saying?

Q. Sure. What is --

A. When you ask what it is, it's an LLC.

Q. What is it -- what is the purpose of Southern Magnolia, LLC?

A. It holds the properties and the land in Mississippi.

Q. All of the Mississippi properties?

A. Yes.

1 Q. And when was that founded?

2 A. I won't be able to give you dates on that. That's not
3 something that I remember.

4 Q. Was it founded prior to the decree of divorce that was
5 issued by Judge Sullivan?

6 A. No. I don't think so. I don't want to say "no" or "yes." I
7 don't know.

8 Q. Does Southern Magnolia, LLC, hold any other assets
9 other than Mississippi properties?

10 A. Just the -- just the Mississippi properties, that I know of.¹

11 . . .

12 Q. So let's go back. Pink Peonies, LLC, is an LSN Trust
13 entity?

14 A. It's underneath.

15 Q. It's underneath what?

16 A. It's held underneath the trust.

17 Q. LSN Trust?

18 A. Uh-huh.

19 Q. Okay. What about Southern Magnolia, LLC?

20 A. They all are, yeah.

21 Q. Okay. They're all LSN Trust entities?

22 A. Well, they're held underneath that trust. That's -- I mean, I
23 could not do anything otherwise.

24 Q. Okay.

25 A. That would be the only honest thing to do.²

26 . . .

27 Q. Just so we're clear, we have the -- sorry. I need to pull up
28 my notes -- Southern Magnolia, LLC?

A. Yes.

Q. That holds which property? I'm sorry. Is that the
Mississippi property?

¹ See Lynita's Deposition Transcript dated March 10, 2022, select portions of which are attached hereto as **Exhibit 7**, at 56:20-57:18.

² See *id.* at 65:7-20.

1 A. It's okay. Yeah.³

2 Similarly, in regards to PINK PEONIES, LLC/PINK PEONIES-WYOMING,
3
4 LLC Lynita testified as follows:

5 Q. Do you -- have you formed any other LLCs? Do you
6 currently have any other LLCs --

7 A. I have another, uh-huh.

8 Q. -- I guess would be proper.

9 A. Pink Peonies Wyoming.

10 Q. And what does Pink Peonies Wyoming hold?

11 A. The land in Wyoming.

12 Q. All of the Wyoming properties, or is it just one?

13 A. It's 200 acres plus. It's, like, 202-point-something.
14 It's the land, you know.

15 Q. Does it hold anything else other than that 200 acres?

16 A. No.⁴

17 ...

18 Q. And then the Wyoming properties, do you believe they
19 went directly from Pink Peonies Wyoming to the -- I'm
20 sorry. Do you think it went directly from LSN Trust to
21 Pink Peonies Wyoming, LLC, or do you believe it went
22 through the One Oak Tree Lane Trust?

23 A. You know, I don't think it did. I think just because
24 Pebble Beach was here in town, I did that, but I would
25 have to look it up myself, honestly.

26 Q. As you sit there today, are you certain that the Wyoming
27 properties are held by Pink Peonies Wyoming, LLC, at
28 this juncture?

A. Yeah. Do I believe, did you say? Or what did you say?

Q. Are you certain? I mean, do you know that they're
actually held by that LLC?

³ See *id.* at 75:16-22.

⁴ See *id.* at 58:3-16.

1 A. Yeah. I mean, the last time I looked, they were. It was
2 Pink Peonies, yeah -- Pink Peonies Wyoming.⁵

3 Despite Lynita's testimony that the Mississippi Properties, which are titled in
4 the name of the SOUTHERN MAGNOLIA, LLC, and Wyoming Properties, which
5 are titled in the name of PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC,
6 were held under the umbrella of the LSN Trust, none of the documentation that has
7 been produced by Lynita confirms the same. It is for this reason that a debtor
8 examination is being requested along with the production of certain information and
9 documentation relating to SOUTHERN MAGNOLIA, LLC or PINK PEONIES,
10 LLC/PINK PEONIES-WYOMING, LLC.

11 B. THE LSN TRUST IS NOT ENTITLED TO A STAY UNDER NRAP
12 8(c).

13 In deciding whether to grant a stay, this Court considers the following factors
14 set forth in NRAP 8(c): (1) Whether the objection of the appeal will be defeated if
15 the stay is denied; (2) Whether appellant will suffer irreparable or serious injury if
16 the stay is denied; (3) Whether respondent will suffer irreparable or serious injury if
17 the stay is granted; and (4) Whether appellant is likely to prevail on the merits. *See*
18 *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). *See also*
19 NRAP 8(c). The Nevada State Legislature has correlated similar stay factors with
20 the legal test for entering an injunction. *See* NRS 233B.140(2) ("In determining
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____

27
28 ⁵ *See id.* at 75:15-76:9.

whether to grant a stay, the court shall consider the same factors as are considered for a preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure.”). Further, there is no automatic stay or entitlement to a stay relating to trust matters. See NRS 155.195 (“Unless otherwise ordered by the court, an appeal pursuant to NRS 155.190 does not stay any order or proceeding in the estate or trust.”).

Upon the weighing of the NRAP 8(c) factors, this Court should deny the LSN Trust’s Countermotion to Stay Execution of Judgment.

1. The Object of the LSN Trust’s Appeal Will Not Be Defeated and It Will Not Suffer Irreparable Harm if a Stay is Denied.

As set forth in the Motion for Order Allowing Debtor Examination, the ELN Trust is seeking documentation/information relating to assets titled in the name of the LSN Trust and the ability to take a debtor examination of Lynita, individually, and in her capacity as Investment Trustee of the LSN Trust. The Motion for Order Allowing Debtor Examination is not seeking to “sell a home” or execute any of the judgments entered by the Court as the LSN Trust alludes to in its Opposition. See Opposition at 4:16-23.

Even if that was the ELN Trust’s goal, however, allowing the ELN Trust to conduct a debtor examination would not defeat the appeal because even if the LSN Trust is successful on appeal it will still owe the ELN Trust \$1,138,448.95.

///

///

1 2. *The ELN Trust Will Be Injured if a Stay is Imposed.*

2 Unlike the LSN Trust, the ELN Trust will be injured if a stay is imposed
3
4 because the LSN Trust has already transferred assets from the LSN Trust to other
5 LLC's. Specifically, as indicated *supra*, Lynita testified on March 10, 2022, that she
6 transferred the Mississippi Properties from the LSN Trust to SOUTHERN
7 MAGNOLIA, LLC and the Wyoming Properties from the LSN Trust to PINK
8 PEONIES, LLC/PINK PEONIES-WYOMING, LLC. As such, the ELN Trust is
9 concerned that if a stay is imposed the LSN Trust will continue to transfer assets
10 outside this Court's purview thereby making it impossible for the ELN Trust to
11 collect.
12

13
14 Further, and more importantly, a stay would also hinder the ELN Trust's ability
15 to collect the \$1,138,448.95 that is not subject to the appeal.
16

17 3. *The LSN Trust is Not Likely to Prevail on the Merits of Its Appeal.*

18 As a final argument, the LSN Trust (with no real analysis) contends that a stay
19 should issue because it is likely to prevail on the merits of its appeal relating to
20 attorneys' fees and interest. Once again, even if successful on appeal the LSN Trust
21 will still owe the ELN Trust \$1,138,448.95.
22
23

24 i. This Court Correctly Found that the ELN Trust is Entitled
25 to Attorneys' Fees.

26 The LSN Trust has apparently forgotten that it also filed a Motion for
27 Attorneys' Fees against Eric/the ELN Trust on virtually identical grounds as Eric/the
28

ELN Trust, but said motion was denied. Now that Lynita/the LSN Trust's Motion for Attorneys' Fees is denied, however, she contends that the ELN Trust is not entitled to its attorneys' fees pursuant to NRS 18.010 or EDCR 5.219. Since the LSN Trust has failed to provide any argument regarding this issue as required by as required by the Eighth Judicial Court rules, the ELN Trust is unable to rebut the same and relies on the analysis contained within this Court's twenty-two (22) page Order After Hearing Granting ELN Trust's Request for an Award of Attorney's Fees entered on July 27, 2023.

ii. The ELN Trust is Entitled to Interest on the Money Owed by Lynita/the LSN Trust.

As this Court is certainly aware, the ELN Trust is owed substantial interest on any amounts owed by Lynita/LSN Trust for property transfers vacated on appeal, namely, Banone, LLC, Lindell Property, security deposit, Farmouth Circle Note and \$75,000.00 paid to the LSN Trust by Banone-AZ, LLC. For years, Lynita/the LSN Trust enjoyed – and the ELN Trust was denied – the use of the transferred property, including rent generated by those properties. Nevada recognizes in both statutory and case law that time has monetary value and compensates for lost time by awarding interest. *See, e.g.*, NRS 17.130(1) (calculating interest when no other rate of interest is provided by law or contract); *Powers v. United Services Automobile Association*, 114 Nev. 690, 705-06, 962 P.2d 596, 605-06 (1998) (noting the purpose of post-judgment interest is compensation for the loss of the use of awarded money).

1 The LSN Trust cites NRAP 37 in an attempt to avoid returning the full value
2 of the property. NRAP 37 provides:

- 3
- 4 (a) When the Court Affirms. Unless the law provides otherwise, **if a**
5 **money judgment in a civil case is affirmed**, whatever interest is
6 allowed by law is payable from the date when the district court's
7 judgment was entered.
- 8 (b) When the Court Reverses. If the court modifies or reverses a
9 judgment **with a direction that a money judgment be entered** in
10 the district court, the mandate must contain instructions about the
11 allowance of interest.

12 (Emphasis Added). Thus, for NRAP 37 to apply, the Nevada Supreme Court must
13 either affirm a money judgment or direct this Court to enter a money judgment. *See,*
14 *e.g., Polk v. Armstrong*, 91 Nev. 557, 563, 540 P.2d 96, 100 (1975) (directing trial
15 court to determine monetary damages and add interest); *Hellman v. Capurro*, 92 Nev.
16 314, 317, 549 P.2d 750, 752 (1976) (directing payment of specific monetary amount
17 but no interest); *Mountain Shadows of Incline v. Kopsho*, 92 Nev. 599, 601, 555 P.2d
18 841, 842 (1976) (directing money judgement and interest); *Weaver v. State Indus.*
19 *Ins. Sys.*, 104 Nev. 305, 306, 756 P.2d 1195, 1196 (1988) (affirming money judgment
20 but not interest); *Schiff v. Winchell*, 126 Nev. 327, 330, 237 P.3d 99, 101 (2010)
21 (affirming money judgment and interest). Either way, there must be a money
22 judgment from the Nevada Supreme Court.

23
24 Here, the Nevada Supreme Court vacated an order, namely the Divorce
25 Decree, but did not affirm or direct the entry of a money judgment thereby making
26 NRCP 37 inapplicable.
27
28

1 As a final matter, it is inconsistent for Lynita to demand that Eric pay interest
2 on child support and alimony from June 3, 2013 through present on one hand, and
3 then take the position that she does not have to pay interest on money that she/the
4 LSN Trust collected and utilized nearly a decade ago on the other hand.

5
6 C. ALTERNATIVELY, IF THE COURT GRANTS A STAY THE LSN
7 TRUST SHOULD BE REQUIRED TO POST A BOND FOR THE
8 AMOUNTS AT ISSUE IN THE APPEAL, INTERESTS AND
9 DAMAGES FOR DELAY.

10 If after weighting the NRAP 8(c) factors, the Court is inclined to enter a stay,
11 the next step is to determine the sufficiency of the bond or security. *See State ex rel.*
12 *Public Serv. Comm'n*, 94 Nev. at 44, 574 P.2d at 274 (“the sufficiency and amount
13 of the supersedeas bond are secondary and a distinctly separate consideration from
14 the issue of entitlement to a stay.”). As a matter of law, an appropriate bond amount
15 includes the whole amount of the judgment remaining unsatisfied, costs on the
16 appeal, interest, and damages for delay. *See Poplar Grove Planting and Ref. Co. v.*
17 *Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979).

18
19 Here, although the LSN Trust states that it will pay a supersedeas bond if a stay
20 is granted it fails to identify the amount of the bond or how bond will be posted,
21 especially in light of the fact that the LSN Trust is apparently arguing that neither the
22 Mississippi Properties or Wyoming Property are owned by the LSN Trust. As
23 indicated supra, the LSN Trust’s position is contrary to Lynita’s sworn testimony.

24
25 Assuming the LSN Trust has the ability to post a supersedeas bond, the ELN
26
27
28

Trust submits that the bond must be no less than \$709,830.11 (\$239,772.30 in attorneys' fees, *see* Motion for Debtor Examination at Ex. 3, July 27, 2023 Attorneys' Fees Order, and \$370,057.81 in interest, *see* Motion for Debtor Examination at Ex. 4, August 2, 2023 Order) plus costs on appeal, interest and damages for delay in the approximate amount of \$100,000.00. As such, the supersedeas bond should be no less than \$709,830.11.

III. CONCLUSION

Based upon the foregoing, the ELN Trust respectfully requests that this Court grant its Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, individually, and in her capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30, 2001, in its entirety. Once again, it is important to note that Lynita, individually, never objected to said relief.

The ELN Trust additionally requests that this Court deny the Countermotion to Stay in its entirety.

