No. 24-

IN THE

Supreme Court of the United States

NVWS PROPERTIES, LLC,

Petitioner,

v.

CASUN INVEST, A.G.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A federal district court sitting in diversity jurisdiction must apply the forum state's law in determining the applicable statute of limitations. Where a choice-of-law issue arises in determining the applicable statute of limitations, and the forum state's highest court has endorsed using the Second Restatement of Conflict of Laws to resolving such an issue, the applicable statute of limitations is that of the jurisdiction where, among other things, the benefit occurred.

The question presented is:

In assessing under a conflict of laws which jurisdiction's statute of limitations applies, does it apply to the jurisdiction where all the parties resided at the time of the events giving rise to the lawsuit, or does it apply to the jurisdiction where some of the parties resided at the time the lawsuit was filed?

PARTIES TO THE PROCEEDING

Petitioner NVWS Properties, LLC, was the appellant in the Ninth Circuit below in Case No. 22-16273[1] and the defendant in the district court. Respondent Casun Invest, A.G., was the appellee in the Ninth Circuit below in Case No. 22-16273 and the plaintiff in the district court.

Michael H. Ponder and Lezlie Gunn are not parties to this petition, nor were they parties in the Ninth Circuit below in Case No. 22-16273. They were both defendants in the district court.

1. The Ninth Circuit's opinion below consisted of three consolidated appeals—Nos. 22-16273, 22-16275, and 23-15224. Certiorari is only being sought in Case No. 22-16273.

CORPORATE DISCLOSURE STATEMENT

Petitioner NVWS Properties, LLC, is a Nevada Limited Liability Company. As it is not a publicly-traded corporation and has no stock, no parent corporation or any publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Supreme Court of the United States

NVWS Properties, LLC v. Casun Invest, A.G., No. 24A663 (order granting extension of time to file petition for a writ of certiorari, issued January 3, 2025) (Kagan, Circuit Justice)

United States Court of Appeals for the Ninth Circuit

Casun Invest, A.G., v. Michael H. Ponder, et al., Nos. 22-16273, 22-16275, and 23-15224 (consolidated) (judgment affirming in part and reversing in part, issued October 15, 2024).

United States District Court for the District of Nevada

Casun Invest, A.G. v. Michael H. Ponder, et al., No. 16-cv-2925 (judgment entered on March 31, 2023).

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PETITION FOR A WRIT OF CERTIORARI

NVWS Properties, LLC, respectfully petitions this Court for a writ of certiorari to the Ninth Circuit below in Case No. 22-16273.[2]

OPINIONS BELOW

The Ninth Circuit's judgment is reported at 119 F.4th 637 (9th Cir. 2024 and reproduced at Apx. 2a-31a. The district court's final judgment is unreported but available at 2022 WL 2818476 (D. Nev. July 15, 2022) and reproduced at Apx. 32a-33a. The district court's order containing its findings of fact and conclusions of law is unreported and not available in any unofficial report but is reproduced at Apx. 34a-54a.

JURISDICTION

The Ninth Circuit issued its judgment on October 15, 2024, (Apx. 2a). NVWS Properties did not seek rehearing en banc. On January 3, 2025, Justice Kagan granted NVWS Properties an extension to file its petition for a writ of certiorari up to and including February 12, 2025. (No. 24A663). This Court has jurisdiction under 28 U.S.C. § 1254(1).

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2. The Ninth Circuit consolidated No. 22-16273 with Nos. 22-16275 and 23-15224, but certiorari is not being sought in those later two cases.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statutory provisions are involed in this case: Code of Obligations (Switzerland), § 1, art. 60 & 67 (reprinted in Apx. 63a-64a); California Cal. Civ. Proc. Code §§ 335, 339 (reprinted in Apx. 60a-61a); and Nev. Rev. Stats. §§ 11.190(2); 11.220 (reprinted in Apx. 55a-59a).

STATEMENT OF THE CASE

This case involves a dispute over a purchase transaction for property located in Woodside, California (the "California property"). The Woodside Property was originally owned by Respondent Casun Invest, A.G., a company with its incorporation and principal place of business in Switzerland. In March 2013, Casun's sole shareholder, multi-billionaire Hans-Peter Wild, urgently needed to transfer the California property to Lezlie Gunn. (Apx. 2a-3a, 4a), due to Casun's potential bankruptcy. Gunn created Petitioner NVWS Properties, LLC, to effect the purchase. Gunn was the sole member of NVWS. Wild also agreed to give Gunn $2,100,000 as an irrevocable gift to enable her to purchase the property for $2,050,000, but Gunn was not required to do anything in return. (Apx. 2a, 4a). Subsequently, on April 17, 2013, Michael Ponder—in his capacity as Casun's *direktor*—executed a deed that conveyed the California property from Casun to NVWS. (Apx. 4a-5a). At the time of the conveyance, all of the above individuals resided in Switzerland, and all of the documents necessary to complete the conveyance were prepared, notarized, and executed in Switzerland. (Apx. 5a). The deed granting the California property transfer was recorded on April 25, 2013, in California. (Apx. 5a).

On July 17, 2013, Wild emailed both Gunn and Ponder demanding payment, claiming it had been overdue for weeks. Casun never received any money or consideration for the California property. (Apx. 5a-6a).

Over three years later—that is, on December 16, 2016—Casun subsequently brought a suit in the federal District of Nevada based on diversity jurisdiction against Ponder, Gunn, and NVWS for, among other things, unjust enrichment. At the time of the lawsuit's filing, Ponder and Gunn had relocated their residence to Nevada. Since Gunn was the sole member of NVWS, complete diversity of citizenship existed between them as the defendants and Casun as the plaintiff, thus vesting the district court with subject matter jurisdiction under 28 U.S.C. § 1332(a)(2).

Switzerland has a one-year statute of limitations for unjust enrichment, (Apx. 63a-64a) while California has a statute of limitations of two years, (Apx. 60a-61a) and Nevada has a statute of limitations of four years. (Apx. 55a-59a). Despite all of the parties being present in Switzerland when the California property was deeded, and despite Nevada having no relationship to the property transaction in the first place, both the district court and the Ninth Circuit, applying the Restatement of the Conflict of Laws, concluded that Nevada's four-year statute of limitations applied to Casun's unjust enrichment claim against NVWS, and following a bench trial entered judgment in favor of Casun on that claim.

The Ninth Circuit never gave a reason for concluding that the unjust enrichment claim arose in Nevada instead of Switzerland or California. (Apx. 15a-19a). The district court, for its part, noted that under the Restatement

(Second) of the Conflicts of Law, § 221, it had to exine (1) the place where the parties' relationship was centered; (2) the place were the benefit was received; (3) the place where the act conferring the benefit or enrichment was performed; (4) the parties' domicile; and (5) the location of the land at issue. For Part (1), the district court admitted the parties' relationship centered in Switzerland. For Part (3), the district court admitted that the act conferring the benefit—that is, the property—occurred in Switzerland as well, given that that was the origin of the money provided and the place where the NVWS Grant Deed was executed. And for Part (5), the district court admitted that the land conveyed was located in California. (Apx. 46a-47a).

But despite admitting that the benefit of the land was conferred in Switzerland, and despite admitting that Gunn—the sole member of NVWS—resided in Switzerland at the time of the conveyance, the district court went on to conclude for Part (2) that the benefit was received in Nevada. It gave no explanation for this conclusion. Presumably, the district court did this due to either NVWS being a Nevada LLC or due to Gunn residing in Nevada at the time Casun filed its lawsuit. (Apx. 46a-47a). Either way, it is undisputed that the conveyance of the California property had absolutely nothing to do with Nevada.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit's decision cannot be reconciled with this Court's precedent assessing the jurisdiction in which a claim arises for purposes of determining the appropriate statute of limitations.

This Court has held that, for purposes of assessing where a cause of action arises under state law, "a cause of action sounding in tort arises in the jurisdiction where the last act necessary to establish liability occurred," that is, "the jurisdiction in which injury was received." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 705 (2004) (quoting John W. Ester, *Borrowing Statutes of Limitations and Conflict of Laws*, 15 Fla. L. Rev. 33, 47 (1962)). In other words, the cause of action does not arise in the jurisdiction where the parties happen to be located at the time the lawsuit is filed. If the parties have relocated to another domicile by the time the lawsuit begins, this is irrelevant to determining the applicable statute of limitations.

The Second of the Conflict of Laws—which the Nebraska Supreme Court has endorsed, *General Motors Corp. v. Eighth Judicial Dist. Court*, 134 P.3d 111, 116 (Neb. 2006)—concurs with this. The critical issue is "where the benefit or enrichment was received" Restatement (Second) of the Conflict of Laws § 221, Comment (2)(b). Without practically any analysis, both the district court and the Ninth Circuit concluded that the benefit—that is, the reception of the California property—was received in Nevada, even though at the time of the property transfer's consummation Gunn—the sole member of NVWS—resided in Switzerland, not Nevada. Neither the Ninth Circuit nor the district court gave any reason

for concluding that NVWS resided in Nevada at the time of the transaction.

The consequences of allowing the Ninth Circuit to stand would be highly detrimental to state causes action filed in federal district courts going forward. Legitimate statute of limitations defenses would be severely weakened, as the plaintiff would simply have to focus on where the defendant lived at the time the lawsuit was filed, as opposed to where the defendant lived at the time the cause of action itself accrued.

