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Case No.:


Eighth Judicial District Court
Case No.: P-15-083867-T (In re
the Beatrice B. Davis Family
Heritage Trust, dated July 28,
2000)

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the Beatrice B. Davis Family
Heritage Trust, dated July 28,
2000)

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Respondent.

ROLAND LAW FIRM


Harriet H. Roland, Esq.

Harriet H. Roland, Esq.
Nevada Bar No. 5471
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

ANTHONY L. BARNEY, LTD.


Anthony L. Barney, Esq.

Anthony L. Barney, Esq.
Nevada Bar No. 8366
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

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1 2) FHT Holdings, LLC

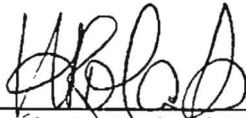
2 a. Managing Member: Beatrice B. Davis Family Heritage Trust

3 b. Registered Agent: Registered Agent Solutions, Inc.

4 c. Officer: Christopher D. Davis

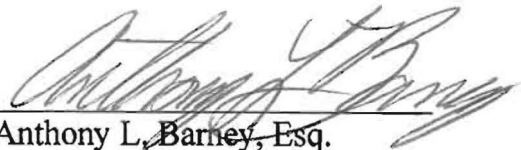
5 Dated this 1st day of December, 2015.

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8
9 Respectfully Submitted,
10 ROLAND LAW FIRM

11 

12 Harriet H. Roland, Esq.
13 Nevada Bar No. 5471
14 2470 E. St. Rose Pkwy, Ste. 105
15 Henderson, NV 89074
16 Telephone: (702) 452-1500
17 Facsimile: (702) 920-8903
18 hroland@rolandlawfirm.com
19 Attorney for Christopher D. Davis

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.



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Nevada Bar No. 8366
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

CERTIFICATE OF COMPLIANCE

1. We hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 pt. font.
2. We further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed thirty pages.
3. Finally, we hereby certify that we have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. We further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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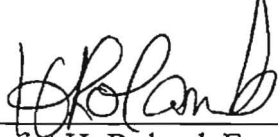
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1 4. We understand that we may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.
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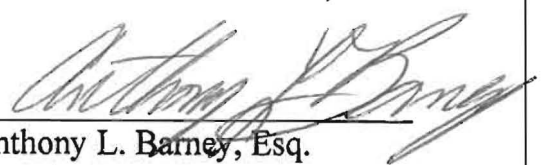
5 Dated this 1st day of December, 2015.
6

7 Respectfully Submitted,
8 ROLAND LAW FIRM

9 

10
11 Harriet H. Roland, Esq.
12 Nevada Bar No. 5471
13 2470 E. St. Rose Pkwy, Ste. 105
14 Henderson, NV 89074
15 Telephone: (702) 452-1500
16 Facsimile: (702) 920-8903
hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.




Anthony L. Barney, Esq.
Nevada Bar No. 8366
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

1 **ATTORNEY'S CERTIFICATE PURSUANT TO NRAP 28.2**

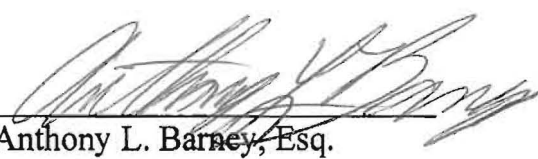
- 2
- 3 1. The undersigned attorneys hereby certify that they have read the brief.
- 4
- 5 2. To the best of the attorneys' knowledge, information and belief, the brief is
- 6 not frivolous or interposed for any improper purpose, such as to harass or to
- 7 cause unnecessary delay or needless increase in the cost of litigation.
- 8
- 9 3. The brief complies with all applicable Nevada Rules of Appellate
- 10 Procedure, including the requirement of Rule 28(e) that every assertion in
- 11 the briefs regarding matters in the record be supported by a reference to the
- 12 page and volume number, if any, of the appendix where the matter relied on
- 13 is to be found.
- 14
- 15 4. The brief complies with the formatting requirements of Rule 32(a)(4)-(6),
- 16 and either the page- or type-volume limitations stated in Rule 32(a)(7).
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18 Dated this 1st day of December, 2015.

19 Respectfully Submitted,
20 ROLAND LAW FIRM

21 
22 _____
23 Harriet H. Roland, Esq.
24 Nevada Bar No. 5471
25 2470 E. St. Rose Pkwy, Ste. 105
26 Henderson, NV 89074
27 Telephone: (702) 452-1500
28 Facsimile: (702) 920-8903
hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.



Anthony L. Barney, Esq.
Nevada Bar No. 8366
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

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JURISDICTIONAL STATEMENT

The Supreme Court of Nevada has jurisdiction over this matter pursuant to NRAP 3(a) as this appeal is taken from the appointment of a Trustee pursuant to NRS 155.190(h), which is an appealable order. The order appointing the Trustee was signed on May 19, 2015 and entered on July 1, 2015. The notice of appeal pertaining to this order was filed on July 30, 2015.