DATED this 9th day of October, 2023.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.
/s/ Jeffrey P. Luszeck

By: _____
Jeffrey P. Luszeck, Esq. (#09619)
jluszeck@sdfnvlaw.com
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 October 9, 2023, I caused to be served a true and correct copy of the **REPLY TO OPPOSITION TO MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR, LYNITA S. NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LYNITA S. NELSON NEVADA TRUST DATED MAY 30, 2001** to the following in the manner set forth below:

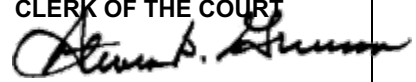
- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Return Receipt Request
- ☒ E-Service through Odyssey eFileNV as follows:

Michelle A. Hauser, Esq.
HAUSER FAMILY LAW
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
michelle@hauserfamilylaw.com

Stacy Howlett, Esq.
Michael Whittaker, Esq.
Michaelson Law
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Las Vegas, Nevada 89134
info@thedklawgroup.com

/s/ Alexandra Carnival

An Employee of SOLOMON DWIGGINS FREER
& STEADMAN, LTD.



Jeffrey P. Luszeck, Esq. (#9619)
jluszeck@sdfnvlaw.com

SOLOMON DWIGGINS FREER & STEADMAN, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

*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

Oral Argument Requested?

☒ Yes ☐ No

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON
NEVADA TRUST'S REPLY TO OPPOSITION TO MOTION TO CONVEY
PROPERTIES TITLED IN THE NAME OF PINK PEONIES LLC/PINK
PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA LLC AND
OPPOSITION TO COUNTERMOTION FOR SANCTIONS**

1 Matt Klabacka, Distribution Trustee Of The ERIC L. NELSON NEVADA
2 TRUST Dated May 30, 2001 ("ELN TRUST"), by and through his Counsel of
3 Record, the law firm of Record, the Law Firm of Solomon Dwiggin Freer &
4 Steadman, Ltd., hereby submits his Reply to Opposition to Motion to Convey
5 Properties Titled in the name of PINK PEONIES LLC/PINK PEONIES-
6 WYOMING, LLC and SOUTHERN MAGNOLIA LLC, and Opposition to
7
8
9 Counter-motion for Sanctions.

10 This Reply is made and based on all the papers and pleadings on file herein,
11 the Memorandum of Points and Authorities submitted herewith, the exhibits
12 provided, and any further evidence and argument as be adduced at the hearing on
13
14 this matter.

15 DATED this 13th day of October, 2023.

16
17 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

18 /s/ Jeffrey P. Luszeck

19 By: _____

Jeffrey P. Luszeck, Esq. (#09619)

jluszeck@sdfnlaw.com

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

23 *Attorneys for Matt Klabacka, Distribution*
24 *Trustee of the ERIC L. NELSON NEVADA*
25 *Trust dated May 30, 2001*
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RESPONSE TO STATEMENT OF FACTS

Like its Oppositions filed on: (1) Plaintiff Eric Nelson, in his Individual Capacity, Motion for an Equitable Offset, and (2) Motion for Order Allowing Examination of Judgment, both of which were filed on October 2, 2023, the instant Opposition fails to analyze the main arguments contained within the Motion to Convey Properties. Specifically, the Opposition does not even try to respond to the fact that Lynita testified, under oath, that PINK PEONIES LLC/PINK PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA LLC are in fact assets of the LSN Trust.

Further, for the first time in this matter, MICHAELSON LAW is apparently taking the position that they now represent “Lynita Nelson, individually,” and as Investment Trustee of the LSN Trust, which is contrary to its Notice of Appearance filed on July 19, 2023¹ and the aforementioned Oppositions filed on

¹ Likewise, on July 20, 2023, the Michaelson Law firm filed its “Motion for Leave to File Supplemental Brief and Motion to Continu Chambers Hearing.” In this pleading, it is clear the Michaelson Law firm represents the LSN Trust. The certificate of service also indicates that Lynita’s attorney of record, Curtis Rawlings and Lynita were served the pleading. On July 21, 2023, an Errata was filed to the motion filed on July 20, 2023. This pleading also makes it clear Michaelson is representing the LSN Trust and Curtis Rawlings, Esq. and Lynita were served this document.

The pleadings filed by the LSN Trust on October 2, 2023, indicate that Michalson Law is not representing Lynita, and Curtis Rawlings was served the pleadings.

1 October 2, 2023. Further, MICHAELSON LAW's position is further perplexing in
2 light of the fact that Curtis Rawlings, Esq. has previously appeared as Counsel for
3 Lynita, individually, and to the ELN Trust's knowledge has never withdrawn as
4 her Counsel².

6 As set forth in the Motion to Convey Properties, the ELN Trust respectfully
7 requests that this Court grant confirm that PINK PEONIES, LLC/PINK PEONIES-
8 WYOMING, LLC and SOUTHERN MAGNOLIA, LLC are assets of the LSN
9 Trust. Alternatively, the ELN Trust respectfully requests that this Court grant the
10 Motion to Convey Properties Titled in the name of PINK PEONIES, LLC/PINK
11 PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC in its entirety
12 by entering an order compelling Lynita to transfer the Mississippi Properties and
13 Wyoming Properties back to the LSN Trust, and if Lynita fails/refuses to sign the
14 deeds to instruct the Clerk of the Court to execute the necessary deeds to effectuate
15 said transfer.

19 ///

21 ///

22 ///

24
25 As it relates to the Opposition filed on October 6, 2023, although it states
26 Michaelson Law is representing both Lynita and the LSN Trust, the certificate of
service does indicate Curtis Rawlings, Esq. was served the opposition.

27 ² Pursuant to EDCR 5.303 Lynita is still represented by Mr. Rawlings until a
28 Notice of Withdrawal is filed with the Court.

II. LEGAL ARGUMENT

1. NRS 164.015 PROVIDES THE ELN TRUST AUTHORITY TO SEEK THE RELIEF REQUESTED IN ITS MOTION TO CONVEY.

NRS 164.015(1) provides, in part, that “[t]he court has exclusive jurisdiction of proceedings initiated by the petition of an interested person . . . and petitions for a ruling that property not formally titled in the name of the trust or its trustees constitutes trust property pursuant to NRS 163.002.” The LSN Trust contends that “Mr. Klabacka is not an interested person of LSN Trust and therefore lacks statutory standing to bring this motion.” *See* Opposition at 3:10-12.

This simplistic and erroneous argument ignores Titles 12 and 13 of the Nevada Revised Statutes. Specifically, NRS 132.185, which is made applicable to NRS 164, defines an “interested person” as:

“Interested person” defined. “Interested person” means a person whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary or court shall determine who is an interested person according to the particular purposes of, and matter involved in, a proceeding.

Here, the ELN Trust has numerous judgments against the LSN Trust that may be “materially affected by a decision” by Lynita “or a decision” of this Court. As such, the ELN Trust is an interested person under NRS 164.015.

In lieu of responding to the ELN Trust’s standing under NRS 164.015, the LSN Trust erroneously relies upon NRS 164.037, which merely sets forth the notice requirements for petitions filed under NRS 164.033. Contrary to the LSN

1 Trust's contention NRS 164.037 does not "expressly define an interested person,"
2 but rather, states that "for purposes of this section [*i.e.* NRS 154.027], "interested
3 person" means a settlor, trustee, beneficiary or any other person to whom the court
4 directs that notice to be given." In other words, the reference to an "interested
5 person" under NRS 164.037 **only** applies to the notice requirement to petitions
6 filed pursuant to NRS 164.033, which the pending Motion for Conveyance is not.
7
8 Since the ELN Trust's Motion for Conveyance was filed pursuant to NRS 164.015
9 the LSN Trust's argument that the ELN Trust is not an interested person under
10 NRS 164.037 fails.
11

12
13 More significantly, however, and as indicated supra, the LSN Trust's
14 analysis regarding NRS 164.015 ignores the fact that Lynita, in her capacity as
15 Investment Trustee of the Trust, testified under oath that SOUTHERN
16 MAGNOLIA, LLC, and PINK PEONIES, LLC/PINK PEONIES-WYOMING,
17 LLC, are held in, or underneath, the LSN Trust. As such, this Court should
18 confirm that said assets belong to the LSN Trust pursuant to NRS 164.015.
19
20

21 2. THIS COURT HAS AUTHORITY TO GRANT THE RELIEF
22 REQUESTED.

23 The LSN Trust also contends that the ELN Trust does not have standing to
24 seek relief under NRS 153.031. Even if the LSN Trust is correct, the ELN Trust
25 provided this Court with additional authority to grant the relief requested in its
26 Motion to Convey. This Court has additional authority to grant the requested relief
27
28

on its own volition pursuant to NRS 31.100:

Supplemental relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

See also NRS 30.060, Declaration of rights in certain cases.

3. THE LSN TRUST'S OPPOSITION TO AN ALTER EGO THEORY FAILS BECAUSE LYNITA HAS ALREADY TESTIFIED THAT THE ENTITIES AT ISSUE ARE OWNED BY THE LSN TRUST AND THE LSN TRUST HAS PARTICIPATED IN THE INSTANT DIVORCE PROCEEDING SINCE 2011.

If SOUTHERN MAGNOLIA, LLC, and PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC are not assets of the LSN Trust under NRS 164.015, the ELN Trust has sought a declaratory judgment that said entities are in fact the alter ego of the LSN Trust. In response to said argument, and in lieu of responding to the detailed analysis contained within the Motion for Conveyance as to why alter ego applies, the LSN Trust relies upon the factually/legally distinguishable case, *Callie v. Bolwing*, 123 Nev. 181, 160 P.3d 878 (2007). The LSN Trust's arguments fail for numerous reasons.

First, unlike Callie, Lynita has already testified that SOUTHERN MAGNOLIA, LLC, and PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC are assets of the LSN Trust, and the LSN Trust has been a party in the instant Divorce Proceeding since 2011.

1 Second, in *Callie*, Mr. Callie was not named as a party or served with a
2 complaint or a summons. *Callie*, 123 Nev. at 182-83, 160 P.3d at 879.
3 Notwithstanding, after a claimant obtained an out-of-state judgment against
4 Callie's company, it domesticated the judgment in Nevada, and sought to amend
5 the judgment to add Callie as an alter ego. It is for this reason that the Nevada
6 Supreme Court held that Mr. Callie's due process rights were violated because he
7 was rendered individually liable without receiving notice and opportunity to be
8 heard. *Id.* at 183-84, 160 P.3d at 879-80. In contrast, Lynita, individually, and in
9 her capacity as Manager of SOUTHERN MAGNOLIA, LLC, and PINK
10 PEONIES, LLC/PINK PEONIES-WYOMING, LLC, and the LSN Trust, had
11 notice of and participated at many different levels of administrative and judicial
12 review. As such, SOUTHERN MAGNOLIA, LLC, and PINK PEONIES,
13 LLC/PINK PEONIES-WYOMING, LLC had "notice and an opportunity to be
14 heard" on Daniel's death benefits claim. *Id.* at 183, 160 P.3d at 879.

15 Here, neither, Lynita, individually, the LSN Trust, SOUTHERN
16 MAGNOLIA, LLC, nor PINK PEONIES, LLC/PINK PEONIES-WYOMING,
17 LLC have cited any authority supporting the self-serving proposition that
18 SOUTHERN MAGNOLIA, LLC, nor PINK PEONIES, LLC/PINK PEONIES-
19 WYOMING, LLC would be somehow deprived of its due process rights. *See, e.g.,*
20 *DeMaranville v. Emps. Ins. Co. of Nevada*, 135 Nev. 259, 268, 448 P.3d 526, 534
21 (2019). As such, the Motion for Conveyance should be granted in its entirety.

1 4. THE ELN TRUST'S FRAUDULENT TRANSFER CLAIM IS NOT
2 TIME-BARRED.

3 The LSN Trust's contention that the ELN Trust's fraudulent transfer claim is
4 intellectually dishonest and fails to analyze NRS 112.230 in its entirety.
5 Specifically, the LSN Trust ignores the fact that pursuant to NRS 112.230 a
6 fraudulent transfer claim may be brought "**within 4 years after the transfer was**
7 **made or the obligation was incurred...**" (Emphasis Added). Here, the
8 obligation (*i.e.* the judgments against the LSN Trust were not entered until July 27,
9 2023)³. As such, the ELN Trust's fraudulent transfer claim is not time-barred.
10

11
12 Even if it was, however, the statute of limitations would be tolled under the
13 discovery rule set forth in NRS 112.230(1)(a) due to Lynita's March 2022
14 testimony wherein she unequivocally stated that SOUTHERN MAGNOLIA, LLC,
15 nor PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC were assets of the
16 LSN Trust. If Lynita/the LSN Trust are now taking the position in the Opposition
17 that SOUTHERN MAGNOLIA, LLC, nor PINK PEONIES, LLC/PINK
18
19

20 ³ Additionally, the procedurally postulate of this case post-remand is clear, the
21 court anticipated there would be offsets at the conclusion of the trial and was led to
22 believe there were plenty of assets in the both Trust to effectuate any necessary
23 offsets. For example, on August 26, 2013, Judge Sullivan denied the ELN's Trust
24 for a Stay of Payments and Property Pending the Resolution of the Appeal
25 requested by the ELN Trust. In making this determination, Judge Sullivan found
26 "the release of funds at issue will not put the ELN Trust at risk; that there are
27 sufficient assets in the LSN Trust to act as collateral for the payment of funds at
28 issue; and there has been nothing presented which would make the Court believe
that Mrs. Nelson would try to get rid of funds and not pay and funds if the
Supreme Court overturned this Court's decisions". See Order dated August 26,
2013, page 2 lines 14 through 19.

1 PEONIES-WYOMING, LLC are not in fact assets of the LSN Trust, not only will
2 Lynita have perjured herself, but the one-year statute of limitation under the
3 discovery rule would not begin to run until October 6, 2023, meaning that the ELN
4 Trust's claim is in fact timely.