II. The Ninth Circuit's decision is wrong on the merits, and if left standing will lead to forum shopping.

There is no question that the Ninth Circuit's decision is wrong on its face. It gave no reason for affirming the district court's conclusion that Nevada's four-year statute of limitations applied, but it is not difficult to see why—there are no grounds on which the district court's can be defended in a manner consistent with the Second Restatement on the Conflict of Laws. That Restatement requires a court to weigh the following factors: (1) the place where the relationship between the parties was centered; (2) the place where the benefit was received; (3) the place where the act conferring the benefit was performed; (4) the parties' domicile; and (5) the location of the property in question. Despite admitting that all of the parties resided in Switzerland at the time of the California property's conveyance, and despite admitting that the conveyance was executed in Switzerland, the district court, with no analysis, concluded that Nevada was where the benefit took place. This cannot withstand scrutiny.

The district court's ruling—with the Ninth Circuit's endorsement—will have consequences far beyond the particular facts and parties of this case if it is allowed to stand. Among other things, it will encourage plaintiffs whose claims would otherwise not survive the applicable statute of limitations to engage in forum shopping and bring their lawsuit in whichever state would have a statute of limitations allowing their claims, no matter how tenuous the relationship between their lawsuit and the forum state might be. At least one member of this Court has expressebnd concerned about forum shopping in the context of district courts entering universal injunctions. "Just do a little forum shopping for a willing judge and, at the outset of the case, you can win a decree barring the enforcement of a duly enacted law against anyone." *Labrador v. Poe by and through Poe*, 114 S.Ct. 921, 927 (2024) (Gorsuch, J., concurring). The exact same concerns about forum shopping are present here—a plaintiff simply need to do a little forum shopping to find a forum state with a long enough statute of limitations, and it can maintain its otherwise-expired cause of action no matter how tenuous the link may be between the forum state and the cause of action.

Nor is that the only consequence that will flow from the Ninth Circuit's decision if it is allowed to stand. Its decision will not only encourage plaintiffs to forum shop—conversely, it will also encourage potential defendants to leave forums with large statutes of limitations if they know there is a chance that such a statute will be applicable to its case even if there is practically no connection between the state in question and the events giving rise to the lawsuit. If defendants cannot be sure that judges will correctly apply the Second Restatement of the Conflict of Laws in

a fair and evenhanded way, they will have every incentive to move out of the state in question and take their business elsewhere, resulting in economic downturn for the forum state in question, similar to what companies have recently done in light of Delaware state courts discarding the law governing shareholder decisions. *See*, *e.g.*, Clyde Hughes, *Elon Musk moves SpaceX's incorporation from Delaware to Texas* (Feb. 15, 2024), bit.ly/40M2iqN.

Courts cannot be allowed to discard the plain meaning of the Second Restatement of the Conflict of Laws at whim. They must be required to apply its principles in a correct matter. This makes it critical for this Court to grant certiorari.

III. This case is an ideal vehicle to review the matter.

This case is an appropriate vehicle for this Court to review this issue. The underlying facts are not in dispute—it is undisputed that the property in question is located in California, that all parties resided in Switzerland at the time the California property was transferred, and that none of them lived in Nevada until the time Casun filed its complaint in the district court. What's more, the Ninth Circuit itself readily admitted that the entire transaction for Casun transferring the California property to NVWS took place in Switzerland. In other words, the Ninth Circuit did not dispute that Nevada had absolutely no relation to the sale of the California property, but discarded this through a dangerous precedent. This lack of dispute over the facts makes it all the more appropriate and extremely important for all Americans to grant certiorari on this very important issue.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-16273
D.C. No. 2:16-cv-02925-JCM-EJY

CASUN INVEST, A.G., A SWISS CORPORATION,

Plaintiff-Appellee,

v.

MICHAEL H. PONDER, AN INDIVIDUAL;
LEZLIE GUNN, AN INDIVIDUAL,

Defendants,

and

NVWS PROPERTIES, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Defendant-Appellant.

No. 22-16275
D.C. No. 2:16-cv-02925-JCM-EJY

CASUN INVEST, A.G., A SWISS CORPORATION,

Plaintiff-Appellant,

v.

MICHAEL H. PONDER, AN INDIVIDUAL; LEZLIE
GUNN, AN INDIVIDUAL; NVWS PROPERTIES,
LLC, A NEVADA LIMITED LIABILITY COMPANY,

Defendants-Appellees.

Appendix A

No. 23-15224
D.C. No. 2:16-cv-02925-JCM-EJY

CASUN INVEST, A.G., A SWISS CORPORATION,

Plaintiff-Appellee,

v.

MICHAEL H. PONDER, AN INDIVIDUAL; LEZLIE GUNN, AN INDIVIDUAL; NVWS PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Defendants-Appellants.

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted March 7, 2024
Las Vegas, Nevada

Filed October 15, 2024

Before: Milan D. Smith, Jr., Mark J. Bennett, and Daniel P. Collins, Circuit Judges.

Per Curiam Opinion
Partial Dissent by Judge Bennett.

OPINION

PER CURIAM:

The case arises from a dispute over the transfer of a property in Woodside, California that was owned by Casun Invest, A.G. ("Casun"). Hans-Peter Wild, sole shareholder of Casun, agreed to transfer the property to his girlfriend Lezlie Gunn (through her company, NVWS Properties [1]) for

1. Casun's *direktor*, Michael Ponder, is a cross-appellee.

$2,050,000.[2] Casun transferred the property to NVWS, but no payment was made in return. Casun sued in federal court in Nevada, claiming unjust enrichment, breach of fiduciary duty (and aiding and abetting breach of fiduciary duty), constructive fraud, and civil conspiracy.

After a bench trial, the district court entered judgment for Casun against NVWS in the amount of $2,050,000 based on the unjust enrichment claim only. The court applied Nevada choice of law principles to determine that Nevada's four-year statute of limitations applied to the unjust enrichment claim. NVWS appealed the judgment, and Casun cross-appealed.[3]

The parties also dispute the costs awarded to Casun. The district court specified in its findings of fact and conclusions of law that each party would bear its own costs. Casun subsequently filed a bill of costs and a motion to retax costs, arguing that Nevada law makes it mandatory for a prevailing party to receive its costs. The district court granted the motion to retax costs and awarded Casun $48,585.44 in costs against NVWS. NVWS appealed the district court's order granting the motion to retax costs.

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2. There have been several Ninth Circuit cases involving these parties. *See, e.g.*, *Gunn v. Wild*, 771 F. App'x 392 (9th Cir. 2019); *GW Grundbesitz AG v. A. Invs., LLC*, No. 21-16419, 2022 U.S. App. LEXIS 23765, 2022 WL 3645062 (9th Cir. Aug. 24, 2022); *Gunn v. Drage*, 65 F.4th 1109 (9th Cir. 2023).

3. The substance of Casun's cross-appeal appears to be that if we find that a shorter limitations period than four years applies, then we should also hold that the district court erred in determining the date that the claim accrued.

This case concerns both appeals. We have jurisdiction under 28 U.S.C. § 1291. We hold that the district court did not err in applying Nevada's four-year statute of limitations to the unjust enrichment claim and affirm the district court's judgment. But we reverse the district court's order granting the motion to retax costs.

I.

In March 2013, Hans-Peter Wild and Gunn arranged for Gunn to purchase the Woodside, California property. Between March 26 and March 28, 2013, Gunn created three Nevada LLCs: Woodside Gate LLC, NVMS Properties LLC (managed by Gunn), and NVWS (managed by NVMS). On March 31, 2013, Hans-Peter Wild agreed to give Gunn $2,100,000 to allow her to purchase the property for $2,050,000.[4] Gunn was not obligated to do anything in return.

The same day, Hans-Peter Wild emailed Hans-Rudolf Wild,[5] Casun's sole board member, and Michael Ponder, Casun's *direktor* (selected and authorized by the board of directors to act on behalf of the corporation), stating:

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4. According to NVWS, Hans-Peter "Wild [arranged] to sell the Woodside Property to Gunn to protect it from [an] investigation [by German authorities]" and instructed Gunn to create NVWS as a shell company to take title of the property. Casun claims that Gunn asked Hans-Peter Wild to transfer title of the property to her as a gift to avoid negative publicity arising from prior litigation between Casun and her father, Calvin Gunn, over the ownership of the property. The district court made no factual findings on this, presumably because it found the parties' reasons for arranging the purchase immaterial. We agree that this is immaterial.

5. The two are unrelated.

> We have an offer for the house at market price and I think we should sell. Mike you have the details and please execute the sale with [Hans-Rudolf] Wild. The house is sold as is and we only need to transfer the title.

Ponder had been removed as Casun's *direktor* on March 21, 2013, and was reappointed on March 28, 2013, effective April 9, 2013. As *direktor*, Ponder had the authority to execute documents, including grant deeds, on Casun's behalf. But he was not *direktor* on March 31, 2013, and thus could not transfer the property on that date.

On April 8, 2013, Hans-Peter Wild wired Gunn $2,100,000. On April 17, 2013, after Ponder was reinstated as Casun's *direktor*, Ponder executed a grant deed conveying the property from Casun to NVWS.[6] Ponder did not provide the grant deed to Hans-Rudolf Wild for review and approval before he executed the document on Casun's behalf. Ponder, Gunn, Hans-Rudolf Wild, and Hans-Peter Wild all resided in Switzerland at the time of the transfer. The grant deed was recorded in San Mateo County, California on April 25, 2013.