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² See Appendix I:6-7.

1 drafter, Stephen K. Lehnardt by Dunham Trust Company, the purported Nevada
2 trustee.³
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4 All other references to Christopher in the Petition were to allege
5 Christopher's purported roles in relation to the FHT.⁴ The Petition did not allege
6 claims or acts performed by any party in Nevada. The Petition was mailed to
7 various parties, but personal service was not effectuated on any party.⁵
8 Christopher is not a resident of nor does he reside in Nevada.⁶ Caroline is not a
9 Nevada resident.⁷ Christopher has not appeared at any court proceeding in
10 Nevada.
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13
14 The primary asset of the FHT and FHT Holdings LLC is the Ashley Cooper
15 Life Insurance Policy from which the loans were taken.⁸ The life insurance policy
16 has a Grand Cayman custodian and its administrative office is in Puerto Rico.⁹
17 Caroline was in receipt of this information and attached it to her Original
18 Petition.¹⁰
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23 ³ See Appendix IX:1418: lines 3-7.

24 ⁴ See Appendix I:3:12 and I:8:26.

25 ⁵ The Court can take judicial notice under NRS 47.130 that neither a summons nor
a citation was ever issued or served upon any party.

26 ⁶ Appendix VI:978:27.

27 ⁷ Appendix IX:1540; Appendix X:1611

28 ⁸ See Appendix I:4: lines 16-17.

⁹ See Appendix I:148.

¹⁰ See Appendix

1 Notably, the DC was made aware of a pending lawsuit in Missouri, and
2 noted that these alleged acts were in Missouri where Christopher had contact with
3 those states.¹¹ The DC was also made aware at subsequent hearings of the lawsuit
4 in Missouri under which Christopher was providing documents to Caroline.¹²
5

6 Additionally, the FHT was an express spendthrift trust settled by a Missouri
7 resident under Alaska law with an Alaskan Trustee.¹³ The FHT required the
8 consent of all beneficiaries thereunder and the opinion or advice from legal
9 counsel before the trustee was enabled to change the situs from Alaska.¹⁴ The
10 Alaska Trustee resigned on December 5, 2013 and had not obtained an opinion
11 from its own counsel as required by the FHT¹⁵ before the FHT situs was allegedly
12 changed on February 24, 2014.¹⁶ The requisite consent from all beneficiaries was
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19 ¹¹ See Appendix IX:1408: lines 3-20.

20 Mr. Barney: "...They've actually filed suit out in Missouri and do you
21 know why they filed suit in Missouri, Your Honor? Because when they raise the
22 issue that they're trying to get jurisdiction over Christopher as – in his capacity
23 belonging to the revocable trust and other capacities, they realize: You know
24 what? We can't get that here so we're—"

25 ---

26 Court: **"That's Missouri. That's Missouri. But, you know, he's at least
27 got contacts with those states..."**

28 ¹² See Appendix IX:1545-1546, 1552, 1556, 1559.

¹³ Appendix I:13.

¹⁴ Appendix I:110.

¹⁵ Appendix VI:977-979

¹⁶ Appendix I:133-144

1 also lacking.¹⁷ Stephen Lenhardt, the drafter and protector of the trust, admitted
2 through counsel that the change in situs was not done according to the terms of the
3 FHT, identifying the lack of condition precedent.¹⁸

4
5 Christopher filed a motion to dismiss based upon Caroline's failure to join
6 the Alaska Trustee who had the information she requested; for the Court's lack of
7 jurisdiction over Christopher; for Caroline's lack of service and service of process
8 upon Christopher personally, as purported investment trust advisor or as manager
9 of FHT Holdings, LLC; and the parties failure to follow the terms of the FHT to
10 change the situs such as the lack of consent by all beneficiaries and failure of the
11 Alaskan Trustees to obtain an opinion of counsel regarding the change in trust
12 situs.¹⁹ In May 2015, the DC heard argument on the motion to dismiss and, on
13 July 1, 2015, the DC denied the motions to dismiss, and purportedly assumed
14 jurisdiction over the FHT, Dunham Trust Company, and Christopher under a
15 theory of constructive trust, which was pled orally by counsel for Caroline.²⁰ In
16 an attempt to subsequently substantiate the July 1, 2015 Order, the DC later ruled
17 that it had jurisdiction over Christopher, based solely upon its assumption that
18 Christopher had acted in Nevada, although no such allegations had been raised in
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27 ¹⁷ See Appendix V:478-483 (consent not received by Tarja Davis, Christopher's
28 wife)

¹⁸ See Appendix III:391-392; 407, lines 18-21.