5
6 5. RESPONSE TO THE ACTIONS OF LYNITA/THE LSN TRUST AS
7 IT RELATES TO THE JPI.

8 Like the remainder of the Opposition, Lynita/the LSN Trust fail provide any
9 meaningful response to the JPI issue. Specifically, the LSN Trust fails to explain
10 why it demanded that Judge Sullivan and the Nevada Supreme Court impose a JPI
11 on one hand, while failing to advise said Courts that she, in her capacity as
12 Investment Trustee of the LSN Trust, had already transferred the Mississippi
13 Properties to SOUTHERN MAGNOLIA, LLC or the Wyoming Properties to
14 PINK PEONIES, LLC/PINK PEONIES-WYOMING, LLC, especially since said
15 properties constitute of the majority of the LSN Trust's corpus.

16
17
18 Further, and although unclear, the LSN Trust seems to argue that the ELN
19 Trust's evidence regarding the transfer is insufficient, despite the fact that the
20 evidence relied upon is Lynita's own testimony and the documents evidencing
21 transfer.

22 ///

23 ///

24 ///

6. THE COUNTERMOTION FOR SANCTIONS SHOULD BE DENIED, AND IF ANYTHING, THE LSN TRUST SHOULD BE SANCTIONS FOR ITS DEFICIENT AND MISLEADING OPPOSITION.

It is laughable the LSN Trust would request sanction pursuant to EDCR5.219. As the statute reads, the action has to be negligent conduct. As discussed herein, it has always been the intent of the District Court to resolve any offsets, etc. at the conclusion of the “Remand” evidentiary hearing. Now that, the ELN Trust and Eric have prevailed, the LSN Trust and Lynita are attempting to avoid any collection of the monies due and owing to the ELN Trust and Eric.

Moreover, it is more than outrageous for the LSN Trust and/or Lynita to file an opposition, wherein it is not even clear who the party is filing the opposition as discussed. Moreover, LSN Trust/Lynita have made briefing these issues even more complicated by their failure to comply local rules.

For example, EDCR 5.502 provides when you **file a motion**, you must include the notice that a party has 14 days to oppose the motion. A countermotion does not include these notices, although the LSN Trust continues to add them to their pleadings.

Moreover, EDCR 5.502(f) allows the ELN Trust to file a Reply, and thus, there was no need for the notice as discussed *infra*. Likewise, there is also no ability for the LSN Trust to file a “sur-Reply.”

1 If anything, EDCR 5.219(e) allows the District Court to award the ELN
2 Trust attorney's fees for failing to comply with the local rules. For example, it
3 now appears, the LSN Trust and Lynita are sharing the same attorney, although
4 Lynita's current/prior counsel has not withdrawn.
5

6 Moreover, EDCR 5.219(a) allows this Court to award the ELN Trust
7 attorney's fees by the mere virtue of the LSN Trust filing an opposition that does
8 not directly address the issues before the Court, or the laws of the case.
9

10 Therefore, the LSN Trust/Lynita's request for fees should be denied, and the
11 ELN Trust should be awarded attorney's fees.
12

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

1 **III. CONCLUSION**

2 Based upon the foregoing, the ELN Trust respectfully requests that this
3 Court grant confirm that PINK PEONIES, LLC/PINK PEONIES-WYOMING,
4 LLC and SOUTHERN MAGNOLIA, LLC are assets of the LSN Trust.
5 Alternatively, the ELN Trust respectfully requests that this Court grant the Motion
6 to Convey Properties Titled in the name of PINK PEONIES, LLC/PINK
7 PEONIES-WYOMING, LLC and SOUTHERN MAGNOLIA, LLC in its entirety
8 by entering an order compelling Lynita to transfer the Mississippi Properties and
9 Wyoming Properties back to the LSN Trust, and if Lynita fails/refuses to sign the
10 deeds to instruct the Clerk of the Court to execute the necessary deeds to effectuate
11 said transfer.
12

13 **DATED** this 13th day of October, 2023.

14
15
16
17 SOLOMON DWIGGINS FREER & STEADMAN, LTD.

18 */s/ Jeffrey P. Luszeck*

19 By: _____

20 Jeffrey P. Luszeck, Esq. (#09619)

21 jluszeck@sdfnvlaw.com

22 9060 West Cheyenne Avenue

23 Las Vegas, Nevada 89129

24 *Attorneys for Matt Klabacka, Distribution*
25 *Trustee of the ERIC L. NELSON NEVADA*
26 *Trust dated May 30, 2001*
27
28

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on October 13, 2023, I caused to be served a true and correct copy of the **MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST'S REPLY TO OPPOSITION MOTION TO CONVEY PROPERTIES TITLED IN THE NAME OF PINK PEONIES LLC/PINK PEONIES-WYOMING, LLC AND SOUTHERN MAGNOLIA LLC, AND OPPOSITION TO COUNTERMOTION FOR SANCTIONS** 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:

Michelle A. Hauser, Esq.
HAUSER FAMILY LAW
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
michelle@hauserfamilylaw.com

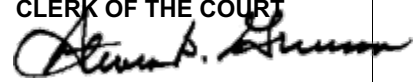
Stacy Howlett, Esq.
Michael Whittaker, Esq.
Michaelson Law
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Las Vegas, Nevada 89134
info@thedklawgroup.com

Curtis R. Rawlings, Esq.
Pecos Law Group
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
curtis@pecoslawgroup.com

*Attorney for Lynita Sue Nelson and LSN
Trust in an "Unbundled Capacity"*

/s/ Alexandra Carnival

An Employee of SOLOMON DWIGGINS FREER
& STEADMAN, LTD.



RPLY
HAUSER FAMILY LAW
Michelle A. Hauser, Esq.
Nevada State Bar No. 7738
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
702-867-8313
Email: michelle@hauserfamilylaw.com
Attorneys for Plaintiff
ERIC NELSON

**DISTRICT COURT
FAMILY DIVISION
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

Date of Hearing: **11/15/2023**

Time of Hearing: **10:00 a.m.**

Oral Argument Requested

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**REPLY TO OPPOSITION TO ERIC NELSON, IN HIS INDIVIDUAL
CAPACITY, MOTION FOR EQUITABLE OFFSET**

COMES NOW Plaintiff, Eric Nelson, in his individual capacity, by and through his attorney, Michelle A. Hauser, Esq., of Hauser Family Law, and hereby submits his reply to Defendant's "Opposition to Eric Nelson, In His Individual Capacity, Motion for Equitable Offset."

This Reply is made and based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities and such oral argument as may be induced at the time of hearing on this matter.

Dated this 9th day of October, 2023.

HAUSER FAMILY LAW

/s/ Michelle A. Hauser

Michelle A. Hauser, Esq.
Nevada State Bar No. 7738
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
702-867-8313
Email: michelle@hauserfamilylaw.com
Attorneys for Plaintiff
ERIC NELSON

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court is aware of the procedural postulate of this case, as such Eric will not address the procedural postulate. As it relates to the pending motions before the Court, the Court should note the following:

1. Lynita did not file an opposition to Eric's motion. The LSN Trust filed an opposition even though it does not have standing to do so.
2. Pursuant to the Docketing Statement filed on September 27, 2023, Lynita and the LSN Trust appealed very limited issues. *See* exhibit 1 to Eric's Appendix of Exhibits. Of note, Lynita and the LSN Trust did not appeal the "costs" awarded to Eric, or the ELN Trust.
3. Neither Lynita nor the LSN Trust appealed the principal amounts due and owing to the ELN Trust, they only appealed the interest the Court applied to the principal amount due to the ELN Trust.

Given the limited issues on appeal, this Court has jurisdiction to enforce the vast majority of its Orders as they are not affected by the appeal. Of the few issues Lynita and the LSN Trust appealed, the Court still has jurisdiction to enforce the orders as discussed in Eric's underlying motion. Finally, Lynita has not filed a request for a stay, the only request for a stay was filed by the LSN Trust, which will need to be addressed at the November 2023 hearing. Given these factors, and as

1 will be discussed in more detail below, Eric's request for an equitable offset should
2 be granted.

3
4 **II. ARGUMENT**

5 **A. THE LSN TRUST DOES NOT HAVE STANDING TO OPPOSE**
6 **ERIC'S PENDING MOTION.**

7 Oddly enough, the LSN Trust has opposed Eric's Motion for an Equitable
8 Offset filed on September 18, 2023. It should not be lost on the District Court just
9 a few hours before filing this opposition, on October 2, 2023, at 5:30 p.m. the LSN
10 Trust filed a procedurally defective Opposition and Reply to the ELN Trust Motion
11 for an Order Allowing Examination of a Judgment Creditor. In this Opposition, the
12 LSN Trust argues:

13
14
15 Yet, LSN Trust is being held liable for attorney's fees incurred by Mr. Nelson
16 and ELN Trust for Ms. Nelson proceeding to trial on her individual, personal
17 right to division of any and all community property. Because the right was
18 personal to Ms. Nelson.... See page 4 lines 10 through 12 of the LSN's
19 Opposition filed on October 2, 2023.

20 Clearly, child support is a personal obligation between the parties, and yet the
21 LSN Trust is opposing Eric's motion despite having no standing to do so. It is
22 because of this gamesmanship that both the ELN Trust and Eric have incurred a
23 substantial amount of attorney's fees and costs during the six years post remand and
24 why, the District Court was correct in awarding attorney's fees and cost to Eric and
25 the ELN Trust against Lynita and the LSN Trust.

26 ...
27
28

Moreover, the Michaelson Law Firm does not represent Lynita in her personal capacity, which is well documented throughout this case, and further demonstrates that Lynita and the LSN Trust are playing games.

After the May 30, 2023, hearing the LSN Trust hired the Michaelson Law Firm. On July 19, 2023, the Michaelson Law Firm filed its Notice of Appearance of Counsel, whereby the Notice clearly states:

Stacy Howlett, Esq. and Matthew D. Whittaker, Esq. of Michaelson Law are hereby appearing in this matter as counsel of record for the Lynita S. Nelson Nevada Trust Dated May 30, 2001. All notices and papers or pleadings in this matter that are directed to the Lynita S. Nelson Nevada Trust Dated May 30, 2001, or that must be served on Lynita S. Nelson as Investment Trustee..... See Exhibit “--- ” page 1 lines 24 through 28.

Likewise, the unauthorized Declaration signed by Matthew D. Whittaker, Esq. attached to Lynita’s Opposition states:

That I have been recently retained by Lynita Nelson **on behalf** of the Lynita S. Nelson Nevada Trust dated May 30, 2001.
See “Opposition to Plaintiff Eric Nelson, in His Individual Capacity, Motion for an Equitable Offset” filed on October 2, 2023, at 10:51 p.m., page 5 lines 3 through 5.

It is clear based upon the procedural postulate of this case, that the Michaelson Law Firm represents the LSN Trust in the underlying case before the District Court, and the LSN Trust does not have standing to oppose Eric’s motion.

Standing presents a question of law. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). “Nevada has a long history of requiring an

1 actual justiciable controversy as a predicate to judicial relief. Moreover, litigated
2 matters must present an existing controversy, not merely the prospect of a future
3 problem.” *Doe v. Bryan*, 102 Nev. 523 (Nev. 1986). As discussed in *Doe*, in order
4 to have a justiciable controversy, a party must demonstrate the following:
5

6 (1) there must exist a justiciable controversy; that is to say, a controversy
7 in which a claim of right is asserted against one who has an interest in
8 contesting it; (2) the controversy must be between persons whose interests
9 are adverse; (3) the party seeking declaratory relief must have a legal
10 interest in the controversy, that is to say, a legal protectable interest; and
11 (4) the issue involved in the must be ripe for judicial determination.

12 *See Doe, citing to Kress v. Corey*, 65 Nev. 1, 189, P.2d 352 (1948).

13 Here, the LSN Trust does not have standing as the issue of child support is
14 personal in nature between Eric and Lynita. The LSN Trust cannot meet the
15 requirements of the *Doe* and *Kress* analysis, and therefore, they do not have standing
16 to oppose Eric’s requested relief. As such, the District Court should strike the LSN’s
17 opposition.
18

19 **B. ERIC’S REQUESTED RELIEF SHOULD BE GRANTED**
20 **PURSUANT TO EDCR 5.503.**

21 EDCR 5.502 (c) requires the opposing party to file an opposition within 14
22 days of the service of the motion. Here, Lynita’s opposition was due on October 2,
23 2023, and no such opposition was forthcoming. Pursuant to EDCR 5.503(b)
24 Lynita’s failure to file an opposition should be construed as an admission that Eric’s
25 motion was meritorious and her consent to the granting of Eric’s motion.
26

27 ...
28

1 **C. ERIC DOES NOT OWE ATTORNEY’S FEES.**

2 While it is unclear why the LSN Trust is commenting on the personal
3 obligations owed by Eric pursuant to the Decree of Divorce, it is further confusing
4 why the LSN Trust is misrepresenting the procedural postulate of the case. First, as
5 the LSN Trust knows, it was contemplated upon the remand from the Supreme Court
6 after the evidentiary hearing, in which the LSN Trust participated, that the Court
7 would conduct further proceedings to determine all the offsets. These offsets
8 included the personal obligations of the parties. Moreover, as the LSN Trust knows,
9 Eric does not owe Lynita any attorney’s fees pursuant to the Decree of Divorce.

10 The Decree of Divorce was entered on June 3, 2013. In Nevada, the statute
11 of limitations for renewing a judgment for attorney’s fees is six years. To renew a
12 judgment, Lynita was required to file an affidavit of renewal within 90 days of the
13 judgment’s expiration, record the affidavit, and serve the affidavit to Eric. *Davidson*
14 *v. Davidson*, 132 Nev,709, 382, P.3d 880 (2016).