On July 17, 2013, Hans-Peter Wild emailed Gunn and Ponder, stating that payment for the property had been overdue for weeks and demanding payment within twenty-four hours. On August 3, 2013, Hans-Peter Wild again

6. The grant deed states: "For valuable consideration, receipt of which is hereby acknowledged, I (We) Casun Invest, AG, a Switzerland Corporation hereby remise, release and grant to: NVWS Properties LLC, a Nevada LLC the following described real property in the City of Woodside, County of San Mateo, State of California . . . ." The grant deed does not specify the consideration.

emailed Gunn and Ponder, indicating that he still had not received payment or the name or contact information for the buyer of the property.[7] Ponder responded, indicating that the buyer was NVWS.[8] On August 6, 2013, Hans-Peter Wild emailed Ponder and copied Gunn requesting that the money be wired "without any further delay." There is no evidence that NVWS paid Casun for the property or provided any other form of consideration.

On December 16, 2016, Casun sued NVWS, Gunn, and Ponder in district court. After a three-day bench trial, the district court entered judgment for Casun against NVWS,[9] but only on the unjust enrichment claim.[10]

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7. The email reads:

> Mike,
>
> I had asked for the name and contact data of the buyer and have not received any answer. This is unacceptable.
>
> The purchase price was not received.
>
> Mike[,] you are a director of Casun, you have been involved in the sale and you are obligated to act on their behalf immediately.

8. The parties do not explain why Hans-Peter Wild asked for the name and contact information of the buyer.

9. The district court entered no judgment against Gunn. The court found that "Casun did not prove by a preponderance of the evidence that Gunn is liable for unjust enrichment" because "[t]he property was transferred to NVWS, not Gunn," and "[t]here [was] no evidence that NVWS is Gunn's alter ego," or that there was an "enforceable contract obligating Gunn to personally complete the transfer with the $2,100,000 that Hans-Peter Wild gave her in 2013." Casun did not appeal this ruling.

10. The district court found for the defendants and against Casun on the breach of fiduciary duty, aiding and abetting breach

The district court awarded Casun $2,050,000 in compensatory damages and $709,440.41 in prejudgment interest. In its conclusions of law following the bench trial, the district court specified that "[e]ach party is to bear its own costs and fees."

Casun nonetheless submitted a bill of costs against NVWS for $48,585.44. NVWS objected to Casun's bill of costs:

> Defendant NVWS objects to:
>
> 1. The entire Bill of Costs on the grounds the Court ordered the parties to bear their own costs;
>
> 2. The entire Bill of Costs on the basis Casun is not the prevailing party because it did not prevail against two defendants, and only prevailed against NVWS on one of five causes of action;
>
> 3. Alternatively, the Bill of Costs should be reduced by two-thirds, as Casun did not receive any relief after trial from two of the three defendants Casun sued; and

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of fiduciary duty, constructive fraud, and civil conspiracy claims. It found against Casun on the civil conspiracy claim because "Casun did not prove by a preponderance of the evidence that there was an agreement between the defendants to commit any tort." It found the other claims barred by the applicable statute of limitations. Casun did not appeal any of these rulings.

> 4. Travel costs to take the deposition of Hans Peter Wild and Hans Rudolf Wild, who were clients and/or client representatives of the party that initiated the lawsuit should not be awarded.

Casun responded to NVWS's objection and moved to retax costs. Casun argued that under Nevada Revised Statutes § 18.020(3), a prevailing party seeking to recover more than $2,500 is entitled to recover costs as a matter of right. It also argued that Casun was a prevailing party because, under Nevada law, a party need only win on one of its claims to be considered a prevailing party.

The district court agreed with Casun, granted the motion to retax costs, and directed the clerk to tax $48,585.44 in costs against NVWS, which the clerk did.

II.

We review de novo choice of law questions and the district court's interpretation of state law. *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 610 (9th Cir. 2010). "We apply the clearly erroneous standard to factual findings that underlie the choice of law determination." *Id.* In addition, we "review a district court's costs award for abuse of discretion." *Spirit of Aloha Temple v. Cnty. of Maui*, 49 F.4th 1180, 1195 (9th Cir. 2022). "A district court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Liberty Ins. Corp. v. Brodeur*, 41 F.4th 1185, 1189 (9th Cir. 2022) (quoting *Ingenco Holdings, LLC v. Ace Am. Ins. Co.*, 921 F.3d 803, 808 (9th Cir. 2019)).

Appendix A

III.

A.

NVWS argues that the district court erred in applying the Nevada statute of limitations to the unjust enrichment claim. We review this choice of law question de novo. *Love*, 611 F.3d at 610.

The district court made these conclusions of law relevant to the unjust enrichment claim:

> 2. Nevada's conflict of law principles dictate which jurisdiction's law applies to each claim. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941), superseded by statute on other grounds.
>
> 3. "[T]he Nevada Supreme Court has endorsed looking to the Second Restatement of Conflict of Laws and applying the most specific, applicable section to questions of tort and contract law." *McNamara v. Hallinan*, No. 2:17-cv-02967, 2019 U.S. Dist. LEXIS 168028, 2019 WL 4752265, at *5 (D. Nev. Sept. 30, 2019) . . . .
>
> 4. The following sections of the Second Restatement apply to each claim:
>
> . . . .
>
> d. For unjust enrichment, Restatement (Second) [of] Conflict[] of Law[s] § 221.

i. The place where the relationship between the parties, if any, is centered: Switzerland;

ii. The place where the benefit [(the title to the property)] was received: Nevada;

iii. The place where the act conferring the benefit or enrichment was performed: Switzerland (origin of money provided and place where the NVWS Grant Deed was executed);

iv. The domicile of the parties: Switzerland and Nevada;[11] and

v. The location of any land or chattel connected to the enrichment: California.

5. "These contacts are to be evaluated according to their relative importance with respect to the particular issue." *See* Restatement (Second) Conflict[] of Law[s] §§ 145, 148, 221.

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11. In its findings of fact, the district court found that Casun is a resident of Switzerland, and NVWS, Ponder, and Gunn are residents of Nevada. The parties do not dispute these findings. Even though the parties who are natural persons resided in Switzerland during the events leading up to this lawsuit, their domicile appears to have changed to Nevada before the complaint was filed. *See Lew v. Moss*, 797 F.2d 747, 752 (9th Cir. 1986) (looking at domicile at the time that the suit was filed to determine diversity jurisdiction).

6. Considering the relevant contacts, . . . Nevada law applies to the claim which arose in Nevada—unjust enrichment.

7. Nevada's borrowing statute, Nevada Revised Statute 11.020, provides that:

When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against the person in this State, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

8. By the date Casun filed this action, December 16, 2016, the statutes of limitations had not run on any of Casun's claims under Swiss law.

. . . .

9. As Swiss law does not bar Casun's claims, the court applies Nevada's statutes of limitations. *See* Restatement (Second) Conflict[] of Law[s] § 142.

. . . .

13. Under Nevada law, Casun's claims for civil conspiracy and unjust enrichment fall under four-year statutes of limitations. *See Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (Nev. 1998); *In re Amerco Derivative Litig.*, 127 Nev.

196, 252 P.3d 681, 703 (Nev. 2011); NEV. REV. STATS. §§ 11.190(2), 11.220.

> a. Accordingly, Casun had until August 3, 2017, to bring these claims. Therefore, the claims are not barred by the applicable Nevada statutes of limitations.

. . . .

16. In Nevada, a claim for unjust enrichment is established when: (a) the plaintiff confers a benefit on the defendant; (b) the defendant appreciates such benefit; and (c) "there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 283 P.3d 250, 257 (Nev. 2012) (internal quotations omitted).

17. Casun proved by a preponderance of the evidence that NVWS is liable for unjust enrichment.

> a. Casun conferred a benefit—title for the property—to NVWS, NVWS appreciated that benefit by holding the title for and managing the property, and it would be inequitable for NVWS to retain that benefit without payment

of the anticipated purchase price of $2,050,000.

18. Casun did not prove by a preponderance of the evidence that Gunn is liable for unjust enrichment.

a. The property was transferred to NVWS, not Gunn.

b. There is no evidence that NVWS is Gunn's alter ego. *See LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 8 P.3d 841, 846-47 (Nev. 2000); (ECF No. 230 (dismissing Casun's alter ego claim)).

c. There is no evidence of an enforceable contract obligating Gunn to personally complete the transfer with the $2,100,000 that Hans-Peter Wild gave her in 2013. *See* NEV. REV. STATS. §§ 111.210, 111.220(5).

. . . .

20. The court finds in favor of Casun and against NVWS on Casun's claim for unjust enrichment.

21. The court finds in favor of Gunn and against Casun on Casun's claim for unjust enrichment.

> 22. Casun is entitled to a judgment in its favor on its unjust enrichment claim for compensatory damages in the amount of the reasonable purchase price.
>
> 23. The reasonable purchase price is the anticipated purchase price of $2,050,000.

In essence, the district court followed the Nevada Supreme Court's guidance by applying the most specific, applicable section of the Restatement (Second) of Conflict of Laws, which in this case was Section 221, covering restitution and unjust enrichment. *See Gen. Motors Corp. v. Eighth Jud. Dist. Ct. of State of Nev. ex rel. Cnty. of Clark*, 122 Nev. 466, 134 P.3d 111, 116 (Nev. 2006). It then applied Section 221 of the Restatement (Second) of Conflict of Laws to find that the Nevada statute of limitations applied to the unjust enrichment claim.

NVWS argues that the district court erred by applying Section 221 of the Restatement instead of Nevada's borrowing statute.[12] NVWS contends that under the borrowing statute, the district court should have applied Switzerland's statute of limitations (or California's statute

12. NVWS does not challenge the district court's weighing of the various factors under Restatement section 221. "[We] will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant's opening brief . . . ." *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1033 (9th Cir. 2008) (quoting *Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986)). Thus, if we determine that the district court properly chose to apply Section 221, we will end our analysis at that point.

of limitations). Casun responds that the borrowing statute only bars claims that have arisen outside of Nevada, and thus the borrowing statute is inapplicable because the unjust enrichment claim arose in Nevada.