¹⁹ See Appendix II:298:9-12 and Appendix III:350-375

1 the initial pleading or at that hearing.²¹ Christopher timely filed a notice of appeal
2 on the order under NRS 155.190(h).
3

4 Before and after the July 1, 2015 Order, Caroline issued subpoenas and
5 notices of deposition for personal documents and testimony from Christopher and
6 his attorneys, for over seven years.²² This time period went far beyond
7 Christopher's purported role as an alleged fiduciary (which purportedly occurred,
8 if at all under Caroline's pleadings, at the earliest date of February 24, 2014) and
9 was at a time when Christopher was simply a beneficiary of FHT like Caroline.
10 Caroline also requested documentation from Christopher for FHT Holdings, LLC,
11 a Nevada entity that is admittedly not a party to the proceeding.²³ Caroline's
12 requests and were directed toward Christopher, personally and in various alleged
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18 ²⁰ See Appendix III:406:6 and Appendix III: 437:18-19.

19 ²¹ See Appendix IX:1440: 23-25, 1441:1 where the DC indicates, "... he's been
20 acting here, I have to assume because stuff has been going on, apparently giving
21 instruction to Dunham and I just think that means he's consented to the
jurisdiction of this Court."

22 ²² Caroline's subpoenas requested information for the following: the Beatrice B
23 Davis Revocable living trust; The Davis Family Office; Companies owned by the
24 Beatrice B. Davis revocable living trust; Any companies which Christopher D.
25 Davis is the owner, manager, director, or officer which have a business or
26 financial relationship with the Beatrice B. Davis Revocable Living Trust;
27 promissory notes dated prior to Christopher's alleged appointment as investment
28 trust advisor; and any loans currently held by the Beatrice B. Davis Family
Heritage Trust. See Appendix VIII:1262-1272. None of these requests can be
justified by any purported *in rem* jurisdiction over the current trustee or even any
purported *in rem* jurisdiction regarding Christopher's alleged role as investment
trust adviser.

1 roles or capacities outside the jurisdiction of the DC; therefore, such requests
2 would have necessitated an assumption of *in personam* jurisdiction, which the DC
3 did not have.
4

5 Christopher filed a petition for reconsideration of the July 1, 2015 order.²⁴
6
7 Caroline also filed a motion to amend the July 1, 2015 order, providing evidence
8 that Caroline was aware of the defective basis upon which the DC asserted
9 jurisdiction.²⁵ Caroline admitted that she did not seek *in personam* jurisdiction
10 over Christopher personally.²⁶ Christopher opposed Caroline's Motion to Amend
11 because she had based her request to amend the order on alleged fraud by
12 Christopher's attorney.²⁷ Caroline's statements in the Motion to Amend were
13 misrepresentations to the Court, and, after Christopher made a NCRP 11 request to
14 Caroline's counsel, they were withdrawn from the record.²⁸
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18 Due to the absence of *in rem* and *in personam* jurisdiction over Christopher,
19 Christopher requested that Caroline's counsel postpone his September deposition
20 but she refused.²⁹ Christopher would not subject himself to Nevada's jurisdiction,
21 which is currently in dispute, and, as a non-party witness, travel accommodations
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25 ²³ See Appendix IX:1470:lines 21-23

26 ²⁴ See Appendix IV:446-477.

27 ²⁵ See Appendix V:795-836

28 ²⁶ See Appendix V:718:15-19

²⁷ See Appendix VIII:1332-1357.

²⁸ See Appendix VII:1119-1138

1 had not been made for him to appear in Nevada, which is several hundred miles
2 from his residence.³⁰ Christopher and his attorneys filed motions and requested
3 protective orders and stays to halt the improper exercise of jurisdiction and
4 burdensome production for on out-of-state resident.³¹
5

6
7 At the September 2, 2015 hearing on the three petitions/motions: 1) Petition
8 for Reconsideration, 2) Motion to Amend and 3) Motion for Protective Order or to
9 Quash or Modify the Subpoena, the Court indicated that it could not rule on the
10 motions/petitions, but it was allowing discovery under this Court's holdings in
11 *Viega GmbH v. Eighth Judicial DC*, 328 P.3d 1152 (Nev. 2014) (hereinafter
12 "Viega") and *Fulbright & Jaworski v. Eighth Judicial DC*, 342 P.3d 997 (Nev.
13 2015) (hereinafter "Fulbright") and stated that the "purpose and intent of taking
14 jurisdiction initially was to figure out jurisdiction."³² The DC also noted its
15 jurisdictional error³³ and further acknowledged that FHT Holdings, LLC was not a
16 party in the case.³⁴
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24 ²⁹ See Appendix VIII: 1197-1201.

25 ³⁰ See Appendix VIII:1185-1221.

26 ³¹ See Appendix VIII:1185-1221; 1239-1285 and Appendix IX:1461, lines 7-8.

27 ³² See Appendix IX:1449: 17-19

28 ³³ See Appendix IX:1450: 23-25 and 1451:1; "I was wrong in accepting Mr. Solomon's description of that as a constructive trust. Technically, you're right [speaking to Christopher's counsel]. It's not a constructive trust..."