15 Here, Lynita never renewed the judgment for attorney’s fees, and therefore
16 Eric does not owe any attorney fees.

17 **D. THE COURT SHOULD ORDER AN EQUITABLE OFFSET.**

18 Again, the LSN Trust does not have standing to oppose Eric’s requested relief.
19 Additionally, the LSN Trust misstates the applicable law, and the facts in their
20 opposition.

21 . . .

1 First, the LSN Trust representations that the child support arrears have grown
2 to \$181,057.31 is factually incorrect. As discussed in Eric's motion, Eric is paying
3 on the child support arrears, as outlined in the NCP Payment History Report. Eric
4 continues to pay his child support obligation despite Lynita knowing offsets would
5 be considered at the conclusion of the evidentiary hearing. Through October 3,
6 2023, Eric has paid \$17,534.60, leaving a balance of \$163,279.85. *See* Exhibit 2 of
7 Plaintiff's Appendix Exhibit.
8
9

10 Meanwhile, Lynita has not paid anything toward the award of attorney's fees
11 and costs made by this Court. Through October 5, 2023, including interest, Lynita
12 owes Eric \$172,378.58. *See* Exhibit 3 of Plaintiff's Appendix Exhibit. It is
13 inequitable for Lynita to receive monies while she owes Eric monies, which is why
14 the case law specifically allows for an equitable offset, which was anticipated
15 throughout the remand proceedings.
16
17

18 Although LSN Trust has requested a stay of proceedings, it is important to
19 note, Lynita in her individual capacity, has not requested a stay. Thus, as discussed
20 in Eric's motion, the District Court can enforce its orders. Moreover, the LSN Trust
21 does not address Eric's argument that the Court can enforce its orders. Pursuant to
22 EDCR 5.503(b), the failure to oppose this argument should be deemed an admission
23 that Eric's argument is meritorious.
24
25

26 ...

27 ...
28

1 Even if the Court determines the LSN's Trust request for a stay should be
2 granted on Lynita's behalf, as is discussed in ELN's Reply, the LSN Trust has not
3 presented a prima facie case to warrant a stay. For example, to receive a stay, the
4 LSN Trust must demonstrate they are likely to prevail in the appeal. *Mikohn Gaming*
5 *Corp, v. McCrea*, 120 Nev. 248, 120 Nev. 248 (2004). Here, Lynita and/or the LSN
6 Trust will most likely not prevail in the pending appeal.
7

8 For example, pursuant to the Docketing statement, Lynita and the LSN Trust
9 are appealing this Court's order holding Lynita and the LSN Trust are jointly and
10 severally liable for the award of attorney's fees to Eric and the ELN Trust. The
11 thrust of this argument is that the LSN Trust did not participate in the remand
12 proceedings, and the remand proceedings were "personal" to Lynita. The procedural
13 postulate is very clear that the LSN Trust did participate in these proceedings.
14

15 Specifically, at the May 30, 2023, hearing Mr. Rawlings, who represents
16 Lynita in her individual capacity stated, "Because their interest, the trust and her
17 individually were in line." See Video Transcript at 2:49:46. This response was
18 provided by Mr. Rawlings in support of why a continuance of the hearing should be
19 granted, so the LSN Trust could secure a separate attorney, despite never having a
20 separate attorney during the ten-plus years the LSN Trust has been a party to the
21 action. Based on Mr. Rawlings argument, up until May 2023, Lynia and the LSN
22 Trust interests were aligned, and they were only not aligned when they did not
23 prevail at the evidentiary hearing.
24
25
26
27
28

Moreover, as the Court remembers, it heard specific arguments regarding the Motion to Adjudicate an Attorney Lien filed by Mr. Karacsonyi on March 23, 2023.

In the motion to adjudicate, Lynita and the LST Trust specifically requested the court to:

The Law Firm requests that the Court adjudicate its retaining lien in accordance with NRS 18.015(6), by entering judgment against Lynita, individually and in her capacity as Investment Trustee of the LSN Trust, in the principal amount of \$542,415.63, plus accrued interest of \$20,878.08 as of March 23, 2023....See page 7 lines 17 through 21 of the Motion filed on March 23, 2023.

If, as now the LSN Trust argues, they were not a party to the action, then how could their prior counsel adjudicate a judgment against them under their newly developed theory of the case? The simple answer is prior counsel was able to secure a judgment against the LSN Trust for work performed post-remand because the LSN Trust was a party to the action and participated in all the remand proceedings.

Turning to the equitable offset Eric is requesting, the LSN Trust, which does not have standing to oppose the motion, asserts Eric is requesting the court to modify its prior judgments without explaining how this argument is relevant to the pending issues. Pursuant to EDCR 5.503(a) bare citations to statutes, rules, or case authority, do not comply with the requirements of EDCR 5.03(a), which is exactly what the LSN Trust has done. Their failure to explain how their cited law is relevant to the pending issue before the court should be construed as an admission that the filing is not meritorious, or as cause for denial of all positions not supported.

Eric is seeking an offset of the award of attorney's fees and costs against the outstanding child support balance, which is the law of the case. The offset requested by Eric complies with Federal Law, and how the District Attorney-Child Support Division addresses these situations.

A founding principle of the United States of America and the State of Nevada is all persons shall be treated equally. Specifically, the Nevada Constitution holds,

Sec. 24. Equality of rights under the law shall not be denied or abridged by this State or any of its political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age disability, ancestry or national origin.

To ensure Eric is treated similarly to any other payor, this Court has to apply credits pursuant to 45CFR 302, which is how the federal law the District Attorney Child Support Division is required to follow in order to ensure continuing funding. 45 CFR 302.51(a) provides payments toward support obligations are paid in the following priority:

1. Current month child support (which may include medical, childcare, or other child-support-related expenses ordered by the Court);
2. Current month alimony/spousal support or alimony;
3. Current child support arrears; and
4. Current alimony/spousal support or alimony arrears.

Here, there is no current monthly child or spousal support obligation due and owing. Thus, any payments made by Eric are required to be made toward child

1 support. As any payments are required to first be credited toward child support, any
2 offsets are required to be made first toward the child support. Eric is requesting the
3
4 award of attorney's fees and costs be offset against child support pursuant to *John*
5 *W. Muige, Ltd v. A North Las Vegas Cab Co., Inc.* 106 Nev. 664, 799 P.2d 559
6 (1990) and *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 110 P.3d. 59
7 (2005).
8

9 Once the offset is applied, Eric's child support obligation would be paid in
10 full, which was discussed and contemplated during the post-remand proceedings.
11

12 **III. CONCLUSION**

13 WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that
14 this Court enter orders granting him the following relief:

- 15 1. The District Court order an equitable offset; and
- 16 2. Awarding Eric such other and further relief as the Court deems
17 appropriate.
18

19 Dated this 9th day of October, 2023.
20

21 **HAUSER FAMILY LAW**

22 /s/ Michelle Hauser

23 Michelle A. Hauser, Esq.

24 Nevada State Bar No. 7738

25 1489 West Warm Springs Road, Suite 110

Henderson, Nevada 89014

26 702-867-8313

27 Email: michelle@hauserfamilylaw.com

Attorneys for Plaintiff

28 ERIC NELSON

DECLARATION OF PLAINTIFF IN SUPPORT OF PLAINTIFF, ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, REPLY TO OPPOSITION TO ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR EQUITABLE OFFSET

I, Eric Nelson, under penalty of perjury, state:

That I am the Plaintiff in the above-entitled action, I have read the **PLAINTIFF, ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, REPLY TO OPPOSITION TO ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR EQUITABLE OFFSET** and the statement it contains are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true. The statements contained in this motion are incorporated here as if fully set forth in full.

SIGNED UNDER PENALTY OF PERJURY.

DATED this 09 day of October, 2023.


Eric nelson (Oct 9, 2023 09:36 PDT)
ERIC NELSON

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HAUSER FAMILY LAW and that on the 9th day of October, 2023, I caused the above and foregoing document entitled **REPLY TO OPPOSITION TO ERIC NELSON, IN HIS INDIVIDUAL CAPACITY, MOTION FOR EQUITABLE OFFSET**, 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:

Curtis R. Rawlings, Esq.

Pecos Law Group
8925 South Pecos Road, Suite 14A

Henderson, Nevada 89074

curtis@pecoslawgroup.com

Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"

Jeffrey P. Luszeck, Esq.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

jluszeck@sdfnlaw.com

Attorneys for Matt Klabacka, Distribution Trustee of the ERIC L. NELSON

NEVADA

TRUST dated May 30, 2001

1 Stacy Howlett, Esq.
2 Michaelson Law
3 1746 W. Horizon Ridge Pkwy.
4 Henderson, NV 89012
5 stacy@michaelsonlaw.com

Attorney for the Lynita S. Nelson Nevada Trust Dated May 30, 2001

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ Susan Pinjuv

An Employee of HAUSER FAMILY LAW


10.9.2023 Reply

Final Audit Report

2023-10-09

Created:	2023-10-09
By:	Michelle Hauser (michelle@hauserfamilylaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAH_Qjy7-WZL2ReYL3mxDyKMJOcUJguuUS


"10.9.2023 Reply" History

 Document created by Michelle Hauser (michelle@hauserfamilylaw.com)


2023-10-09 - 4:31:40 PM GMT

 Document emailed to ericnelson59@gmail.com for signature


2023-10-09 - 4:32:31 PM GMT

 Email viewed by ericnelson59@gmail.com

2023-10-09 - 4:35:44 PM GMT

 Signer ericnelson59@gmail.com entered name at signing as Eric nelson

2023-10-09 - 4:36:32 PM GMT

 Document e-signed by Eric nelson (ericnelson59@gmail.com)

Signature Date: 2023-10-09 - 4:36:34 PM GMT - Time Source: server

 Agreement completed.

2023-10-09 - 4:36:34 PM GMT

Heather S. Linn

CLERK OF THE COURT

ORDR

**DISTRICT COURT
FAMILY DIVISION
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,
Defendant.

Case No.: D-09-411537-D

Dept. No.: O

Scheduled Hearing: November 15, 2023

MATT KLABACKA, Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30,
2001,
Cross-Claimant,

vs.

LYNITA SUE NELSON,
Individually and as Investment
Trustee of the LSN Nevada Trust
dated May 30, 2001, and ERIC L.
NELSON, Individually and as
Investment Trustee of the ERIC L.
NELSON NEVADA TRUST, dated
May 30, 2001.
Cross-Defendant

ORDER VACATING HEARING FOR JURISDICTION

This Court has reviewed the calendar for an upcoming hearing and FINDS
that NRCP 1 and EDCR 1.10 state that the procedure in District Courts shall be

1 administered to secure efficient, speedy, and inexpensive determinations in
2 every action. Pursuant to EDCR 5.502(e)(3), this Court can consider a motion
3 and issue a decision on the papers at any time without a hearing.
4

5 The COURT FINDS that this matter is currently before the Supreme
6 Court of Nevada. The Defendant filed her *Notice of Appeal* on August 25, 2023,
7 and *Case Appeal Statement* on August 25, 2023; Cross-Claimant filed his *Notice*
8 *of Appeal* on September 2, 2023, and *Case Appeal Statement* on September 2,
9 2023, and as a result, while the case is pending before the Supreme Court of
10 Nevada, this Court lacks jurisdiction to consider the pending issues.
11

12 THEREFORE THIS COURT ORDERS that all hearings presently set for
13 November 15, 2023 shall be VACATED.
14

15 THIS COURT FURTHER ORDERS that, following the completion of the
16 appellate process, Plaintiff, Defendant and Cross-Claimant may file a Re-Notice
17 of Hearing.
18

19 IT IS SO ORDERED
20
21

22 Dated this 13th day of November, 2023

23 

24 LS

25 774 7A5 4E77 6A49
26 Regina M. McConnell
27 District Court Judge
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: 11/13/2023

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 .

nick@llbcpa.com

23 Josef Karacsonyi

Josef@thedklawgroup.com

24 Shahana Polselli .

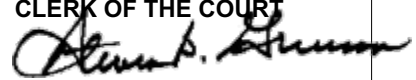
sp@jimmersonlawfirm.com

25 Shari Aidukas .

shari@dickersonlawgroup.com

1	The Dickerson Karacsonyi Law Group .	info@thedklawgroup.com
2	Natalie Karacsonyi	Natalie@thedklawgroup.com
3	Josef Karacsonyi	Josef@thedklawgroup.com
4	Info info email	info@thedklawgroup.com
5	Stacy Howlett	stacy@michaelsonlaw.com
6	Grayson Moulton	grayson@shumwayvan.com
7	Edwardo Martinez	edwardo@thedklawgroup.com
8	Efiling Email	efiling@jimmersonlawfirm.com
9	Matthew Whittaker	matthew@michaelsonlaw.com
10	Dorie Williams	dorie@thedklawgroup.com
11	Michelle Ekanger	michelle@michaelsonlaw.com
12	Amber Pinnecker	amber@michaelsonlaw.com
13	Michelle Hauser	michelle@hauserfamilylaw.com
14	Curtis Rawlins	curtis@pecoslawgroup.com
15	Lynita Nelson	sunnysidelscn@gmail.com
16	Susan Pinjuv	susan@hauserfamilylaw.com
17	Efile Notice	efilenotification@hauserfamilylaw.com
18		
19		
20		
21		
22		
23		
24	James Jimmerson	415 South Sixth St., Ste 100
25		Las Vegas, NV, 89101
26		
27		
28		

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 11/14/2023



EXP
HAUSER FAMILY LAW
Michelle A. Hauser, Esq.
Nevada State Bar No. 7738
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
702-867-8313
Email: michelle@hauserfamilylaw.com
Attorneys for Plaintiff
ERIC NELSON

**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

Date of Hearing: 1.25.2024
Time of Hearing: 9:00 a.m.