First, we agree that Nevada's borrowing statute plainly bars only claims that have arisen outside of Nevada. The statute provides:

> When a cause of action **has arisen in another state, or in a foreign country**, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against the person in this State . . . .

NEV. REV. STAT. § 11.020 (emphasis added).

We next turn to NVWS's contention that the unjust enrichment claim arose in either Switzerland or California, and thus the district court should have applied the statute of limitations of either and barred the claim.

The Nevada Supreme Court has not yet addressed the question of how to determine where an unjust enrichment cause of action "has arisen," and the parties offer different tests for making this determination.[13] NVWS argues that we should determine where the cause of action "has arisen" by looking at "where the tort occurred." It argues

13. No party disputes that, under NEV. REV. STAT. § 11.020, we must determine where the unjust enrichment claim arose.

that the "tort occurred in Switzerland" because "[e]ach of the parties (or their representatives or stakeholders) resided in Switzerland at the time the transaction was effected . . . . Thus, the grant deed was executed, delivered, and accepted in Switzerland . . . ." NVWS makes the alternative argument that "if the Swiss statute of limitations does not apply, then Casun's cause of action 'arose' in California, because the subject property is located there and the deed was recorded there."

Casun argues that the district court's analysis was correct because "'substantive' choice-of-law principles may be utilized as guidance when considering the applicable statute of limitations." As such, it is appropriate to consider the most specific and applicable section of the Restatement (Second) of Conflict of Laws, here Section 221, dealing with restitution and unjust enrichment. Casun also argues that NVWS improperly relies on Nevada authority regarding tort claims, as here we are dealing with an unjust enrichment claim.

"Federal courts sitting in diversity must apply 'the forum state's choice of law rules to determine the controlling substantive law.'" *Fields v. Legacy Health Sys.*, 413 F.3d 943, 950 (9th Cir. 2005) (quoting *Patton v. Cox*, 276 F.3d 493, 495 (9th Cir. 2002)). "Nevada tends to follow the Restatement (Second) of Conflict of Laws (1971) in determining choice-of law questions involving contracts," *Progressive Gulf Ins. Co. v. Faehnrich*, 752 F.3d 746, 750 (9th Cir. 2014), and "unjust enrichment is a quasi-contractual claim" in Nevada, *Carter v. Ethicon, Inc.*, No. 2:20-cv-1232, 2021 U.S. Dist. LEXIS 62463,

2021 WL 1226531, at *4 (D. Nev. Mar. 31, 2021); *see also Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 283 P.3d 250, 256-58 (Nev. 2012). Thus, we agree with Casun and the district court that we can "look[] to the Second Restatement of Conflict of Laws and apply[] the most specific, applicable section" to determine where the unjust enrichment cause of action arose. *McNamara v. Hallinan*, No. 2:17-cv-02967, 2019 U.S. Dist. LEXIS 168028, 2019 WL 4752265, at *5-6 (D. Nev. Sept. 30, 2019) (looking to Section 221 of the Restatement (Second) of Conflict of Laws as the "most specific, applicable section" for an unjust enrichment claim).

The most specific, applicable section is Section 221, which "applies to claims . . . to recover for unjust enrichment." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 221 cmt. a (AM. L. INST. 1971). Section 221 states:

> (1) In actions for restitution, the rights and liabilities of the parties with respect to the particular issue are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.
>
> (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
>
> > (a) the place where a relationship between the parties was centered,

> provided that the receipt of enrichment was substantially related to the relationship,
>
> (b) the place where the benefit or enrichment was received,
>
> (c) the place where the act conferring the benefit or enrichment was done,
>
> (d) the domicil[e], residence, nationality, place of incorporation and place of business of the parties, and
>
> (e) the place where a physical thing, such as land or a chattel, which was substantially related to the enrichment, was situated at the time of the enrichment.
>
> These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Id. § 221.

We see no section more applicable than Section 221 to an unjust enrichment claim, and NVWS offers no alternatives.[14] *McNamara*, 2019 U.S. Dist. LEXIS

14. While NVWS discusses Section 142 of the Restatement (Second) of Conflict of Laws, it only uses Section 142 to support

168028, 2019 WL 4752265, at *5-6 ("As a general matter, the Nevada Supreme Court has endorsed looking to the Second Restatement of Conflict of Laws and applying the most specific, applicable section to questions of tort and contract law . . . . In light of this authority, this Court will look to . . . § 221 [of the Restatement (Second) of Conflict of Laws] dealing with unjust enrichment."). We therefore see no error in the district court's application of Section 221 of the Restatement (Second) of Conflict of Laws to determine that the unjust enrichment claim arose in Nevada.[15]

Accordingly, we affirm the district court's holding that Nevada's four-year statute of limitations applies to the unjust enrichment claim.[16] *See In re Amerco Derivative Litig.*, 127 Nev. 196, 252 P.3d 681, 703 (Nev. 2011) (stating that, under Nevada law, "[t]he statute of limitation for an unjust enrichment claim is four years" (citing NEV. REV. STAT. § 11.190(2)(c))).

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that the borrowing statute should apply, and not that § 142 should be used to determine where the unjust enrichment claim arose. And NVWS offers no reason to treat an unjust enrichment claim as a tort claim and apply NVWS's proposed test—"where the tort occurred"—instead of Section 221.

15. As noted above, NVWS does not challenge how the district court weighed the Section 221 factors—it argues only that Section 221 should not apply. *See supra* n.12.

16. Because we hold that Nevada's four-year statute of limitations applies, we do not address Casun's alternative argument on cross-appeal challenging the district court's finding that the unjust enrichment claim accrued on August 6, 2013.

B.

NVWS also argues that the unjust enrichment claim was barred because a contract remedy was available to Casun. But we decline to reach this argument because NVWS raised it for the first time on appeal. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1108 (9th Cir. 2001) ("Generally, an appellate court will not hear an issue raised for the first time on appeal. We may decline to reach an issue if it was not raised sufficiently for the trial court to rule on it." (citations and quotation marks omitted)).

C.

We next address the district court's order granting the motion to retax costs.

As noted earlier, the district court specifically stated, in its written findings of fact and conclusions of law, that "[e]ach party is to bear its own costs." Accordingly, when Casun nonetheless proceeded to submit a bill of costs, the Clerk cited the court's prior ruling and declined to award costs. Casun moved to retax costs, contending that Nevada law, rather than federal law, governed the availability of costs and that Nevada law mandated an award of costs to Casun. The district court agreed, granted Casun's motion, and awarded Casun $48,585.44 in costs. We hold that the district court erred in concluding that Nevada law applied to the issue of costs.

In resolving asserted "conflicts between state law and the Federal Rules," the Supreme Court has established

a two-step test. *Burlington N. R. Co. v. Woods*, 480 U.S. 1, 4, 107 S. Ct. 967, 94 L. Ed. 2d 1 (1987). At the first step, a court must determine whether a relevant federal rule "answers the question in dispute." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398, 130 S. Ct. 1431, 176 L. Ed. 2d 311 (2010); *see also Burlington*, 480 U.S. at 4-5 (framing the question as whether a relevant federal rule "is sufficiently broad to cause a direct collision with the state law or, implicitly, to control the issue before the court, thereby leaving no room for the operation of that law" (simplified)). If a federal rule does answer the question in dispute, then the federal rule must be applied "unless it exceeds statutory authorization or Congress's rulemaking power." *Shady Grove*, 559 U.S. at 398; *see also Burlington*, 480 U.S. at 5 (stating that an applicable federal rule controls "if it represents a valid exercise of Congress' rulemaking authority, which originates in the Constitution and has been bestowed on th[e] [Supreme] Court by the Rules Enabling Act, 28 U.S.C. § 2072").

Here, it is clear that federal law answers the precise question in dispute and does so in a way that directly conflicts with Nevada law. Section 1920 of Title 28 of the United States Code provides that "[a] judge or clerk of any court of the United States *may* tax as costs" a list of six enumerated categories of costs. 28 U.S.C. § 1920 (emphasis added). That discretion to award or deny costs is likewise reflected in Federal Rule of Civil Procedure 54(d), which states that, absent a contrary provision in a federal statute, rule, or court order, costs "*should* be allowed to the prevailing party." FED. R. CIV. P. 54(d)(1) (emphasis added). Nevada law, by contrast, states that

"[c]osts *must* be allowed of course to the prevailing party against any adverse party against whom judgment is rendered" in, *inter alia*, "an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500." NEV. REV. STAT. § 18.020(3) (emphasis added).[17] Moreover, this clear conflict between federal and Nevada law is perfectly illustrated by the facts of this case: when the district court believed that it had discretion whether to award costs, it explicitly declined to do so, and it thereafter awarded such costs *only* because it concluded that Nevada's mandatory cost-shifting requirement applied here.[18]

Because federal law "answers the question in dispute," *Shady Grove*, 559 U.S. at 398, we proceed to the second step of the analysis, which generally asks whether the federal rule exceeds either constitutional limits or statutory limits. *Id.* In the context of the Federal Rules of Civil Procedure, which were promulgated under the

17. Because neither side has contended that the scope of the costs recoverable in this case would differ depending upon whether federal law or Nevada law is applied, we have no occasion to consider the significance, if any, of any such possible difference.