³⁴ See Appendix IX: 1470: 9-14, 21-23; 1472:12-25.

1 Despite the realization of its jurisdictional error and the overbreadth of
2 Caroline's subpoenas and notices, the DC declined to rule on Christopher's
3 motion for a protective order or to quash or modify Caroline's subpoena and,
4 instead, desired that the discovery commissioner rule on any objections at the
5 deposition in its attempt to have Christopher submit to its jurisdiction by
6 appearance.³⁵ Not only were Christopher's motion for protective order, to modify
7 or quash the subpoena and request for stay denied, likewise, the Roland Law
8 Firm's request for protective order was denied, in part.³⁶

12 Then, at the hearing on September 30, 2015, the DC threatened discovery
13 sanctions against Christopher for failing to appear for his deposition and providing
14 documents.³⁷ The DC also required that initial disclosures be exchanged between
15 the parties.³⁸ A motion was filed in this matter to stay the DC court proceedings
16 until the Writ of Prohibition and/or Mandamus or this Appeal could be resolved
17 and was subsequently granted on October 22, 2015. It should be noted that after
18 the appeal was filed, the DC made *sua sponte* findings at subsequent hearings to
19 substantiate its July 1, 2015 Order with the missing jurisdictional findings.³⁹

25 ³⁵ See Appendix IX:1472-1474.

26 ³⁶ See Appendix IX:1589-1592; Appendix X:1639: lines 20-25; 1640: lines 1-5.

27 ³⁷ See Id, Appendix X:1642: lines 16-25; 1643: lines 1-3.

28 ³⁸ Appendix X:1648-1649.

³⁹ Appendix IX:1540; Appendix X: 1611; The DC belatedly found *in personam* jurisdiction despite the lack of allegations or factual findings.

SUMMARY OF THE ARGUMENT

The salient issues of the entire case are whether the DC properly assumed *in rem* jurisdiction over the trust and the role of trust investment adviser and whether the DC could assume *in personam* jurisdiction over Christopher and require him to disclose seven years of personal and financial documents in the absence of allegations and findings of sufficient contacts, decisions, or acts by him in any purported role and in light of Caroline's failure to properly serve him under Nevada's long arm statute. First, under the prior version of NRS 164.010, only *in rem* jurisdiction could have been obtained over a trust and its trustee - not *in personam* jurisdiction. The new change to NRS 164.010 through SB 484 provides evidence that *in personam* jurisdiction was not available prior to October 1, 2015.

Second, a theory of constructive trust is a remedy, which requires personal jurisdiction over a person to put property in trust for another. The DC's assumption of jurisdiction under this theory was improper because jurisdiction had not yet been exercised before the constructive trust was created. The DC does not currently have *in rem* jurisdiction over the trust or the parties. Furthermore, the condition precedent to move the FHT situs to Nevada was absent, invalidating the

1 first amendment (as admitted by the trust's drafter), causing doubt as to whether
2 the DC will have jurisdiction over FHT if this case is remanded.⁴⁰
3

4 Third, *in personam* jurisdiction is lacking over Christopher because proper
5 service was lacking, no acts or claims were raised against him pertaining to his
6 contact with Nevada or pertaining to any decisions or acts as a purported
7 investment trust adviser, and jurisdiction is not reasonable. As a result, it is
8 improper to force Christopher to disclose seven plus years of documents in his
9 personal capacity, in any purported role as an investment trust adviser, or as an
10 officer of FHT Holdings, LLC.
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14 Fourth, even assuming *arguendo* that a Nevada Investment Trust Adviser is
15 a type of trustee to which the DC could assume *in rem* jurisdiction, the assumption
16 of *in personam* jurisdiction over Christopher as the Investment Trust Advisor was
17 improper because decisions and acts had not been alleged pursuant to NRS
18 163.5555, and the requirements of due process were not satisfied. Caroline has
19 not provided case law to support her proposed deviation from established
20 jurisdictional precedent as articulated in *Viega* and *Fulbright*. Therefore,
21 Christopher's motion to dismiss should have been granted and Christopher
22 dismissed as a defendant for lack of proper jurisdiction.
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28 ⁴⁰ Appendix III: 391-392.

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1 Further, the persons mentioned in Section 59 are trustees or co-trustees,
2 while trust protectors or trust investment advisers are noticeably absent. In this
3 same bill, the SB 484 drafters included the definition of a “directing trust adviser”
4 as being specifically a trust adviser or trust protector;⁴¹ however, any references to
5 personal jurisdiction over either of these individuals is lacking in Section 59. If
6 personal jurisdiction would have been intended to be given to a trust protector or
7 trust adviser under Section 59, the Legislature could have included these
8 individuals (or their defined term: “directing trust adviser”) from Section 42, but
9 the Legislature did not. Therefore, personal jurisdiction under the new NRS
10 164.010 would extend only to trustees or co-trustees, if at all.⁴²

15 Likewise, Section 25 of SB 484, which is a completely new addition to
16 Chapter 155, provides evidence that personal jurisdiction was not available prior
17 to October 1, 2015 to any party. After October 1, 2015, Section 25 provides that

19 1. In a proceeding involving the estate of a decedent or a testamentary trust,
20 the court has jurisdiction over the assets of the estate or trust as a proceeding
21 in rem.