Oral Argument Requested

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME IN
WHICH TO HEAR THE PLAINTIFF'S MOTION TO RECONSIDER THE**

**COURT’S ORDER VACATING HEARING FOR JURISDICTION FILED
ON NOVEMBER 13, 2023 AND IN THE ALTERNATIVE MOTION FOR A
HUNEYCUTT ORDER**

COMES NOW, Michelle A. Hauser, Esq., of HAUSER FAMILY LAW, attorney of record for Plaintiff, Eric Nelson, and hereby files an “Ex Parte Application for an Order Shortening Time” and requests that this Court shorten the time in which to hear the Plaintiff’s Motion to Reconsider the Court’s order Vacating Hearing for Jurisdiction filed on November 13, 2023, and In the Alternative Motion for a Huneycutt Order.

This Ex Parte Application for Order Shortening Time is based upon the pleadings and papers on file herein and the Declaration of Michelle A. Hauser, Esq., attached hereto.

Dated this 5th day of December 2023.

HAUSER FAMILY LAW

/s/ Michelle A. Hauser

Michelle A. Hauser, Esq.

Nevada State Bar No. 7738

1489 West Warm Springs Road, Suite 110

Henderson, Nevada 89014

702-867-8313

Email: michelle@hauserfamilylaw.com

Attorneys for Plaintiff

ERIC NELSON

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3

4
5
6
7
8
9

10
11
12
13
14
15
16
17
18

19
20
21

22
23
24
25
26
27
28

1 122 Nev. at 858, 138 P.3d at 532 (noting that as a collateral matter, the district
2 court may enforce orders during a pending appeal); Bongiou v. Bongiou, 94
3 Nev. 321, 322, 579 P.2d 1246, 1247 (1978) (same). Indeed, a district court's
4 refusal to enforce its orders pending appeal could in effect grant the opposing
5 party a stay without bond. Cf. Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252
6 (2005), as modified (Jan. 25, 2006) (discussing when stays of money
7 judgments upon a waived or reduced bond are appropriate). Moreover, to the
8 extent that a post-appeal motion could result in altering the order on appeal or
9 affect the appeal's merits, the district court may proceed under NRCP 62.1 and
NRAP 12A by either denying the motion or certifying its intent to grant the
motion or that the motion raises a substantial issue.

See exhibit "1" attached.

Although the Writ was denied due to a technical error, it is clear the Nevada
Supreme Court in its prior decisions has ruled the District Court maintains
jurisdiction to enforce its orders and to enter collateral orders. The Order stemming
from the Writ also makes it clear the Nevada Supreme Court wants the District Court
to reconsider its order as requested by the Plaintiff.

With Eric's motion not scheduled to be heard until January 25, 2024, Eric
requests his underlying motion be heard on an Order Shortening Time.

Dated this 5th day of December 2023.

HAUSER FAMILY LAW

/s/ Michelle A. Hauser
Michelle A. Hauser, Esq.
Nevada State Bar No. 7738
Attorneys for Plaintiff
ERIC NELSON

EXHIBIT “1”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA 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
REGINA M. MCCONNELL, DISTRICT
JUDGE,

Respondents,


and

LYNITA SUE NELSON,
INDIVIDUALLY AND IN HER
CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S.
NELSON NEVADA TRUST DATED
MAY 30, 2001; AND ERIC L. NELSON,
Real Parties in Interest.

No. 87650

FILED

DEC 04 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This emergency petition for a writ of mandamus challenges an alleged November 13, 2023, district court order concluding that the court lacked jurisdiction to consider post-judgment motions because an appeal is pending and vacating a hearing thereon.

In summer 2023, the district court entered several post-judgment orders awarding sums to the ELN Trust, including for rents owed, attorney fees, and costs. Real party in interest Lynita Sue Nelson, individually and as trustee of the LSN Trust, appealed from some of those orders, and petitioner Matt Klabacka, as trustee of the ELN Trust, cross-

appealed. *See Nelson v. Klabacka*, Docket No. 87234. Meanwhile, according to Klabacka, he filed two motions in aid of execution on the post-judgment orders: a motion for judgment debtor examination and a motion to reconvey properties back to the LSN Trust. Lynita and the LSN Trust opposed his motions and filed a countermotion for stay, Klabacka states, but before hearing the matter, on November 13, 2023, the district court entered an order concluding that it lacked jurisdiction to consider the motions due to the pending appeal. Klabacka then filed this emergency writ petition, seeking to compel the district court to consider his motions.

As Klabacka points out in the petition, this court has repeatedly explained that the district court retains jurisdiction to consider collateral matters and to enforce its orders during the pendency of an appeal, absent a stay of enforcement pursuant to NRCP 62(d) or NRAP 8. *E.g.*, *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (“[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal’s merits.” (quoting *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006)); *Mack-Manley*, 122 Nev. at 858, 138 P.3d at 532 (noting that as a collateral matter, the district court may enforce orders during a pending appeal); *Bongiovi v. Bongiovi*, 94 Nev. 321, 322, 579 P.2d 1246, 1247 (1978) (same). Indeed, a district court’s refusal to enforce its orders pending appeal could in effect grant the opposing party a stay without bond. *Cf. Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005), *as modified* (Jan. 25, 2006) (discussing when stays of money judgments upon a waived or reduced bond are appropriate). Moreover, to the extent that a post-appeal motion could

result in altering the order on appeal or affect the appeal's merits, the district court may proceed under NRCP 62.1 and NRAP 12A by either denying the motion or certifying its intent to grant the motion or that the motion raises a substantial issue.

Here, however, we are unable to discern whether writ relief is warranted to remedy clear error or a manifest abuse of discretion because Klabacka failed to provide this court with copies of the district court's November 13 order and the parties' motion briefing below. NRAP 21(a)(4); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 229, 88 P.3d 840, 844 (2004) ("If essential information is left out of the petition and accompanying documentation, we have no way of properly evaluating the petition."); see also *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017) (discussing standards for issuing mandamus relief). Nor has Klabacka demonstrated that he brought this issue to the district court's attention before seeking writ relief. Accordingly, we deny the petition without prejudice to Klabacka's ability to refile with proper documentation if deemed warranted. NRAP 21(b).

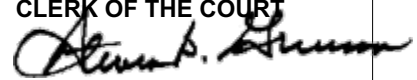
It is so ORDERED.

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Herndon, J.
Herndon

cc: Hon. Regina M. McConnell, District Judge, Family Division
Solomon Dwiggins & Freer, Ltd.
Pecos Law Group
Michaelson Law
Hauser Family Law
Eighth District Court Clerk



MOT
HAUSER FAMILY LAW
Michelle A. Hauser, Esq.
Nevada State Bar No. 7738
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
702-867-8313
Email: michelle@hauserfamilylaw.com
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

Date of Hearing:
Time of Hearing:

Oral Argument Requested

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**PLAINTIFF ERIC NELSON'S, IN HIS INDIVIDUAL CAPACITY,
MOTION TO RECONSIDER THE COURT'S ORDER VACATING
HEARING FOR JURISDICTION FILED ON NOVEMBER 13, 2023 AND
IN THE ALTERNATIVE MOTION FOR A HUNEYCUTT ORDER**

1 **NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO**
2 **THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE**
3 **THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14**
4 **DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A**
5 **WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14**
6 **DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE**
7 **REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT**
8 **HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

9 COMES NOW, Plaintiff, ERIC NELSON (“Eric”), in his Personal Capacity,
10 by and through his attorney, Michelle A. Hauser, Esq. of HAUSER FAMILY LAW,
11 and respectfully submits this Motion to Reconsider the Court’s Order Vacating
12 Hearing for Jurisdiction filed on November 13, 2023.

- 13 1. For reconsideration of the Court’s Order Vacating Hearing for
14 Jurisdiction filed on November 13, 2023;
- 15 2. In the alternative a *Hunneycutt* order; and
- 16 2. For all other and further relief as the Court deems appropriate.

17 This Motion is made and based on all the papers and pleadings on file herein,
18 the Memorandum of Points and Authorities submitted herewith, any exhibits
19 provided, and any further evidence and argument as may be adduced at the hearing
20 on this matter.

21 DATED this 21st day of November, 2023.

22 **HAUSER FAMILY LAW**

23 /s/MICHELLE A. HAUSER
24 Michelle A. Hauser, Esq.
25 Nevada State Bar No. 7738
26 Attorneys for Plaintiff
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This case has a long and tragic procedural postulate and Eric will only be addressing the relative portions as it relates to this underlying motion. Eric filed his Complaint for Divorce in the instant matter on May 6, 2009. At the time of the filing, the parties were married for 26 years. The parties have now been litigating divorce for 14 years, more than half the length of their marriage.

On July 27, 2023, this Court entered the following orders:

1. Order Denying the LSN Trust Request for Attorney's Fees;
2. Order after Hearing Denying Lynita S. Nelson Motion to Retax Costs, and Order Awarding ELN Trust Memorandum of Costs;
3. Order after Hearing Granting ELN Trust's Request for an Award of Attorney's Fees; and
4. Order After Hearing Granting Eric Nelson's, in His Personal Capacity, Request for Attorney's Fees and Verified Memorandum of Costs.

These orders, in theory, ended several years of litigation regarding the LSN Trust and the Defendant's false belief there was a co-mingling of community assets into either trust. With the final orders being entered, Eric and the ELN Trust needed to be made whole for assets that were wrongfully transferred by the ELN Trust to the LSN Trust pursuant to the Decree of Divorce entered on June 3, 2013, which was . . .

1 subsequently overturned by the Nevada Supreme Court by virtue of the remand
2 entered in 2017.

3
4 On August 25, 2023, the Defendant and the LSN Trust filed their Notice of
5 Appeal. Although the Defendant and the LSN Trust filed an appeal, the court was
6 not divested of jurisdiction as will be discussed *supra*. Knowing the court was not
7 divested of jurisdiction, the following motions were filed by Eric and the ELN Trust:
8

9 1. September 18, 2023- Plaintiff Eric Nelson, In His Individual Capacity, Motion
10 For An Equitable Offset;

11
12 2. September 18, 2023- Motion for Order Allowing Examination of Judgment
13 Debtor, Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee
14 of the Lynita S. Nelson Nevada Trust dated May 30, 2001; and

15
16 3. September 22, 2023-Matt Klabacka, Distribution Trustee of the Eric L.
17 Nelson Nevada Trust's Motion to Convey Properties Titled in the Name of Pink
18 Peonies, LLC/Pink Peonies-Wyoming, LLC and Southern Magnolia, LLC.

19
20 The above motions and the Defendant's counter motions were scheduled to be
21 heard on November 15, 2023. However, on November 13, 2023, this Court entered
22 an order vacating the hearing stating:
23

24 The COURT FINDS that this matter is currently before the Supreme
25 Court of Nevada. The Defendant filed her Notice of Appeal on August
26 25, 2023, and Case Appeal Statement on August 25, 2023; Cross-
27 Claimant filed his Notice of Appeal on September 2, 2023, and Case
28 Appeal Statement on September 2, 2023, and as a result, while the case
is pending before the Supreme Court of Nevada, this Court lacks
jurisdiction to consider the pending issues. See order filed on

1 November 13, 2023, page 2 lines 5 through 12.

2 Eric respectfully submits to this Court it does have jurisdiction to hear the
3 underlying motions and countermotions and therefore requests the Court to
4 reconsider its order or in the alternative, Eric requests the Court enter a *Huneycutt*
5 order.
6

7 II. ARGUMENT.

8 A. THE DISTRICT COURT DOES HAVE JURISDICTION TO 9 HEAR THIS MATTER PENDING AN APPEAL. 10

11 EDCR 5.516 states as follows:

12 Reconsideration and/or rehearing of motions.

13 (a) A party seeking reconsideration and/or rehearing of a ruling
14 (other than an order that may be addressed by motion pursuant to
15 NRCP 50(b), 52(b), 59, or 60), must file a motion for such relief
16 not later than 14 days after service of notice of entry of the order
17 unless the time is shortened or enlarged by order. A motion for
18 reconsideration does not toll the period for filing a notice of
19 appeal.

20 (b) If a motion for reconsideration and/or rehearing is granted,
21 the court may make a final disposition without hearing, may set it
22 for hearing or resubmission, or may make such other orders as are
23 deemed appropriate under the circumstances.

24 Here, Eric is making a timely motion for reconsideration pursuant to EDCR
25 5.516 as the order was entered on November 13, 2023, and fourteen days have not
26 elapsed since the filing of this motion.

27 This court does have jurisdiction to entertain the pending motions despite the
28 filing of an appeal. A common misconception by parties is that filing a Notice of

1 Appeal automatically stays any further District Court action. The Nevada Supreme
2 Court has repeatedly held this is not the case. In *State ex rel. P.C. v. District Court*,
3
4 94 Nev. 42, 574 P.2d 272 (1978), the Nevada Supreme Court held:

5 ... not required to post a bond, is entitled to a stay of judgment upon
6 the mere filing of the notice of appeal. Not only here would such a result
7 torture our prevailing rules of court, but such a determination would
8 render the language meaningless and would do untold mischief to the
effective administration of justice.