18. The dissent's reliance on *Clausen v. M/V New Carissa*, 339 F.3d 1049 (9th Cir. 2003), is unavailing. In finding that state law controlled the recovery of expert witness costs in that case, we relied on the view that the state provision at issue there was a "*damages provision*" that allowed the plaintiff to recover such costs "as *one element of its compensatory damages*." *Id.* at 1064 (emphasis in original). There is no support for the view that Nevada law treats the costs covered by § 18.020(3) as an item of compensatory "damages." On the contrary, the statute on its face treats "[c]osts" as distinct from "damages." *See* NEV. REV. STAT. § 18.020(3) (allowing "[c]osts" where "damages" sought exceed $2,500).

Rules Enabling Act, the second step's statutory inquiry requires the court to consider whether the relevant rule satisfies the Rules Enabling Act's requirement that the rule must not "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b); *see also Burlington*, 480 U.S. at 5 (identifying this as an "additional requirement" that must be met in addition to constitutional requirements). In *Shady Grove*, the Court was sharply divided as to whether the federal rule in question altered the parties' "substantive right[s]" under New York law in violation of the Rules Enabling Act; indeed, the Justices in the majority did not even agree as to the standards governing that inquiry. 559 U.S. at 407, 410-15 (plurality); *id.* at 424-28 (Stevens, J., concurring in part and in the judgment); *id.* at 448 n.7 (Ginsburg, J., dissenting). In this case, however, we need not wade into any such issue. Here, the relevant "rule" governing costs—*viz.*, that they may be awarded or declined at the discretion of the court—is contained in a federal *statute*, *i.e.*, § 1920. Rule 54(d) merely replicates that discretion, accompanied by hortatory language about what courts "should" ordinarily do. Because Rule 54(d) adds nothing material to what is already contained in § 1920, our inquiry at the second step is greatly simplified. Because § 1920—a statute—itself controls the relevant federal question, we have no need, at the second step, to address any question of statutory authorization under the Rules Enabling Act. The only question, therefore, is whether the discretionary cost authority afforded by § 1920 is within Congress's constitutional authority.

The Supreme Court has held that Congress's constitutional power to establish lower federal courts, together with its authority under the Necessary and

Proper Clause, gives Congress the "power to make rules governing the practice and pleading in those courts, which in turn includes a power to regulate matters which, though falling within the uncertain area between substance and procedure, *are rationally capable of classification as either*." *Hanna v. Plumer*, 380 U.S. 460, 472, 85 S. Ct. 1136, 14 L. Ed. 2d 8 (1965) (emphasis added). Accordingly, it is irrelevant here whether § 1920's grant of discretionary cost-shifting authority might reasonably be viewed as a "substantive" rule that conflicts with Nevada's contrary "substantive" rule. All that matters here is whether § 1920 is "'rationally capable of classification' as [a] *procedural* rule[]"; if it is, then it falls within Congress's power to enact laws that are "necessary and proper for carrying into execution the power to establish federal courts vested in Congress by Article III, § 1." *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988) (emphasis added) (quoting *Hanna*, 380 U.S. at 472). We have little difficulty concluding that § 1920 satisfies this standard. Because § 1920 deals exclusively with allocating costs that arise in connection with the various stages of conducting the federal litigation itself, it may be rationally classified as a "procedural rule[]." *Id.* That is, Congress could rationally classify, as procedural, § 1920's rule about allocating the costs associated with performing the various *procedural steps* of the litigation in federal court.

Because § 1920 controls the question at issue and is constitutional, it applies in this case. The district court therefore erred as a matter of law in concluding that Nevada law applied so as to require it to award costs

to Casun. And because the district court had already determined that, to the extent it had discretion over costs, it would not award costs to either side, we reverse its cost award and remand with instructions to amend the judgment to provide that each party shall bear its own costs.

IV.

For the reasons stated above, we **AFFIRM** the district court's judgment and **REVERSE** its order granting the motion to retax costs.[19]

19. Each party shall bear its own costs on appeal.

BENNETT, Circuit Judge, dissenting in part:

Because I would affirm the district court's award of costs, I respectfully dissent in part.

"[F]ederal courts sitting in diversity apply state substantive law and federal procedural law." *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 666 (9th Cir. 2003) (citing *Erie R.R. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938); *Wray v. Gregory*, 61 F.3d 1414, 1417 (9th Cir. 1995)). "An award of standard costs in federal district court is normally governed by Federal Rule of Civil Procedure 54(d), even in diversity cases." *Champion Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1022 (9th Cir. 2003). But "if a cost statute confers a substantive right, then the district court allows costs under that statute." *Atwell v. Cent. Fla. Invs. Inc.*, No. 15-cv-02122, 2020 U.S. Dist. LEXIS 262995, 2020 WL 13138255, at *2 (D. Nev. Dec. 1, 2020) (citing *Clausen v. M/V New Carissa*, 339 F.3d 1049, 1064-65 (9th Cir. 2003), *as amended on denial of reh'g* (Sept. 25, 2003)).

In *Clausen*, we held that an Oregon cost statute was substantive because there was "an 'express indication' of [the] state legislature's 'special interest in providing litigants' with full compensation for reasonable sums expended in pursuit of an Oil Spill Act claim." [20] 339 F.3d

20. The majority's characterization of *Clausen*'s holding as limited to state "damages" provisions is too narrow. Op. at 23 n.18. *Clausen*'s emphasis on the fact that the Oregon cost statute was a "state damages provision" was an attempt to distinguish *Aceves v. Allstate Ins. Co.*, 68 F.3d 1160 (9th Cir. 1995), in which the choice

at 1065 (quoting *Chevalier v. Reliance Ins. Co. of Ill.*, 953 F.2d 877, 886 (5th Cir. 1992)). We reasoned:

> Because the measure of damages is a matter of state substantive law, it would do violence to the principles enunciated in *Erie* to disregard Oregon law in favor of [the federal cost provision]. *See Erie*, 304 U.S. at 78 ("Congress has no power to declare substantive rules of common law applicable in a State . . . .").

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of law issue between the federal and state cost provisions did not affect a party's "entitlement to costs," but affected only the "level of reimbursement." *Id.* at 1167. By contrast, the choice of law issue here does affect a party's entitlement to costs. Moreover, *Clausen* itself relied heavily on *Henning v. Lake Charles Harbor & Terminal Dist.*, 387 F.2d 264 (5th Cir. 1968), which held that the reimbursement of expert fees—"by whatever name called" (i.e., "costs" or "damages")—"is a substantive requirement of [state] law" and "a substantive right of the [plaintiffs]." 387 F.2d at 267. What matters is not what the subject of reimbursement is called, but whether there is "an express indication from the [state] legislature, or its courts, of [the state]'s special interest in providing litigants with [its] recovery." *Clausen*, 339 F.3d at 1065 (quoting *Chevalier*, 953 F.2d at 886); *see also In re USA Com. Mortg. Co.*, 802 F. Supp. 2d 1147, 1185 (D. Nev. 2011) (applying "state substantive law" to award costs to prevailing parties pursuant to Nev. Rev. Stat. § 18.020 "as compensatory damages under Nevada law"). The Nevada cost statute contains an express statutory mandate entitling prevailing parties to costs, made by the Nevada Legislature and recognized by the Nevada Supreme Court. *See WPH Architecture, Inc. v. Vegas VP, LP*, 131 Nev. 884, 360 P.3d 1145, 1148 (Nev. 2015) ("[W]e hold that . . . [Nev. Rev. Stat. §] 18.020 [is a] substantive law . . . . [The statute] *requires* the award of costs to the prevailing party in several types of district court actions." (emphasis added)).

Id. at 1065-66 (cleaned up) (quoting *Barbier v. Shearson Lehman Hutton Inc.*, 948 F.2d 117, 122 (2d Cir. 1991)).

Following this principle, I would find that Nevada's cost statute confers a substantive right. The Nevada Legislature provided an express statutory mandate that "[c]osts *must* be allowed of course to the prevailing party" in certain types of cases, including suits for damages "where the plaintiff seeks to recover more than $2,500." Nev. Rev. Stat. § 18.020 (emphasis added); *see also Coker Equip. Co. v. Wittig*, 366 F. App'x 729, 733 (9th Cir. 2010) ("Under Nev. Rev. Stat. § 18.020,[21] the prevailing party in an action alleging more than $2,500.00 in damages is entitled to recover all costs *as a matter of right*." (emphasis added)). Thus, I would join the other courts within this circuit in holding that Nev. Rev. Stat. § 18.020 confers a substantive right. *See Jacobi v. Ergen*, No. 12-cv-02075, 2016 U.S. Dist. LEXIS 177343, 2016 WL 7422642, at *1 (D. Nev. Dec. 21, 2016) ("Because [Nev. Rev. Stat. § 18.020 provides] an express statutory mandate, I find that reimbursement under [Nev. Rev. Stat.] § 18.005 is a substantive right and therefore controls over FRCP 54(d) here."); *Atwell*, 2020 U.S. Dist. LEXIS 262995, 2020 WL 13138255, at *2 ("The Court finds that Nev. Rev. Stat[.] § 18.020 creates a mandatory award of costs in cases where the Plaintiffs seek[] more than $2,500 in damages . . . . This statutory scheme sets forth substantive provisions for the categories of costs that may be recovered and is not simply procedural. The Court therefore finds that [Nev.

21. In addition, Nev. Rev. Stat. § 18.005 enumerates specific categories of fees that qualify as "costs" under the statutory scheme.