22 2. In addition to any other basis for claiming jurisdiction over a person, the
23 court has personal jurisdiction over each person:

24 (a) Who is appointed as a personal representative by the court;

25 (b) Whose appointment as a trustee is confirmed by the court;

26 ⁴¹See Section 42 of SB 484.

27 ⁴²It is strongly believed that constitutional implications are raised regarding
28 whether mailed service pursuant to NRS 155.010 is adequate to allow the DC to
automatically assume personal jurisdiction over a trustee or co-trustee.

1 (c) Who files with the court a petition, a motion, other than a motion for
2 dismissal for lack of jurisdiction, an objection or a joinder to a petition or
3 motion;

4 (d) Who makes an appearance at a hearing of a proceeding involving the
5 estate of a decedent or a testamentary trust, unless the appearance is made
6 solely for the purpose of objecting to the jurisdiction of the court; or

7 (e) Who is a party to a proceeding commenced by a petition filed pursuant to
8 NRS 153.031 if notice is given pursuant to NRS 155.010. (Emphasis added)

9 Again, this provides evidence that, before October 1, 2015, personal jurisdiction
10 was not available to parties to a proceeding commenced by a petition filed
11 pursuant to NRS 153.031 through mailed notice. Therefore, the Court did not
12 automatically have personal jurisdiction over the parties to this proceeding,
13 including, but not limited to, Christopher through mailed notice.

14 It is worth noting that there is a serious question as to the constitutionality
15 of Section 25 and Section 59, because they appear to automatically grant personal
16 jurisdiction over a party, which may be involved in a decedent's estate or named
17 in a trust document, by mailing a copy of the trust petition to their last known
18 address. Most concerning, Provision 2(b) and 2(e) of Section 25 above is an
19 exercise of personal jurisdiction without the consent of the parties; therefore, a
20 proper jurisdictional analysis would be required to exercise personal jurisdiction
21 over these parties who object to the jurisdiction of the court, such as this court's
22 analysis outlined in *Viega* and *Fulbright*. As they stand, however, it appears these
23 new sections of SB 484 completely forego any constitutional analysis or required
24 findings before personal jurisdiction is exercised over a non-resident. Christopher
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1 and his counsel believe it is important to make the Court aware of the effect these
2 new sections may have on jurisdiction within the state of Nevada as it relates to
3 parties involved with decedent's estates and trusts – especially to non-residents.

4
5 ***II. A constructive trust requires personal jurisdiction over the person to***
6 ***obtain this remedy, which was not obtained; therefore, jurisdiction is***
7 ***improper.***

8 As stated above, NRS § 164.010 provides that the court may take *in rem*
9 jurisdiction over a trust. After assuming *in rem* jurisdiction, a court then has only
10 the power to adjudicate title to or ownership of trust property without personal
11 liability to the trustee or any other person involved with the trust.⁴³ Herein,
12 however, the DC exercised jurisdiction under a theory of constructive trust – not
13 under NRS § 164.010.
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16 A constructive trust is entirely different from a trust proceeding *in rem*. It is
17 a “remedial device by which the holder of legal title to property is held to be a
18 trustee of that property for the benefit of another who in good conscience is
19 entitled to it.”⁴⁴ This Court and the Ninth Circuit have both indicated that a
20 constructive trust is an equitable remedy to prevent or redress unjust
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27 ⁴³ *Shaffer v. Heitner*, 433 U.S. 186, 199, (U.S. 1977)

28 ⁴⁴ *DeLee v. Roggen*, 111 Nev. 1453, 1457, (Nev. 1995) quoting *Locken v. Locken*,
98 Nev. 369, 650 P.2d 803 (1982)

1 enrichment.”⁴⁵ This Court identified that specific findings are necessary to impose
2 a constructive trust, which were not found by the DC.⁴⁶ This Court also
3
4 recognized that “a constructive trustee have title (not mere possession) to the
5 property” because this “is critical to the imposition of a constructive trust.”⁴⁷ The
6
7 DC failed to make these necessary findings of title.