9 In *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006), the Nevada
10 Supreme Court held the District Court maintains jurisdiction to enforce its orders
11 pending an appeal.¹

12 In *Foster v. Dingwall*, 228 P.3d 453 (2010) the Nevada Supreme Court held:

13 We have further held that when an appeal is perfected, the district court
14 is divested of jurisdiction to revisit issues that are pending before this
15 court, [but] the district court retains jurisdiction to enter orders on
16 matters that are collateral to and independent from the appealed
17 order, *i.e.*, matters that in no way affect the appeal's merits. *Citing to*
18 *Mack-Manley*, 122 Nev. At 855, 138 P.3d at 529-30.

19
20 ...

21 ...

22 ...

23 ...

24 ...

25
26
27 ¹ See also *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); *Smith v.*
28 *Emery*, 11 109 Nev. 737, 740, 856 P.2d 1386, 1388 (1993); and *Huneycutt v. Huneycutt*, 94 Nev. 79, 80,
575 P.2d 585, 585 (1978)

1 In *Myers v. Haskins*, 381 P.3d 644 (Nev. 2012) the Nevada Supreme Court
2 in a footnote, denoted:

3
4 In light of this order, we deny as moot respondent's motion for
5 temporary remand, in which he contends that the underlying
6 proceedings are halted whenever appellant files a notice of appeal. We
7 remind the parties and the district court that after a notice of appeal is
8 filed, the district court retains jurisdiction to decide matters collateral
9 to or independent from the issues on appeal, to enforce orders that are
10 before this court on appeal, and to hold hearings concerning matters
11 that are pending before this court. *Foster v. Dingwall*, 126 Nev. —, —,
12 —, 228 P.3d 453, 455 (2010) ; *Mack–Manley v. Manley*, 122 Nev.
13 849, 855, 858, 138 P.3d 525, 531, 532 (2006) (providing that the
14 district court has the authority to resolve matters that are collateral to
15 and independent of the issues on appeal, “i.e., matters that in no way
16 affect the appeal's merits,” and explaining that a “district court has the
17 power to enforce” its order being challenged on appeal). The district
18 court is simply without jurisdiction to enter an order that modifies or
19 affects the order being challenged on appeal. *Foster*, 126 Nev. at —
20 , 228 P.3d at 455.

21 The relevant case law makes it clear, that the District Court retains jurisdiction
22 to enforce its court’s orders pending an appeal. Eric, in his underlying motion, is
23 requesting the District Court enforce its orders by offsetting the award of attorney’s
24 fees and cost against his child support obligation as discussed in his pending motion.
25 Moreover, as previously denoted, Defendant has not opposed this motion, and the
26 motion should be summarily granted.

27 **B. IN THE ALTERNATIVE, ERIC REQUESTS A HUNEYCUTT**
28 **ORDER BE ISSUED.**

In *Huneycutt v. Huneycutt*, 94 Nev 79 (Nev. 1978) the Nevada Supreme Court
adopted a procedure whereby a party can seek to have the District Court certify its

1 intent to grant the requested relief, whereby the party may move the Supreme Court
2 to remand the issue to the District Court².

3
4 In *Foster v. Dingwall*, 228 P.3d 453 (Nev. 2010), the Nevada Supreme Court
5 held:

6 As outlined in *Huneycutt*, prior to filing a motion for remand in this
7 court, a party seeking to alter, vacate, or otherwise change or modify an
8 order or judgment challenged on appeal should file a motion for relief
9 from the order or judgment in the district court. As demonstrated by
10 our *Huneycutt* decision, despite our general rule that the perfection of
11 an appeal divests the district court of jurisdiction to act except with
12 regard to matters collateral to or independent from the appealed order,
13 the district court nevertheless retains a limited jurisdiction to review
14 motions made in accordance with this procedure. *See Mack-*
15 *Manley*, [122 Nev. at 855-56](#), [138 P.3d at 529-30](#); *Huneycutt*, [94 Nev. at](#)
16 [80-81](#), 575 P.2d at 585-86. In considering such motions, the district
17 court has jurisdiction to direct briefing on the motion, hold a hearing
18 regarding the motion, and enter an order denying the motion, but lacks
19 jurisdiction to enter an order granting such a motion. *See Huneycutt*, [94](#)
20 [Nev. 79](#), [575 P.2d 585](#); *King v. First American Investigations, Inc.*, [287](#)
21 [F.3d 91](#), [94](#) (2d Cir.2002) (explaining that federal district courts have
22 jurisdiction to "entertain and deny" Rule 60(b) motions while an appeal
23 is pending, but cannot grant such motions without permission from the
24 circuit court); *Federal Land Bank of St. Louis v. Cupples Bros.*, [889](#)
25 [F.2d 764](#), [766-67](#) (8th Cir.1989) (same). Some of our caselaw implies,
26 however, that the district court lacks the authority to deny requests for
27 relief regarding matters that are not collateral to or independent from
28 the appealed order while the appeal remains pending. *See Mack-*
Manley, [122 Nev. at 855](#), [138 P.3d at 529-30](#); *Kantor v. Kantor*, [116](#)
[Nev. 886](#), [894-95](#), [8 P.3d 825](#), [830](#) (2000); *Rust*, [103 Nev. at 688](#), [747](#)
[P.2d at 1382](#). We take this opportunity to clarify that the district

² It is important to note, in *Foster* the Nevada Supreme Court specifically held this process is to be used by a party to an appeal if the party believes there is a basis "...to alter, vacate, or otherwise modify or change an order or judgment challenged on appeal..." Here, Eric is not seeking to alter, vacate, or otherwise modify the court's order, his pending motions are to enforce the orders entered by the District Court.

1 court *does* have jurisdiction to *deny* such requests. *King*, [287 F.3d at](#)
2 [94](#); *Federal Land Bank*, [889 F.2d at 766](#).

3 As for the remand procedure, if the district court is inclined to grant the
4 relief requested, then it may certify its intent to do so. *Mack-*
5 *Manley*, [122 Nev. at 855](#), [138 P.3d at 530](#); *Huneycutt*, [94 Nev. at](#)
6 [81](#), [575 P.2d at 586](#). At that point, it would be appropriate for the
7 moving party to file a motion (to which the district court's certification
8 of its intent to grant relief is attached) with this court seeking a remand
9 to the district court for entry of an order granting the requested
10 relief. *Mack-Manley*, [122 Nev. at 855-56](#), [138 P.3d at](#)
11 [530](#); *Huneycutt*, [94 Nev. at 81](#), [575 P.2d at 586](#). This court will then
12 consider the request for a remand and determine whether it should be
13 granted or denied. *See Mack-Manley*, [122 Nev. at 856](#), [138 P.3d at](#)
14 [530](#) (noting this court's discretion to grant a motion seeking remand to
15 the district court); *see also Post v. Bradshaw*, [422 F.3d 419](#), [422](#) (6th
16 Cir.2005) (noting that appellate courts do not rubber-stamp or grant
17 such motions as a matter of course). If the district court is not inclined
18 to grant the requested relief, however, then as stated above, the district
19 court may enter an order denying the motion. *King*, [287 F.3d at](#)
20 [94](#); *Federal Land Bank*, [889 F.2d at 766](#).

21 As discussed in *Foster*, the first step pursuant to *Huneycutt*, is for Eric to
22 request from this court an order certifying the court will entertain Eric's pending
23 motion. Once this court grants the *Huneycutt*, Eric will then need to file the
24 appropriate motion with the Supreme Court, and the Supreme Court will then
25 determine whether to remand the issue.

26 Eric therefore requests this court to enter an order pursuant to *Huneycutt*
27 which will allow this Court to entertain Eric's pending motion.

28 ...

...

III. CONCLUSION

WHEREFORE, based upon the foregoing, Eric respectfully requests this Court enter orders granting him the following relief:

1. For reconsideration of the Court's Order Vacating Hearing for Jurisdiction filed on November 13, 2023;
2. In the alternative a *Hunneycutt* order; and
3. For all other and further relief as the Court deems appropriate.

DATED this 21st day of November, 2023.

HAUSER FAMILY LAW

/s/ MICHELLE A. HAUSER

Michelle A. Hauser, Esq.

Nevada State Bar No. 7738

1489 West Warm Springs Road, Suite 110

Henderson, Nevada 89014

702-867-8313

Email: michelle@hauserfamilylaw.com

Attorneys for Plaintiff

Eric Nelson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HAUSER FAMILY LAW and that on the 21st day of November, 2023, I caused the above and foregoing document entitled **PLAINTIFF ERIC NELSON’S, IN HIS INDIVIDUAL CAPACITY, MOTION TO RECONSIDER THE COURT’S ORDER VACATING HEARING FOR JURISDICTION FILED ON NOVEMBER 13, 2023 AND IN THE ALTERNATIVE MOTION FOR A HUNEYCUTT ORDER** 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:

Curtis R. Rawlings, Esq.
Pecos Law Group
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
curtis@pecoslawgroup.com
Attorney for Lynita Sue Nelson and LSN Trust in an “Unbundled Capacity”

Stacy Howlett, Esq.
Michaelson Law
1746 W. Horizon Ridge Pkwy.
Henderson, NV 89012
stacy@michaelsonlaw.com
Attorney for the Lynita S. Nelson Nevada Trust Dated May 30,2001

...

...

1 Jeffrey P. Luszeck, Esq.
2 SOLOMON DWIGGINS FREER &
3 STEADMAN, LTD.
4 9060 West Cheyenne Avenue
5 Las Vegas, Nevada 89129
6 jluszeck@sdfnlaw.com
7 *Attorneys for Matt Klabacka,*
8 *Distribution Trustee of the ERIC L.*
9 *NELSON NEVADA*
10 *TRUST dated May 30, 2001*

11
12 and that there is regular communication by mail between the place of mailing and
13 the place(s) so addressed.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Susan Pinjuv
An Employee of HAUSER FAMILY LAW

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff,

v.

LYNITA SUE NELSON, et al.,
Defendant.

CASE NO.: D-09-411537-D

DEPT. NO.: O

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- | |
|---|
| <input type="checkbox"/> \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
<input checked="" type="checkbox"/> \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/> The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/> The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input checked="" type="checkbox"/> The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on.
<input type="checkbox"/> Other Excluded Motion (must specify). |
|---|

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- | |
|---|
| <input checked="" type="checkbox"/> \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input type="checkbox"/> The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/> The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-
<input type="checkbox"/> \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order. -OR-
<input type="checkbox"/> \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129. |
|---|

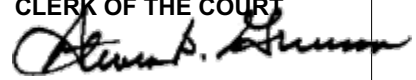
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is: <input checked="" type="checkbox"/> \$0 <input type="checkbox"/> \$25 <input type="checkbox"/> \$57 <input type="checkbox"/> \$82 <input type="checkbox"/> \$129 <input type="checkbox"/> \$154
--

Party filing Motion/Opposition: Plaintiff Date: November 21, 2023

Signature of Party or Preparer /s/ Susan Pinjuv

PAPP0429



OPPS

Stacy Howlett, Esq.
Nevada Bar No. 8502
Email: stacy@michaelsonlaw.com
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
Email: matthew@michaelsonlaw.com
MICHAELSON LAW

1746 W. Horizon Ridge Parkway
Henderson, Nevada 89012
Ph: (702) 731-2333
Fax: (702) 731-2337

*Attorneys for Lynita Nelson, individually and
as investment trustee for the Lynita S. Nelson Nevada Trust Dated May 30, 2001*

**DISTRICT COURT
FAMILY DIVISION
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,

LYNITA SUE NELSON,

Cross-defendant

District Court Case No.: D-09-411537-D

**OPPOSITION TO PLAINTIFF ERIC
NELSON'S, IN HIS INDIVIDUAL
CAPACITY, MOTION TO
RECONSIDER THE COURT'S ORDER
VACATING HEARING FOR
JURISDICTION FILED ON NOVEMBER
13, 2023 AND IN THE ALTERNATIVE
MOTION FOR A HUNEYCUTT ORDER
AND
ELN TRUST'S JOINDER TO MOTION**

Lynita Nelson, individually and as investment trustee of the Lynita S. Nelson Nevada Trust
Dated May 30, 2001 ("LSN Trust") by and through attorneys, Stacy Howlett, Esq. and Matthew
D. Whittaker, Esq. of Michaelson Law, hereby submits this Opposition to Plaintiff Eric Nelson's,
in His Individual Capacity, Motion to Reconsider the Court's Order Vacating Hearing for
Jurisdiction Filed on November 13, 2023 and in the Alternative Motion for a Huneycutt Order and

1 ELN Trust's Joinder to Plaintiff's Motion to Reconsider.

2 This Opposition is made and based on the papers and pleadings on file in the above-
3 captioned case, the Memorandum of Points and Authorities below, and upon such oral argument
4 as the Court may entertain at the hearing on this matter.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. LEGAL ARGUMENT**

7 Mr. Nelson's Motion to Reconsider and ELN Trust's Joinder¹ are meritless attempts to get
8 the Court to revisit the stay issue. The Motion and Joinder fail to include the reconsideration
9 standard – likely because neither Mr. Nelson nor ELN Trust can meet the standard. Mr. Nelson
10 also requests a *Huneycutt* order – even though he concedes that these circumstances do not match
11 reasons for such an order. Finally, the Court appropriately stayed the proceedings, but even if not,
12 the Court merely needs to determine a reasonable security pursuant to NRCP 62 wherein Ms.
13 Nelson and LSN Trust would be entitled to complete, automatic stay of enforcement and execution
14 of the judgments.