Rev. Stat.] § 18.020 confers a substantive right that may be enforced in this case."); *Bustos v. Dennis*, No. 17-cv-0822, 2021 U.S. Dist. LEXIS 129123, 2021 WL 7829774, at *2 (D. Nev. July 12, 2021) ("Because this is an express statutory mandate, the Court finds that reimbursement under [Nev. Rev. Stat.] § 18.005 [and § 18.020] is a substantive right and therefore trumps FRCP 54(d)."); *Hendrix v. Progessive Direct Ins. Co.*, No. 20-cv-01856, 2024 U.S. Dist. LEXIS 21151, 2024 WL 472457, at *3 (D. Nev. Feb. 7, 2024) ("[T]he Court finds that [Nev. Rev. Stat. §] 18.020 confers a substantive right and applies here."); *see also Coker*, 366 F. App'x at 733-34 (remanding for reconsideration and explanation of why costs were not awarded pursuant to Nev. Rev. Stat. § 18.020 in a diversity suit).

I believe the majority's analysis of the conflict between the Nevada cost statute and federal law is incomplete in two ways. First, the majority limits its analysis of the relevant federal law to 28 U.S.C § 1920 because "Rule 54(d) adds nothing material to what is already contained in § 1920." Op. at 24. But Rule 54(d) does add something material: it specifies that "costs . . . *should* be allowed to the prevailing party," Fed. R. Civ. P. 54(d)(1) (emphasis added), which we have interpreted as "creat[ing] a presumption for awarding costs to prevailing parties" and requiring a district court to "'specify reasons' for its *refusal* to tax costs to the losing party," [22] *Save Our Valley*

22. In its order granting Casun's motion to retax costs, the district court acknowledged the requirement to "specify reasons for its *denial of costs* only." Because the district court provided no such reasons in previously concluding that each party should bear its own costs, I do not agree with the majority's characterization

v. Sound Transit, 335 F.3d 932, 944-45 (9th Cir. 2003) (quoting *Assoc. of Mexican-Am. Educators v. California*, 231 F.3d 572, 591 (9th Cir. 2000); *Subscription Television, Inc. v. S. Cal. Theatre Owners Ass'n*, 576 F.2d 230, 234 (9th Cir. 1978)); *see also Champion Produce*, 342 F.3d at 1022. While § 1920 enumerates categories of costs that "[a] judge or clerk of any court of the United States may tax," it does not specify who should bear those costs. 28 U.S.C § 1920. Yet the majority drops Rule 54(d) from its analysis for "replicat[ing]" § 1920. Op. at 24.

Focusing exclusively on § 1920 brings the second-step inquiry to a premature end. As the majority explains, when the relevant federal law "answers the question in dispute," the second step is to determine "whether the federal rule exceeds either constitutional limits or statutory limits." Op. at 23 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398, 130 S. Ct. 1431, 176 L. Ed. 2d 311 (2010)). And, as the majority explains, "[i]n the context of the Federal Rules of Civil Procedure, which were promulgated under the Rules Enabling Act, the second step's statutory inquiry requires the court to consider whether the relevant rule satisfies the Rules Enabling Act's requirement that the rule must not 'abridge, enlarge or modify any substantive right'"—or else it may not govern. Op. at 23-24 (quoting 28 U.S.C. § 2072(b)). By sidelining Rule 54(d), the majority skips this required statutory inquiry. For the reasons above, I would find that Nev. Rev. Stat. § 18.020, which

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of the district court's earlier decision as "explicitly declin[ing]" to award costs to Casun. Op. at 23.

mandates the award of costs to the prevailing party, confers a substantive right. That right is abridged by Rule 54(d), which does not contain the same mandate. Thus, I would find that the Nevada cost statute governs this case, entitling the prevailing party to the recovery of costs.

Casun is the prevailing party because it succeeded in its unjust enrichment claim and received damages equivalent to the full value of the property. Under Nevada law, a party need only win on one claim to be considered a prevailing party. *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416, 373 P.3d 103, 107 (Nev. 2016) ("A prevailing party must win on at least one of its claims."); *see also Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 106 P.3d 1198, 1200 (Nev. 2005) ("A party can prevail under [Nev. Rev. Stat. §] 18.010 'if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.'"). The district court correctly awarded costs to Casun as the prevailing party, and thus I respectfully dissent, in part.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA, FILED JULY 22, 2022

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CASE NO. 2:16-cv-02925-JCM-EJY

CASUN INVEST, A.G., A SWISS CORPORATION,

Plaintiff,

vs.

MICHAEL H. PONDER, AN INDIVIDUAL; LEZLIE GUNN, AN INDIVIDUAL; AND NVWS PROPERTIES LLC, A NEVADA LIMITED LIABILITY COMPANY,

Defendants.

Filed July 22, 2022

JUDGMENT

This matter came before the Court for a bench trial, occurring May 9-11, 2022. The issues have been considered and a decision was entered on July 15, 2022 in this Court's Findings of Fact and Conclusions of Law [ECF 291].

1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Casun Invest A.G. and against NVWS Properties LLC for Unjust Enrichment in the amount of $2,050,000 in compensatory damages;

2. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to NEV. REV. STAT. § 17.130(1), Casun Invest A.G. is awarded prejudgment interest on its judgment against NVWS Properties LLC, in the amount of $709,440.41, calculated at the legal rate prescribed by NEV. REV. STAT. § 17.130(2) from December 22, 2016 through July 19, 2022.

3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Lezlie Gunn and against Casun Invest A.G. with respect to Plaintiff's claims for Unjust Enrichment, Aiding and Abetting Breach of Fiduciary Duty, and Civil Conspiracy.

4. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Michael Ponder and against Casun Invest A.G. with respect to Plaintiff's claims for Breach of Fiduciary Duty, Constructive Fraud, and Civil Conspiracy.

5. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of NVWS Properties LLC and against Casun Invest A.G. for Aiding and Abetting Breach of Fiduciary Duty and Civil Conspiracy.

IT IS SO ORDERED July 22, 2022.

/s/ James C. Mahan
UNITED STATES DISTRICT JUDGE

APPENDIX C — FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA, FILED JULY 15, 2022

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF NEVADA

Case No. 2:16-cv-02925-JCM-GWF

CASUN INVEST, A.G., A SWISS CORPORATION,

Plaintiff,

vs.

MICHAEL H. PONDER, AN INDIVIDUAL; LEZLIE GUNN, AN INDIVIDUAL; AND NVWS PROPERTIES LLC, A NEVADA LIMITED LIABILITY COMPANY,

Defendants.

Filed July 15, 2022

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These Findings of Fact and Conclusions of Law are based upon the stipulations of the parties, the evidence presented at the trial of this matter from May 9, 2022, through May 11, 2022, and the parties' post-trial briefings. Any and all findings of fact set forth herein shall constitute findings of fact even if stated as conclusions of law, and any and all conclusions of law set forth herein constitute conclusions of law even if stated as findings of fact.

Appendix C

FINDINGS OF FACT[1]

The court hereby finds as follows:

1. Plaintiff Casun Invest AG ("Casun") is incorporated in Switzerland, with its principal place of business in Switzerland.

2. Defendant Michael H. Ponder ("Ponder") is a resident of Nevada.

3. Defendant Lezlie Gunn ("Gunn") is a resident of Nevada.

4. Defendant NVWS Properties LLC ("NVWS") is incorporated in Nevada with its principal place of business in Nevada.

5. At all times relevant to this matter, Hans-Peter Wild was Casun's sole shareholder.

6. At all times relevant to this matter, Hans-Rudolf Wild was Casun's sole board member.

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1. The court enters these findings of fact based on a preponderance of the evidence. In assessing the credibility of witnesses, the court has considered the source and basis of each witness's knowledge; the ability of each witness to observe; the strength of each witness's memory; each witness's interest, if any, in the outcome of the litigation; the relationship of each witness to either side in the case; and the extent to which each witness's testimony is either supported or contradicted by other evidence presented at the trial.

7. On November 16, 1992, a grant deed was recorded in the official records of the County of San Mateo, California, conveying title to the property commonly known as 140 Josselyn Lane, Woodside, California 94062 (APN 072-112-030) ("the property") from Calvin F. Gunn, an unmarried man, to Casun.

8. On December 2, 1992, Karen A. Kangas—a/k/a Karen A. Gunn—executed a quitclaim deed, quit claiming any interest she held in the property to Casun. That quitclaim deed was recorded in the official records of the county of San Mateo, California on December 7, 1992.

9. Approximately ten years after Casun purchased the Woodside Property, Calvin Gunn initiated litigation against Casun and Dr. Wild, claiming a life estate and an option to repurchase the Woodside Property based on an alleged oral agreement.

10. On August 28, 2002, Ponder was appointed as a *direktor*—someone selected and authorized by the board of directors to act on behalf of the corporation—for Casun to serve as its corporate representative in that lawsuit.

11. Ultimately, Casun and Dr. Wild prevailed in the Calvin Gunn Litigation because Calvin Gunn was unable to produce a writing documenting the interests he claimed in the Woodside Property.

12. Ponder was removed as Casun's *direktor* on March 21, 2013, and reappointed on March 28, 2013, effective on April 9, 2013.

13. As *direktor*, Ponder had the authority to execute documents, including grant deeds, on Casun's behalf.

14. In late March of 2013, Gunn and Hans-Peter Wild agreed that Casun would transfer the property to Gunn at a purchase price of at least $2,050,000.

15. Between March 26, 2013, and March 28, 2013, Gunn organized three Nevada limited liability companies: 1) Woodside Gate LLC, managed by Gunn and Ponder; 2) NVMS Properties LLC ("NVMS"), managed by Gunn; and 3) NVWS, managed by NVMS.