8 The Federal Sixth Circuit clarified that:

9
10 A constructive trust is not really a trust. A constructive trust is a legal
11 fiction, a common-law remedy in equity that may only exist by the grace of
12 judicial action...a constructive trust, unlike an express trust, is a remedy, **it**
13 **does not exist until a plaintiff obtains a judicial decision finding him to**
14 **be entitled to a judgment** "impressing" defendant's property or assets with
15 a constructive trust.⁴⁸

16 In other words, a constructive trust is a remedy, which can be ordered only after 1)
17 jurisdiction has been obtained over the persons or entities over which the court
18 seeks to impose the constructive trust or against whom the court is entitled to enter
19 judgment and 2) the elements for obtaining a constructive trust are satisfied. It is
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22 ⁴⁵ *Taylor Assocs. v. Diamant (In re Advent Mgmt. Corp.)*, 178 B.R. 480, 486,
23 (B.A.P. 9th Cir. Cal. 1995); *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1027, (Nev.
1998), citing Dan B. Dobbs, *Law of Remedies* § 4.3(2) (2d ed. 1993).

24 ⁴⁶ *DeLee v. Roggen*, 111 Nev. 1453, 1457 (Nev. 1995), citing *Locken v. Locken*,
25 650 P.2d 803, 805 (Nev. 1982).

26 ⁴⁷ See *Danning v. Lum's, Inc.*, 86 Nev. 868, 871, (Nev. 1970), citing *Cherno v.*
27 *Dutch Am. Mercantile Corp.*, 353 F.2d 147 (2d Cir. 1965); *Thompson v. Mobile*
28 *Producing Co.*, 163 F.Supp. 402 (D. Mont. 1958); G. Bogert, *Law of Trusts* 208
(4th ed. 1963)

⁴⁸ *XL/Datacomp v. Wilson (In re Omegas Group)*, 16 F.3d 1443, 1449, (6th Cir.
Ky. 1994) (Emphasis added).

1 not a theory through which a court can establish or assume jurisdiction over a trust
2 or parties to a trust and is entirely different from an express trust over which *in*
3 *rem* jurisdiction might be imposed under NRS 164.010.

4
5 Because the DC did not make the necessary findings to establish a
6 constructive trust or obtain proper jurisdiction over (or provide due process to) the
7 persons over which the constructive trust would be imposed, the DC improperly
8 exercised jurisdiction under a constructive trust theory. Therefore, the DC does
9 not currently have *in rem* jurisdiction over the trust or any of the parties.
10 Likewise, the DC did not obtain *in personam* jurisdiction over Christopher, under
11 such a theory.
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15 ***III. Even if this Court found that the Court could exercise its jurisdiction in***
16 ***rem, the Court could not exercise in personam jurisdiction without***
17 ***complying with Nevada’s long-arm statute and due process, because***
18 ***Christopher is a non-resident.***

19 *In rem* jurisdiction is significantly different from *in personam* jurisdiction.⁴⁹
20 *In personam* jurisdiction allows the court to “impose a personal obligation on an
21 individual.”⁵⁰ *In rem* jurisdiction provides the court with only the power to
22 adjudicate title to or ownership of property without the liability to the property
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28 ⁴⁹ *Shaffer v. Heitner*, 433 U.S. 186, 199, (U.S. 1977),

⁵⁰ *Id.*

1 owner.⁵¹ Herein, the trust is the thing or the *res* over which the court may exercise
2 power.
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4 When requesting the court to assume jurisdiction over FHT, however,
5 Caroline made requests for information when Christopher was solely a beneficiary
6 of FHT and which were wholly unrelated to the trust or *res*.⁵² Caroline requested
7 Christopher's personal and financial information for a period of over seven years
8 through subpoenas and a request to submit to a deposition in Nevada.⁵³ *In*
9 *personam* jurisdiction would absolutely be necessary to permit such an expansive
10 inquiry.
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14 In order to obtain *in personam* jurisdiction over a non-resident party, this
15 Court held that "[j]urisdiction over a nonresident defendant is proper only if the
16 plaintiff shows that the exercise of jurisdiction satisfies the requirements of
17 Nevada's long-arm statute and does not offend principles of due process."⁵⁴ To
18 not offend due process under the Fourteenth Amendment, this Court requires that
19 a nonresident have sufficient minimum contacts with Nevada so that subjecting
20 the nonresident to the Nevada's jurisdiction "will not offend traditional notions of
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25 ⁵¹ *Id.*

26 ⁵² Appendix I:6-7

27 ⁵³ See footnote 21, *supra*.

28 ⁵⁴ *Viega*, 328 P.3d at 1156, citing *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512, 134 (2006) and *Consipio Holding, BV v. Carlberg*, 282 P.3d 751, 754 (2012).

1 fair play and substantial justice.”⁵⁵ This Court further stated “[w]hen a
2 nonresident defendant challenges personal jurisdiction, the plaintiff bears the
3 burden of showing that jurisdiction exists.”⁵⁶
4

5 Caroline has failed to set forth any of the elements that jurisdiction exists,
6 including her compliance with Nevada’s long arm statute found in NRS 14.065(2)
7 which requires personal service of the summons and complaint under NRCP 4 and
8 failed to show that an exercise of due process would not offend traditional notions
9 of fair play and substantial justice.
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12 A. There is no personal jurisdiction over Christopher because Nevada’s long-
13 arm statute is not satisfied.