15 **A. Mr. Nelson fails to provide the reconsideration standard because his Motion**
16 **fails to meet the standard.**

17 Mr. Nelson's Motion for Reconsideration fails to include the reconsideration standard. A
18 party's ability to seek reconsideration is not absolute and should only be entertained in the
19 narrowest of circumstances. Those narrow circumstances do not exist here.

20 "A district court may reconsider a previously decided issue if substantially different
21 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*
22 *Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,
23 489 (1997); *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)
24 ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling
25 contrary to the ruling already reached should a motion for rehearing be granted.").

26
27
28 ¹ ELN Trust filed a late joinder that does not include any additional arguments or points.

1 Based on Nevada law, Mr. Nelson has not shown a valid reason for the court to reconsider
2 its Minute Order. His motion is completely devoid of any argument as to new law or facts that
3 were not previously before the court when it issued the Minute Order.

4 **B. Mr. Nelson is not actually requesting a Huneycutt Order and therefore his**
5 **request for one should be denied.**

6 The Nevada Supreme Court created a process in *Huneycutt* by which a district court can
7 reconsider matters that are on appeal. *See Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 575 P.2d
8 585, 585-86 (1978); *see also Foster v. Dingwall*, 126 Nev. 49, 53, 228 P.3d 453, 456 (2010). A
9 *Huneycutt* order is appropriate where the district court is inclined to grant a motion for
10 reconsideration for the order or judgment on appeal, but cannot due to lack of jurisdiction. *Id.*; *see*
11 *also Mack-Manley v. Manley*, 122 Nev. 849, 855-56, 138 P.3d 525, 529-30 (2006). This has been
12 codified in NRCP 62.1 and NRAP 12A.

13 Here, Mr. Nelson is admittedly not asking the court to reconsider the orders on appeal. Mr.
14 Nelson makes that clear in footnote 2 of his Motion for Reconsideration. Accordingly, Mr. Nelson
15 is not actually asking for a *Huneycutt* order and such an order would not be appropriate in these
16 circumstances.

17 **C. The Court appropriately stayed these proceedings and enforcement and**
18 **execution of the Judgment. Even if there is an issue, a bond or other security**
19 **is sufficient to correct any error.**

20 Good cause exists for the court to grant a stay of execution of the judgment and these
21 proceedings generally pending the appeal.

22 Nevada Rule of Appellate Procedure 8(a)(1) allows a party to move the trial court for stay
23 of the judgment or order of, or proceedings in, a district court pending appeal to the Supreme Court
24 or Court of Appeal.

25 The court is to apply four tests when considering whether to grant a stay:

- 26 (1) Whether the object of the appeal will be defeated if the stay is denied;
27 (2) Whether appellant will suffer irreparable or serious injury if the stay is denied;
28

- 1 (3) Whether respondent will suffer irreparable or serious injury if the stay is granted; and
2 (4) Whether appellant is likely to prevail on the merits.

3 *See Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see also* NRAP 8(c).

4 The object of the appeal would be defeated if the stay is denied. As the Nevada Supreme
5 Court held as law of this case, trusts are not to be held liable for a settlor's personal debts. *See*
6 *Klabacka v. Nelson*, 133 Nev. 164, 177, 394 P.3d 940, 950 (2017). Yet, LSN Trust is being held
7 liable for attorney's fees incurred by Mr. Nelson and ELN Trust for Ms. Nelson proceeding to trial
8 on her individual, personal right to division of any and all community property. Because the right
9 was personal to Ms. Nelson, LSN Trust could not proceed to trial unreasonably or with intent to
10 harass ELN Trust because LSN Trust did not go to trial on any issues. Therefore, the object of
11 holding this court to mandatory Nevada precedence would be defeated should LSN Trust have to
12 pay debts personal to Ms. Nelson.

13 Ms. Nelson and the LSN Trust would be irreparably harmed if the stay is denied.
14 Irreparable harm is harm for which compensatory damages would be inadequate, such as the sale
15 of a home, because real property is unique. *See Hansen v. Eighth Jud. Dist. Ct. ex rel. Cnty. of*
16 *Clark*, 116 Nev. 650, 658, 6 P.3d 982, 986–87 (2000) citing and quoting *Dixon v. Thatcher*, 103
17 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987). ELN Trust seeks information regarding Ms.
18 Nelson and LSN Trust's real property holdings to execute the judgment against. Such real property
19 is unique and therefore harm would exist upon execution that clouds title to such property.

20 ELN Trust will not suffer irreparable harm should the stay be granted. Due to the Nevada
21 Supreme Court's decisions, ELN Trust's assets are vastly large and more significant than LSN
22 Trust's assets.

23 Appellant is likely to prevail on the merits of the appeal. ELN Trust is only entitled to
24 attorney's fees pursuant to NRS 18.010 and EDCR 5.219 if Ms. Nelson and LSN Trust proceeded
25 to trial unreasonably or with an intent to harass ELN Trust. As LSN Trust did not proceed to trial
26 on any claims, LSN Trust could not unreasonably proceed to trial or otherwise intend to harass
27 ELN Trust. Additionally, the court sided with Ms. Nelson at the summary judgment stage and the
28

1 court's ultimate decision from the trial rested on testimony from the trial. Further, the Nevada
2 Supreme Court ordered this court to complete the community property tracing. *See Klabacka v.*
3 *Nelson*, 133 Nev. at 173 (finding that the district court "must still perform[]" the tracing of trust
4 assets and mandating the district court that it "shall make an equal distribution of community
5 property" if community property exists in the trusts).

6 Additionally, LSN Trust will prevail on the issue of interest owed to ELN Trust because
7 the Court's order violates NRAP 37. NRAP 37(b) explicitly states that if the appellate court
8 reverses or modifies a judgment that a money judgment be entered in the district court, the mandate
9 must contain instructions about the allowance of interest. The appellate decision had no such
10 instructions.

11 Finally, ELN Trust's requests go beyond the statutory allowance of NRS 21.270. ELN
12 Trust requests documents about entities not party to or privy to this matter or the judgments.
13 Namely, all Articles of Organization, Operating Agreements, lists of members and managers,
14 meeting minutes, resolutions, and other documentary evidence of Southern Magnolia LLC and
15 Pink Peonies LLC – none of which are reasonably calculated to identify executable assets of Ms.
16 Nelson or LSN Trust. Accordingly, such requests are meant only to harass Ms. Nelson and her
17 trust.

18 Even if issues exist with the Minute Order, any issues are subject to harmless error review.
19 *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010). At worst, Ms. Nelson and/or
20 the LSN Trust would have to post a supersedeas bond or other bond or security to get an automatic
21 stay of execution and enforcement of the judgment. *See* NRCP 62(d) (a supersedeas bond or other
22 bond or security that the court deems fit is sufficient to obtain a full and automatic stay of
23 enforcement and execution of the judgment).

24 **II. CONCLUSION**

25 Based on the foregoing, this Court should deny Plaintiff Eric Nelson's, in His Individual
26 Capacity, Motion to Reconsider the Court's Order Vacating Hearing for Jurisdiction Filed on
27 November 13, 2023 and in the Alternative Motion for a Huneycutt Order and ELN Trust's Joinder
28 to Mr. Nelson's Motion to Reconsider. Alternatively, the Court should determine reasonable

1 security pursuant to NRCP 62 to allow the stay to stand pending appeal.

2 Dated this 5th day of December, 2023.

3 MICHAELSON LAW

4 /s/ Matthew D. Whittaker

5 Stacy Howlett, Esq.
6 Nevada Bar No. 8502
7 Matthew D. Whittaker, Esq.
8 Nevada Bar No. 13281
9 1746 W. Horizon Ridge Parkway
10 Henderson, NV 89012
11 Ph: (702) 731-2333
12 *Attorneys for Lynita Nelson, individually and*
13 *as investment trustee for the Lynita S. Nelson*
14 *Nevada Trust Dated May 30, 2001*

DECLARATION OF COUNSEL SUPPORTING OPPOSITION TO PLAINTIFF ERIC NELSON'S, IN HIS INDIVIDUAL CAPACITY, MOTION TO RECONSIDER THE COURT'S ORDER VACATING HEARING FOR JURISDICTION FILED ON NOVEMBER 13, 2023 AND IN THE ALTERNATIVE MOTION FOR A HUNEYCUTT ORDER AND ELN TRUST'S JOINDER TO MOTION

Matthew D. Whittaker, being first duly sworn, deposes and says:

That I have been retained by Lynita Nelson. I have read the **OPPOSITION TO PLAINTIFF ERIC NELSON'S, IN HIS INDIVIDUAL CAPACITY, MOTION TO RECONSIDER THE COURT'S ORDER VACATING HEARING FOR JURISDICTION FILED ON NOVEMBER 13, 2023 AND IN THE ALTERNATIVE MOTION FOR A HUNEYCUTT ORDER AND ELN TRUST'S JOINDER TO MOTION**, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.

SIGNED UNDER THE PENALTY OF PERJURY.

Dated this 5th day of December, 2023.

MICHAELSON LAW

/s/ Matthew D. Whittaker

Stacy Howlett, Esq.
Nevada Bar No. 8502
Matthew D. Whittaker, Esq.
Nevada Bar No. 13281
1746 W. Horizon Ridge Parkway
Henderson, NV 89012
Ph: (702) 731-2333

*Attorneys for Lynita Nelson, individually and
as investment trustee for the Lynita S. Nelson
Nevada Trust Dated May 30, 2001*

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b) and NEFCR 9, the undersigned hereby certifies that on December 5, 2023, a copy of the **OPPOSITION TO PLAINTIFF ERIC NELSON'S, IN HIS INDIVIDUAL CAPACITY, MOTION TO RECONSIDER THE COURT'S ORDER VACATING HEARING FOR JURISDICTION FILED ON NOVEMBER 13, 2023 AND IN THE ALTERNATIVE MOTION FOR A HUNEYCUTT ORDER AND ELN TRUST'S JOINDER TO MOTION** was e-served and/or mailed by US Priority Mail in Henderson, Nevada to the following individuals and/or entities at the following addresses:

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>
Curtis R. Rawlings, Esq. Pecos Law Group 8925 South Pecos Road, Suite 14A Henderson, Nevada 89074 curtis@pecoslawgroup.com <i>Attorney for Lynita Sue Nelson and LSN Trust in an "Unbundled Capacity"</i>	

MICHAELSON LAW

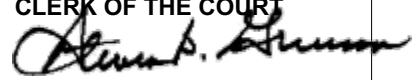
/s/ Michelle Ekanger

An Employee of Michaelson Law

From: NoReply@clarkcountycourts.us
To: [Susan Pinjuv](#)
Subject: Eighth Judicial District Court - Proposed Order Returned
Date: Wednesday, December 6, 2023 9:36:43 AM

D-09-411537-D OST Nelson v. Nelson

Your proposed order or document requiring a judge's signature to the court has been returned for the following reason(s): The Court did not find good cause to move up the hearing on the Motion for Reconsideration.



RPLY
HAUSER FAMILY LAW
Michelle A. Hauser, Esq.
Nevada State Bar No. 7738
1489 West Warm Springs Road, Suite 110
Henderson, Nevada 89014
702-867-8313
Email: michelle@hauserfamilylaw.com
Attorneys for Plaintiff
ERIC NELSON

**DISTRICT COURT
FAMILY DIVISION
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

Date of Hearing: **01/25/2024**
Time of Hearing: **9:00 a.m.**

Oral Argument Requested

MATT KLABACKA, Distribution Trustee
of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**REPLY TO OPPOSITION TO PLAINTIFF ERIC NELSON'S, IN HIS
INDIVIDUAL CAPACITY, MOTION TO RECONSIDER THE COURT'S
ORDER VACATING HEARING FOR JURISDICTION FILED ON**

1 **NOVEMBER 13,2023 AND IN THE ALTERNATIVE MOTION FOR A**
2 **HUNEYCUTT ORDER AND ELN TRUST’S JOINDER TO MOTION**

3
4 COMES NOW Plaintiff, Eric Nelson, in his individual capacity, by and
5 through his attorney, Michelle A. Hauser, Esq., of Hauser Family Law, and hereby
6 submits his reply to Defendant’s “Opposition to Eric Nelson’s, In His Individual
7 Capacity, Motion to Reconsider the Court’s Order Vacating Hearing For Jurisdiction
8 Filed on November 13, 2023 and In the Alternative Motion for A Huneycutt Order
9 and ELN Trust’s Joinder to Motion.”
10

11
12 This Reply is made and based upon the papers and pleadings on file herein,
13 the attached Memorandum of Points and Authorities and such oral argument as may
14 be induced at the time of hearing on this matter.
15

16 Dated this 11th day of December, 2023.

17 **HAUSER FAMILY LAW**

18 /s/ Michelle Hauser

19 Michelle A. Hauser, Esq.

20 Nevada State Bar No. 7738

21 1489 West Warm Springs Road, Suite 110

22 Henderson, Nevada 89014

23 702-867-8313

24 Email: michelle@hauserfamilylaw.com

25 Attorneys for Plaintiff

26 ERIC NELSON
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court is aware of the procedural postulate of this case, as such Eric will not address the same. On November 21, 2023, Eric filed his “Plaintiff Eric Nelson’s, in His Individual Capacity Motion to Reconsider the Court’s Order Vacating Hearing for Jurisdiction filed on November 13, 2023, and In the Alternative Motion for a Huneycutt Order.” Eric filed this motion due to the Order entered on November 13, 2023, whereby the Court vacated the hearings scheduled for November 15, 2023. In the Order entered November 13, 2023, the Court wrongfully determined it did not have jurisdiction to hear either Eric or the ELN Trust’s pending motions due to the Defendant(s) filing an appeal.