16. On March 31, 2013, Hans-Peter Wild agreed to give Gunn $2,100,000 so that Gunn could purchase the property from Casun for $2,050,000.

17. On March 31, 2013, Hans-Peter Wild sent an email to Hans-Rudolf Wild, Casun's sole board member, copied to Ponder, stating:

> Dear All,
>
> We have an offer for the house at market price and I think we should sell.
>
> Mike you have the details and please execute the sale with [Hans-Rudolf] Wild. The house is sold as is and we only need to transfer the title.
>
> Best regards

18. Because he had been released as a *direktor* of Casun ten days earlier, Ponder did not have the ability to transfer the property on March 31, 2013.

19. In early April, Gunn and Ponder prepared a series of emails to be sent to Jan-Michael Clauss ("Clauss"), Casun's legal counsel, regarding Ponder's removal as a *direktor* of Casun.

20. At the same time, Gunn and Ponder prepared a series of emails to be sent to Hans-Rudolf Wild.

21. On April 3, 2013, Ponder sent an email to Hans-Rudolf Wild, stating: "Please transfer the property from Casun to NVWS Properties, LLC as directed by Dr. Hans Peter Wild's message of March 31, 2013."

22. On April 5, 2013, Ponder sent an email, as revised by Gunn, to Hans-Rudolf Wild, requesting that Hans-Rudolf Wild acknowledge and confirm receipt of Ponder's email of April 3, 2013.

23. Hans-Rudolf Wild responded to Ponder's email minutes later, stating:

> I have received Dr. Hans Peter Wild's email a couple of days ago but I did neither receive your message of 3rd March 2013 nor any further documents.
>
> I accept that the matter has high priority. However I have no idea how to prepare transfer

> documents for real estate in the US and to be honest I have not received any documents for execution from anyone. If this documents [sic] are provided I will carry out what ever [sic] is necessary immediately.

24. Thereafter, Ponder sent an email to Hans-Rudolf-Wild stating: "I will have all documents prepared and email them to you, along with the documents that I sent on April 3rd."

a. Ponder failed to fulfill this pledge.

25. On April 8, 2013, Hans-Peter Wild wired Gunn $2,100,000.

26. On April 11, 2013, Clauss sent Ponder an email attaching a copy of the Commercial Register for the Canton of Zug reflecting Ponder's re-appointment as a *direktor* of Casun. The text of Clauss' email read: "you are back in the game."

27. On April 11, 2013, Ponder requested certain documents regarding the property from Sibylle Fassbind ("Fassbind").

28. On April 11 and 12, 2013, Fassbind sent emails to Ponder with copies of the title documents Ponder had requested related to Casun's ownership of the Woodside Property.

29. On April 12, 2013, Ponder forwarded to Gunn the email from Fassbind that included the grant deed from Calvin Gunn to Casun.

30. Defendants claim that on April 12, 2013, Gunn and Ponder executed a purchase agreement [Ex. 104] – Gunn on behalf of NVWS and Ponder on behalf of Casun – documenting Casun's agreement to sell the property to NVWS for $1,500,000 in cash equivalent.

31. Defendants claim that three days later, on April 15, 2013, Gunn and Ponder executed a receipt [Ex. 105] – Gunn on behalf of NVWS and Ponder on behalf of Casun – documenting the delivery of jewelry to Hans-Peter Wild to satisfy the $1,500,000 purchase price identified in the purchase agreement.

32. The purchase agreement [Ex. 104] and receipt [Ex. 105] are not credible evidence of a written contract to transfer the property for consideration.

a. The documents were created after the purported dates of signing and the parties' communications after those dates show that payment had not been received as represented by the documents.

b. However, Casun did not prove by a preponderance of the evidence that Ponder and Gunn fabricated those documents to defraud Casun or the court.

33. On April 16, 2013, Hans-Peter Wild sent an email to Ponder identifying $2,050,000 as the purchase price but stating that he still did not have any details regarding the purchaser or the account number.

34. On April 17, 2013, Ponder executed a grant deed on behalf of Casun and in favor of NVWS to convey the property.

35. The evidence establishes that the parties—or their representatives or stakeholders: Ponder, Gunn, Hans-Rudolf Wild, and Hans-Peter Wild—all resided in Switzerland when the transfer was effected.

36. Despite the representation in Ponder's email to Hans-Rudolf Wild on April 5, 2013, that Ponder would "have all documents prepared and email them to [Hans-Rudolf Wild], along with the documents that [Ponder] sent on April 3rd", Ponder did not provide the NVWS grant deed to Hans-Rudolf Wild for review and approval before executing the document on behalf of Casun.

37. On April 25, 2013, the grant deed was recorded in the official records of the County of San Mateo, California, as instrument no. 2013-062730.

38. On July 17, 2013, Hans-Peter Wild sent an email to Gunn and Ponder, stating that the payment for the property was overdue by weeks and demanding that the money be transferred within 24 hours.

39. On August 3, 2013, Hans-Peter Wild sent Ponder and Gunn another email indicating that he had not received the name and contact data of the buyer for the property and had still not received payment.

40. Ponder responded to that email stating "[t]he name of the purchaser is NVWS Properties LLC."

41. On August 6, 2013, Hans-Peter Wild sent an email to Ponder, copied to Gunn, that provided the bank account number and the wiring instructions for Casun's bank account. The email concluded by stating: "[p]lease see to it that the money is wired without any further delay."

42. Casun conferred a benefit on NVWS by transferring title for the property to it.

43. NVWS appreciated that benefit by holding title for and managing the property.

44. It would be inequitable for NVWS to retain that benefit without paying the anticipated purchase price of $2,050,000.

45. There is no evidence that NVWS provided payment to Casun for the property.

46. Casun was, or should have been, aware of its loss or damages and the identity of the person liable by, at the latest, August 3, 2013.

a. Casun, through its sole shareholder Hans-Peter Wild, became aware of the transfer and the non-payment on July 17, 2013, when Hans-Peter Wild protested through email that payment had not yet been received for the transfer.

b. Casun, through its sole shareholder Hans-Peter Wild, learned the identity of the

purchaser on August 3, 2013, when Ponder informed Hans-Peter Wild through email that NVWS was the purchaser.

47. Casun reasonably should have learned that its causes of action arose by, at the latest, August 6, 2013.

a. Casun, through its sole shareholder Hans-Peter Wild, knew or reasonably should have known that payment had not been received by, at the latest, August 6, 2013, the date of his last communication regarding the payment status.

b. Casun, through its sole board member Hans-Rudolf Wild, reasonably should have learned about the transfer and failure to collect payment by that same date.

48. Casun brought this action on the date it filed its complaint, December 16, 2016.

CONCLUSIONS OF LAW

The court hereby concludes as follows:

1. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because a complete diversity of citizenship exists between Casun and defendants and the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

2. Nevada's conflict of law principles dictate which jurisdiction's law applies to each claim. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941), superseded by statute on other grounds.

3. "[T]he Nevada Supreme Court has endorsed looking to the Second Restatement of Conflict of Laws and applying the most specific, applicable section to questions of tort and contract law." *McNamara v. Hallinan*, No. 2:17-cv-02967, 2019 U.S. Dist. LEXIS 168028, 2019 WL 4752265, at *5 (D. Nev. Sept. 30, 2019) (citing *Gen. Motors Corp. v. Eighth Judicial Dist. Court of State of Nev. ex rel. Cty. of Clark*, 122 Nev. 466, 134 P.3d 111, 116 (Nev. 2006) ("[T]he Second Restatement's most significant relationship test governs choice-of-law issues in tort actions unless another, more specific section of the Second Restatement applies to the particular tort.")).

4. The following sections of the Second Restatement apply to each claim:

a. For breach of fiduciary duty, Restatement (Second) Conflicts of Law § 309.

    i. Under § 309 and the internal affairs doctrine, the place of incorporation applies: Switzerland.

b. For aiding and abetting breach of fiduciary duty and civil conspiracy, Restatement (Second) Conflicts of Law § 145.

i. The place where the injury occurred: Switzerland (a Swiss corporation was harmed when Ponder executed the NVWS Grant Deed in Switzerland);

ii. The place where the conduct causing the injury occurred: Switzerland (Ponder executed the NVWS Grant Deed in Switzerland);

iii. The domicile of the parties: Switzerland and Nevada; and

iv. The place where the relationship between the parties, if any, is centered: Switzerland.

c. For constructive fraud, Restatement (Second) Conflicts of Law § 148(2).

i. The place where the plaintiff acted in reliance upon the representations: Switzerland (the money was wired from Switzerland);

ii. The place where the plaintiff received the representations: Switzerland (the NVWS Grant Deed was executed there and was effective upon execution);

iii. The place where the defendant(s) made the representations: Switzerland;

iv. The domicile of the parties: Switzerland and Nevada; and

v. The place where the tangible thing which is the subject of the transaction is located: California.

d. For unjust enrichment, Restatement (Second) Conflicts of Law § 221.

i. The place where the relationship between the parties, if any, is centered: Switzerland;

ii. The place where the benefit was received: Nevada;

iii. The place where the act conferring the benefit or enrichment was performed: Switzerland (origin of money provided and place where the NVWS Grant Deed was executed);

iv. The domicile of the parties: Switzerland and Nevada; and

v. The location of any land or chattel connected to the enrichment: California.

5. "These contacts are to be evaluated according to their relative importance with respect to the particular issue." *See* Restatement (Second) Conflicts of Law §§ 145, 148, 221.

6. Considering the relevant contacts, Swiss law applies to those claims which arose in Switzerland—breach of fiduciary duty, aiding and abetting breach of fiduciary duty, constructive fraud, and civil conspiracy—and Nevada law applies to the claim which arose in Nevada—unjust enrichment.