14 Caroline has not disputed that Christopher is a non-resident of Nevada.⁵⁷
15 NRS 14.065(2) requires personal service of a summons in accordance with NRCP
16 4, and adherence to the requirements of federal due process. Christopher was
17 never personally served with a summons or a citation (an official summons to
18 appear before a court) to appear personally or in any other role for which he is
19 currently being requested to provide documents.⁵⁸
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24 ⁵⁵ *Fulbright*, 342 P.3d at 1001, citing *Arbella Mut. Ins. Co. v. Eighth Judicial Dist.*
25 *Court*, 122 Nev. 509, 512, (2006)

26 ⁵⁶ *Fulbright*, 342 P.3d at 1001, citing *Trump v. Eighth Judicial Dist. Court*, 109
27 Nev. 687, 692, (1993).

28 ⁵⁷ Appendix VI:977-979.

⁵⁸ Caroline concedes this point in her unsolicited Reply filed on November 17,
2015.

1 Christopher is aware that the process of assuming *in rem* jurisdiction over a
2 trust does not typically require the summons and complaint process as mentioned
3 in NRS 14.065(2); however, when asserting claims within an estate or trust
4 proceeding or when someone is compelled to do something within an estate or
5 trust proceeding, the court issues a citation or an official summons.⁵⁹ Such
6 citations (or official summonses) require personal service on the parties as a
7 means of forcing them to do what is being requested or to gain *in personam*
8 jurisdiction over the party.⁶⁰

12 Although Caroline knew Christopher's address and could have personally
13 served Christopher under NRS 14.065 before requesting documents and
14 information wholly unrelated to the FHT, she failed to do so. Caroline's lack of
15 personal service upon Christopher fails to satisfy NRS 14.065 and does not
16 provide the DC with personal jurisdiction over Christopher personally or in any
17 capacity to require him or his attorneys to provide his personal and financial
18 information for the past approximately seven years.

22 Therefore, Caroline has not satisfied Nevada's long-arm statute and
23 personal jurisdiction is lacking over Christopher in any role. Christopher should
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27 ⁵⁹ NRS 155.010 requires adherence to other "specific statute(s) relating to the kind
28 of notice required" such as NRS 153.041 (trust administration) or NRS 143.110
(estate administration), requiring the issuance of a citation to obtain *in personam*
jurisdiction over a party.

1 not be subject to orders or sanctions regarding discovery that would only be
2 allowed if personal jurisdiction were properly exercised. Christopher should be
3 dismissed as a defendant.
4

5 B. There is a lack of due process and minimum contacts; therefore personal
6 jurisdiction is lacking over Christopher in any capacity.

7 In regards to due process, the US Supreme Court has held the following:
8

9 An elementary and fundamental requirement of due process in any
10 proceeding which is to be accorded finality is notice reasonably calculated,
11 under all the circumstances, to apprise interested parties of the pendency of
12 the action and afford them an opportunity to present their objections. The
13 notice must be of such nature as reasonably to convey the required
14 information...and it must afford a reasonable time for those interested to
15 make their appearance...But when notice is a person's due, process which is
16 a mere gesture is not due process.⁶¹

17 This Court has likewise mandated that "[a]n elementary and fundamental
18 requirement of due process... is notice reasonably calculated, under all the
19 circumstances, to apprise interested parties of the pendency of the action and
20 afford them the opportunity to present their objections."⁶²

21 Due process limitations on the jurisdiction of the court serve two important
22 functions: 1) "It protects the defendant against the burdens of litigating in a distant
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26 ⁶⁰ See generally NRS 153.041 and NRS 143.110

27 ⁶¹ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315, (U.S.
28 1950), citing *Milliken v. Meyer*, 311 U.S. 457 (1940); *Grannis v. Ordean*, 234
U.S. 385 (1914); *Priest v. Las Vegas*, 232 U.S. 604 (1914); *Roller v. Holly*, 176
U.S. 398 (1900), and cf. *Goodrich v. Ferris*, 214 U.S. 71 (1909).