On November 27, 2023, the ELN Trust filed with the Nevada Supreme Court “Emergency Writ under NRAP 27(e) Petition for Writ of Mandamus. On December 4, 2023, the Nevada Supreme Court issued an order on the ELN Trust’s Writ. Although the Nevada Supreme Court denied the Writ due to a procedural error, the Nevada Supreme Court did by its dicta in the order, provide further instruction to the District Court as to its jurisdiction to hear Eric and the ELN Trust’s pending motions. Specifically, the Nevada Supreme Court held:

As Klabacka points out in the petition, this court has repeatedly explained that the district court retains jurisdiction to consider collateral matters and to enforce its orders during the pendency of an appeal, absent a stay of enforcement pursuant to NRCP 62(d) or NRAP 8. *E.g.*, *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010)

1 ("[W]hen an appeal is perfected, the district court is divested of
2 jurisdiction to revisit issues that are pending before this court, [but] the
3 district court retains jurisdiction to enter orders on matters that are
4 collateral to and independent from the appealed order, i.e., matters that
5 in no way affect the appeal's merits." (quoting *Mack-Manley v. Manley*,
6 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006)); *Mack-Manley*, 122
7 Nev. at 858, 138 P.3d at 532 (noting that as a collateral matter, the
8 district court may enforce orders during a pending appeal); *Bongioui v.*
9 *Bongioui*, 94 Nev. 321, 322, 579 P.2d 1246, 1247 (1978) (same).
10 Indeed, a district court's refusal to enforce its orders pending appeal
11 could in effect grant the opposing party a stay without bond. *Cf. Nelson*
12 *v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005), *as modified* (Jan. 25,
13 2006) (discussing when stays of money judgments upon a waived or
14 reduced bond are appropriate). Moreover, to the extent that a post-
15 appeal motion could result in altering the order on appeal or affect the
16 appeal's merits, the district court may proceed under NRCP 62.1 and
17 NRAP 12A by either denying the motion or certifying its intent to grant
18 the motion or that the motion raises a substantial issue.

19 *See* exhibit "1" attached.

20 The dicta from the Nevada Supreme Court along with the legal authority
21 provided by Eric in his Motion to Reconsider and his Motion for an Equitable Offset¹
22 filed on September 18, 2023, make it clear that (1) the mere filing of a Notice of an
23 Appeal does not divest the District Court of jurisdiction to enforce its orders, or
24 handle collateral issues; and (2) there is not an automatic stay issued by filing a
25 Notice of Appeal. Despite the framework provided by the Nevada Supreme Court,
26 Defendant(s) on December 5, 2023, *after* the Nevada Supreme Court issued its

27 ¹ In Eric's motion filed on September 18, 2023, Eric provided the District Court with the legal authority to
28 proceed forward with hearing the pending motions. *See* page 5 of Eric's motion. Despite this briefing, the
District Court made no findings of fact in its minute order entered on November 23, 2023, as to why it
lacked jurisdiction to hear the pending motions.

1 order, filed a meritless and misleading Opposition. The Defendant(s) opposition is
2 sanctionable under EDCR 5.219.

3 4 II. ARGUMENT

5 A. Eric filed a proper Motion to Reconsider.

6 The Defendant argues that Eric's motion to reconsider is legally unsound as
7 it does not provide any legal basis to support his underlying request. This argument
8 is intellectually dishonest. First, Eric properly cites EDCR 5.516, which provides
9 the legal basis for the Court to reconsider its order. Moreover, Eric, like the ELN
10 Trust in its Writ, provided the legal argument as to why the District Court has
11 jurisdiction to hear the pending motions. The Nevada Supreme Court in its dicta as
12 discussed *infra*, also agrees with the legal arguments presented by Eric and the ELN
13 Trust.
14

15
16 Moreover, the Nevada Supreme Court in its Writ decision, also stated:

17
18 Nor has Klabacka demonstrated that he brought this issue to the district
19 court's attention before seeking writ relief. *See Id.* at page 3.

20 By the mere statements made by the Nevada Supreme Court in its decision it
21 is abundantly clear the Nevada Supreme Court agrees the Court has jurisdiction to
22 hear the pending matters and invited the ELN Trust, and thus likewise Eric to file a
23 motion to reconsider before the Court.
24

25
26 Instead of addressing the relevant law regarding the Court's jurisdiction to
27 hear the pending matters, the Defendant(s) make an intellectual dishonest argument
28

1 indicating Eric did not file any legal support for his underlying Motion for
2 Reconsideration. The failure by the Defendant(s) to address Eric's well sounded
3 legal arguments, which is supported by the Nevada Supreme Court, should be
4 considered an admission by the Defendant that this Court has jurisdiction to hear the
5 pending motions. This is evident by the countermotion filed by the Defendant(s)
6 which will be discussed *supra*.
7
8

9
10 **B. The District Court never stayed the proceedings.**

11 The Defendant(s) in an attempt to confuse the issues, argue the District Court
12 "appropriately stayed these proceedings." As the Defendant's attorney, Matthew D.
13 Whittaker signed a Declaration under oath, supporting the factual averments in the
14 Opposition, Mr. Whittaker should be personally sanctioned for making false
15 statements to the Court. In reviewing the Order issued by the Court on November
16 13, 2023, nowhere does the Court enter an order "staying" the orders subject to the
17 pending appeal.
18
19

20 The Order simply states the Court does not have jurisdiction to hear the
21 pending motions. There is a significant legal difference between a "stay" and the
22 Court having jurisdiction to hear a matter. The difference between a court having
23 jurisdiction to hear a matter and a court "staying" a matter is that jurisdiction refers
24 to the court's authority to hear a case, while a stay refers to the court's decision to
25 pause proceedings in a case. This is why the Defendant(s) have requested a stay in
26
27
28

1 their opposition, although their opposition does not properly indicate they have filed
2 a counter motion as required under EDCR 5.502.

3
4 In their counter motion, the Defendant(s) make several arguments that are
5 disputed and factually inaccurate. Eric and the ELN Trust have already addressed
6 the arguments presented in the Defendant(s) counter motion in the following
7 pleadings:
8

9 1. October 9, 2023, Reply to Opposition to Motion for Order Allowing
10 Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in her
11 Capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust dated May 30,
12 2001; and Opposition to Counter motion to Stay Execution of Judgment Pursuant to
13 NRAP 8;
14

15 2. October 9, 2023, Reply to Opposition to Eric Nelson, In His Individual
16 Capacity, Motion for Equitable Relief; and
17

18 3. October 13, 2023, Matt Klabacka, Distribution Trustee of the Eric L.
19 Nelson Nevada Trusts Reply to Opposition to Motion to Convey Properties Titled
20 in the Name of Pink Peonies LLC/Pink Peonies-Wyoming, LLC and Southern
21 Magnolia LLC and Opposition to Counter motion for Sanctions.
22
23

24 Thus, for the sake of brevity, Eric incorporates all the factual and legal
25 arguments in the October 9, 2023, and October 13, 2023, replies into this Reply.

26 Eric would like to remind the Court that the LSN Trust's argument that it
27 cannot be held liable for attorney's fees and costs incurred by Eric and the ELN Trust
28

1 is not supported by the procedural postulate of this case. The best evidence that the
2 Defendant(s) arguments are without merit is seen in the “Motion to Withdraw as
3 Attorney for Defendant/Cross-Defendant, and to Adjudicate and Reduce Attorneys’
4 Lien to Judgement” filed on March 23, 2023, by the Defendant’s prior counsel.
5

6 In this Motion, the Defendant(s) counsel at the time specifically requested a
7 judgment be entered against Lynita and the LSN Trust in the amount of \$563,293.71
8 for work performed post-remand. Neither Lynita nor the LSN Trust filed an
9 opposition to this requested relief and, to the contrary, Lynita and the LSN Trust
10 admitted at subsequent hearings they owed the money to their prior counsel.
11 Likewise, they never filed a motion to reconsider or any further pleading after the
12 court granted the requested relief. This is an admission by the Defendant(s) that
13 despite their argument, the LSN Trust was a party to the action.
14
15
16

17 For these reasons, and the reasons stated in the Replies filed on October 9,
18 2023, and October 13, 2023, the Defendant(s) requested relief should be denied.
19

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

III. CONCLUSION

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that this Court enter orders granting him the following relief:

1. Granting requests in Plaintiff's underlying Motion; and
2. Awarding Eric such other and further relief as the Court deems appropriate.

Dated this day 11th of December, 2023.

HAUSER FAMILY LAW

/s/Michelle Hauser

Michelle A. Hauser, Esq.

Nevada State Bar No. 7738

1489 West Warm Springs Road, Suite 110

Henderson, Nevada 89014

702-867-8313

Email: michelle@hauserfamilylaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HAUSER FAMILY LAW and that on the 11th day of December, 2023, I caused the above and foregoing document entitled **REPLY TO OPPOSITION TO PLAINTIFF ERIC NELSON’S, IN HIS INDIVIDUAL CAPACITY, MOTION TO RECONSIDER THE COURT’S ORDER VACATING HEARING FOR JURISDICTION FILED ON NOVEMBER 13,2023 AND IN THE ALTERNATIVE MOTION FOR A HUNEYCUTT ORDER AND ELN TRUST’S JOINDER TO MOTION**, 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:

Curtis R. Rawlings, Esq.
Pecos Law Group
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
curtis@pecoslawgroup.com
Attorney for Lynita Sue Nelson in an “Unbundled Capacity”

...

Jeffrey P. Luszeck, Esq.
SOLOMON DWIGGINS FREER & STEADMAN, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

jluszeck@sdfnvlaw.com

*Attorneys for Matt Klabacka, Distribution Trustee of the ERIC L. NELSON
NEVADA
TRUST dated May 30, 2001*

Stacy Howlett, Esq.
Michaelson Law
1746 W. Horizon Ridge Pkwy.
Henderson, NV 89012

stacy@michaelsonlaw.com

Attorney for the Lynita S. Nelson Nevada Trust Dated May 30, 2001

and that there is regular communication by mail between the place of mailing and
the place(s) so addressed.

/s/ Susan Pinjuv

An Employee of HAUSER FAMILY LAW

EXHIBIT “1”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA 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
REGINA M. MCCONNELL, DISTRICT
JUDGE,

Respondents,


and

LYNITA SUE NELSON,
INDIVIDUALLY AND IN HER
CAPACITY AS INVESTMENT
TRUSTEE OF THE LYNITA S.
NELSON NEVADA TRUST DATED
MAY 30, 2001; AND ERIC L. NELSON,
Real Parties in Interest.

No. 87650

FILED

DEC 04 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This emergency petition for a writ of mandamus challenges an alleged November 13, 2023, district court order concluding that the court lacked jurisdiction to consider post-judgment motions because an appeal is pending and vacating a hearing thereon.

In summer 2023, the district court entered several post-judgment orders awarding sums to the ELN Trust, including for rents owed, attorney fees, and costs. Real party in interest Lynita Sue Nelson, individually and as trustee of the LSN Trust, appealed from some of those orders, and petitioner Matt Klabacka, as trustee of the ELN Trust, cross-

appealed. *See Nelson v. Klabacka*, Docket No. 87234. Meanwhile, according to Klabacka, he filed two motions in aid of execution on the post-judgment orders: a motion for judgment debtor examination and a motion to reconvey properties back to the LSN Trust. Lynita and the LSN Trust opposed his motions and filed a countermotion for stay, Klabacka states, but before hearing the matter, on November 13, 2023, the district court entered an order concluding that it lacked jurisdiction to consider the motions due to the pending appeal. Klabacka then filed this emergency writ petition, seeking to compel the district court to consider his motions.

As Klabacka points out in the petition, this court has repeatedly explained that the district court retains jurisdiction to consider collateral matters and to enforce its orders during the pendency of an appeal, absent a stay of enforcement pursuant to NRCP 62(d) or NRAP 8. *E.g., Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (“[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal’s merits.” (quoting *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006)); *Mack-Manley*, 122 Nev. at 858, 138 P.3d at 532 (noting that as a collateral matter, the district court may enforce orders during a pending appeal); *Bongiovi v. Bongiovi*, 94 Nev. 321, 322, 579 P.2d 1246, 1247 (1978) (same). Indeed, a district court’s refusal to enforce its orders pending appeal could in effect grant the opposing party a stay without bond. *Cf. Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005), *as modified* (Jan. 25, 2006) (discussing when stays of money judgments upon a waived or reduced bond are appropriate). Moreover, to the extent that a post-appeal motion could

result in altering the order on appeal or affect the appeal's merits, the district court may proceed under NRCP 62.1 and NRAP 12A by either denying the motion or certifying its intent to grant the motion or that the motion raises a substantial issue.

Here, however, we are unable to discern whether writ relief is warranted to remedy clear error or a manifest abuse of discretion because Klabacka failed to provide this court with copies of the district court's November 13 order and the parties' motion briefing below. NRAP 21(a)(4); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 229, 88 P.3d 840, 844 (2004) ("If essential information is left out of the petition and accompanying documentation, we have no way of properly evaluating the petition."); see also *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 820, 407 P.3d 702, 706 (2017) (discussing standards for issuing mandamus relief). Nor has Klabacka demonstrated that he brought this issue to the district court's attention before seeking writ relief. Accordingly, we deny the petition without prejudice to Klabacka's ability to refile with proper documentation if deemed warranted. NRAP 21(b).

It is so ORDERED.

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Herndon, J.
Herndon

cc: Hon. Regina M. McConnell, District Judge, Family Division
Solomon Dwiggins & Freer, Ltd.
Pecos Law Group
Michaelson Law
Hauser Family Law
Eighth District Court Clerk