7. Nevada's borrowing statute, Nevada Revised Statute 11.020, provides that:

> When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against the person in this State, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

8. By the date Casun filed this action, December 16, 2016, the statutes of limitations had not run on any of Casun's claims under Swiss law.

a. The court has taken judicial notice that the statutes of limitations in Switzerland in April 2013 for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, constructive fraud, and civil conspiracy were one year from the date the plaintiff learned of the loss and the identity of the person liable. Swiss Code: 220 Code of Obligations; Art. 60.

b. The court has taken judicial notice that, under Swiss law, if the action is derived from an offence for which criminal law envisages a longer limitation period, that longer period also applies to the civil law claim. Federal Act of 30 March 1911 on the Amendment of the Swiss Code: 220 Code of Obligations Art. 60.

c. The court has taken judicial notice that, under Swiss law, Casun's claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, constructive fraud, and civil conspiracy may also be pursued as criminal charges for fraud and/or criminal mismanagement, punishable by a custodial sentence of up to three years. Swiss Code: 311 Code of Obligations Art. 158.

d. Under Swiss law, claims for criminal mismanagement punishable by a custodial sentence of three years carry a 10-year

statute of limitation. Swiss Code: 311 Code of Obligations Art. 97.

e. Accordingly, Casun had until August 6, 2023, to bring these claims. Therefore, the claims are not barred by the applicable Swiss statutes of limitations.

9. As Swiss law does not bar Casun's claims, the court applies Nevada's statutes of limitations. *See* Restatement (Second) Conflicts of Law § 142.

10. No equitable tolling applies to the statutes of limitations for Casun's claims.

11. Under Nevada law, Casun's claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and constructive fraud fall under three-year statutes of limitations. *See* Nev. Rev. Stat. § 11.190(3).

12. The relevant statutes of limitations begin to run when the damaged party knew or reasonably should have known about the facts giving rise to its claims.

a. As discussed above, Casun reasonably should have known about the facts giving rise to its claims by, at the latest, August 6, 2013.

b. Accordingly, Casun had until August 3, 2016, to bring these claims. Therefore, the claims are barred by the applicable Nevada statutes of limitations.

13. Under Nevada law, Casun's claims for civil conspiracy and unjust enrichment fall under four-year statutes of limitations. *See Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (Nev. 1998); *In re Amerco Derivative Litig.*, 127 Nev. 196, 252 P.3d 681, 703 (Nev. 2011); Nev. Rev. Stats. §§ 11.190(2), 11.220.

a. Accordingly, Casun had until August 3, 2017, to bring these claims. Therefore, the claims are not barred by the applicable Nevada statutes of limitations.

14. In Nevada, a civil conspiracy is established by demonstrating: "(1) the commission of an underlying tort; and (2) an agreement between [d]efendants to commit that tort." *Sharda v. Sunrise Hosp. & Med. Ctr.*, No. 2:16-cv-2233-JCM-GWF, 2017 U.S. Dist. LEXIS 103554, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017).

15. Casun did not prove by a preponderance of the evidence that there was an agreement between the defendants to commit any tort.

16. In Nevada, a claim for unjust enrichment is established when: (a) the plaintiff confers a benefit on the defendant; (b) the defendant appreciates such benefit; and (c) "there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 283 P.3d 250, 257 (Nev. 2012) (internal quotations omitted).

17. Casun proved by a preponderance of the evidence that NVWS is liable for unjust enrichment.

a. Casun conferred a benefit—title for the property—to NVWS, NVWS appreciated that benefit by holding the title for and managing the property, and it would be inequitable for NVWS to retain that benefit without payment of the anticipated purchase price of $2,050,000.

18. Casun did not prove by a preponderance of the evidence that Gunn is liable for unjust enrichment.

a. The property was transferred to NVWS, not Gunn.

b. There is no evidence that NVWS is Gunn's alter ego. *See LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 8 P.3d 841, 846-47 (Nev. 2000); (ECF No. 230 (dismissing Casun's alter ego claim)).

c. There is no evidence of an enforceable contract obligating Gunn to personally complete the transfer with the $2,100,000 that Hans-Peter Wild gave her in 2013. *See* Nev. Rev. Stats. §§ 111.210, 111.220(5).

19. The court finds in favor of the defendants and against Casun on Casun's claims for breach of fiduciary

duty, aiding and abetting breach of fiduciary duty, constructive fraud, and civil conspiracy.

20. The court finds in favor of Casun and against NVWS on Casun's claim for unjust enrichment.

21. The court finds in favor of Gunn and against Casun on Casun's claim for unjust enrichment.

22. Casun is entitled to a judgment in its favor on its unjust enrichment claim for compensatory damages in the amount of the reasonable purchase price.

23. The reasonable purchase price is the anticipated purchase price of $2,050,000.

24. Defendants are entitled to a judgment in their favor and against Casun on Casun's claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, constructive fraud, and civil conspiracy.

25. Casun's first and second claims for constructive trust and equitable lien are not claims for relief, but equitable remedies for its other claims.

26. As monetary damages are sufficient to cure Casun's loss for its unjust enrichment claim, equitable relief in the form of a constructive trust or equitable lien is not warranted.

27. Each party is to bear its own costs and fees.

Appendix C

ORDER

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, consistent with these findings and conclusions:

1. Judgment shall be entered in favor of Casun and against NVWS for unjust enrichment in the amount of $2,050,000 in compensatory damages;

2. Judgment shall be entered in favor of Gunn and against Casun for unjust enrichment;

3. Judgment shall be entered in favor of Ponder and against Casun for breach of fiduciary duty;

4. Judgment shall be entered in favor of NVWS and Gunn and against Casun for aiding and abetting breach of fiduciary duty;

5. Judgment shall be entered in favor of Ponder and against Casun for constructive fraud; and

6. Judgment shall be entered in favor of Ponder, NVWS, and Gunn and against Casun for civil conspiracy.

IT IS FURTHER ORDERED that Casun shall prepare and file a proposed judgement consistent with this order and the forgoing findings and conclusions.

DATED this 15th day of July, 2022.

/s/ James C. Mahan
UNITED STATES DISTRICT JUDGE

APPENDIX D — NEVADA REVISED STATUTES 11.220, PERIODS OF LIMITATION

NEVADA REVISED STATUTES 11.220 PERIODS OF LIMITATION

An action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued, regardless of whether the underlying cause of action is analogous to that of any other cause of action with a statute of limitations expressly prescribed by law.

APPENDIX E — NEVADA REVISED STATUTES 11.190, PERIODS OF LIMITATION

NEVADA REVISED STATUTES 11.190 PERIODS OF LIMITATION

Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) Except as otherwise provided in NRS 11.245, an action against a person alleged to have committed a deceptive

trade practice in violation of NRS 598.0903 to 598.0999, inclusive, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or

mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

(f) An action pursuant to NRS 41.1335, but the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting fertility fraud or of any medical or genetic disorder which results from the human reproductive material implanted in, used on or provided to a patient in violation of NRS 200.975, whichever occurs later.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215 or 11.217, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

APPENDIX F — CALIFORNIA CODE OF CIVIL PROCEDURE § 335, PERIODS OF LIMITATION

CALIFORNIA CODE OF CIVIL PROCEDURE § 335, PERIODS OF LIMITATION

The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

APPENDIX G — CALIFORNIA CODE OF CIVIL PROCEDURE § 339, PERIODS OF LIMITATION

CALIFORNIA CODE OF CIVIL PROCEDURE § 339, PERIODS OF LIMITATION

§ 339. Two years; oral contract; certificate, abstract or guaranty of title; title insurance policy; sheriff; coroner; rescission of oral contract

Within two years: 1. An action upon a contract, obligation or liability not founded upon an instrument of writing, except as provided in Section 2725 of the Commercial Code or subdivision 2 of Section 337 of this code; or an action founded upon a contract, obligation or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance; provided, that the cause of action upon a contract, obligation or liability evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder.

2. An action against a sheriff or coroner upon a liability incurred by the doing of an act in an official capacity and in virtue of office, or by the omission of an official duty including the nonpayment of money collected in the enforcement of a judgment.

3. An action based upon the rescission of a contract not in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or

mistake, the time does not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

APPENDIX H — SWISS CODE OF OBLIGATIONS, SECTION 1

FEDERAL ACT ON THE AMENDMENT OF THE SWISS CIVIL CODE (PART FIVE: THE CODE OF OBLIGATIONS) OF 30 MARCH 1911 (STATUS AS OF 1 JULY 2014)

The Federal Assembly of the Swiss Confederation, having considered the Dispatches of the Federal Council dated 3 March 1905 and 1 June 1909 *decrees*:

* * *

Art. 60

1 A claim for damages or satisfaction becomes time-barred one year from the date on which the injured party became aware of the loss or damage and of the identity of the person liable for it but in any event ten years after the date on which the loss or damage was caused.

2 However, if the action for damages is derived from an offence for which criminal law envisages a longer limitation period, that longer period also applies to the civil law claim.

3 Where the tort has given rise to a claim against the injured party, he may refuse to satisfy the claim even if his own claim in tort is time-barred.

* * *

Appendix H

Art. 67

D. Time limits

1 A claim for restitution for unjust enrichment becomes time-barred one year after the date on which the injured party learned of his claim and in any event ten years after the date on which the claim first arose.

2 Where the unjust enrichment consists of a claim against the injured party, he may refuse to satisfy the claim even if his own claim for restitution is time-barred.

* * *