1 or inconvenient forum”, and 2) “It acts to ensure that the States, through their
2 courts, do not reach out beyond the limits imposed on them by their status as
3 coequal sovereigns in a federal system.”⁶³ Finally, the US Supreme Court states
4 that “a judgment rendered in violation of due process is void in the rendering State
5 and is not entitled to full faith and credit elsewhere.”⁶⁴
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8 Herein, Caroline’s first failure was to provide sufficient notice of the claims
9 she was asserting or the information she was requesting. In the Original Petition,
10 Caroline indicated that the majority of the loans borrowed by the Alaska Trustee
11 against an insurance policy owned by FHT constituted \$1,430,689 from which
12 only \$25,000 had been handled by a purported Nevada Trustee.⁶⁵ Because the
13 FHT indicates that a prior trustee does not have to account for another trustee,⁶⁶
14 Christopher could not have had a reasonable notice from the contents of the
15 Original Petition that he would be required to produce information on 98.3% of
16 the aforementioned loans when he was neither a trustee of FHT nor acting in a
17 fiduciary role during that time period. The legal custodian of this information
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25 ⁶² *Gonzales-Alpizar v. Griffith*, 317 P.3d 820, 827 (Nev. 2014), citing *Browning v.*
26 *Dixon*, 114 Nev. 213, 217, (1998)

27 ⁶³ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, (U.S. 1980)

28 ⁶⁴ *Id.* at 291.

⁶⁵ Appendix I:5, lines 10-15; 6:lines 1-7.

⁶⁶ See Appendix I:64.

1 would be the Alaska Trustee, who Christopher already argued was an
2 indispensable party to the action.⁶⁷
3

4 The only notice or expectation that Christopher could have reasonably
5 ascertained from this “action” would be that the court may assume *in rem*
6 jurisdiction over FHT and possibly its purported Nevada trustee over the \$25,000,
7 or 1.7% of the outstanding loans, which was admittedly a fee paid by the
8 purported Nevada Trustee to Stephen K. Lenhardt after the change in trust situs
9 allegedly occurred.⁶⁸ Christopher could not expect from the Original Petition,
10 which did not plead claims against him and did not plead decisions or acts that he
11 allegedly made as an alleged fiduciary, that he would be required to turn over his
12 personal documents, personal finances, and other documents in his possession for
13 a period of over seven years. Given the lack of claims in the Original Petition,
14 Christopher could not have sufficient notice that a mailed proceeding for a Nevada
15 court to assume jurisdiction over FHT would subject him to an inquiry into his
16 personal finances, his personal and professional dealings, and for all documents he
17 acquired as a beneficiary of FHT.
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24 Secondly, Caroline, a nonresident, needed to provide evidence that
25 Christopher, a nonresident, and his “activities or the consequences thereof, must
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28 ⁶⁷ See Appendix II:288-293.

⁶⁸ See Appendix IX:1418: lines 3-7.

1 have a substantial enough connection with [Nevada] to make the exercise of
2 jurisdiction over [him] reasonable.”⁶⁹ Such a jurisdictional inquiry is only proper
3 where “the cause of action arises from the defendant's contacts with the forum.”⁷⁰
4 Herein, there were no claims alleged in the Original Petition, the only “contact”
5 alleged in the Original Petition is that Christopher is allegedly an investment trust
6 advisor of a purported Nevada trust and manager of a Nevada LLC. However,
7 Caroline failed to plead any decisions, acts, or any activities performed by
8 Christopher or their alleged consequences that occurred in Nevada in either of
9 these two purported roles. In fact, the evidence offered to the court indicates that
10 the dispositive jurisdictional activities occurred outside the state of Nevada.⁷¹
11 Jurisdiction is simply absent in Nevada over Christopher in any role.

12 Even assuming *arguendo* that Christopher could be considered a fiduciary
13 of the FHT, which is in dispute because of the parties’ failure to follow the
14 condition precedent of FHT in changing the situs, this role purportedly began on
15 February 24, 2014, the date of the purported First Amendment. If the DC had *in*
16 *rem* jurisdiction, which it doesn’t, Christopher would only be required to provide
17 documents and evidence related to or arising out of his alleged fiduciary role

18 ⁶⁹ See Appendix IX:1540 and Appendix X:1611; *Fulbright*, 342 P.3d at 1002.

19 ⁷⁰ *Fulbright*, 342 P.3d at 1002; *Dogra v. Liles*, 314 P.3d 952, 955 (2013) (quoting
20 *Trump*, 109 Nev. at 699, 857 P.2d at 748).

21 ⁷¹ See Appendix I:6-7; 12-196.

1 beginning February 24, 2014 – and the DC would need personal jurisdiction over
2 Christopher for all other documentary and evidentiary requests, including any
3 requests unrelated to FHT after February 24, 2014.
4

5 C. There is no in personam jurisdiction over Christopher as manager of FHT
6 Holdings, LLC and to force Christopher to produce documents in the
7 absence of jurisdiction is an abuse of discretion.

8 Caroline also did not argue that Christopher had sufficient minimum
9 contacts with the forum state to assert personal jurisdiction over him as manager
10 of FHT Holdings, LLC. The US Supreme Court has stated that “personal
11 jurisdiction over a limited liability company does not automatically extend to its
12 members.”⁷² In other words, “membership in a business entity is not sufficient in
13 and of itself to confer personal jurisdiction.”⁷³ This jurisdictional principle also
14 extends to officers and employees of a corporation.⁷⁴ All parties – members,
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19 ⁷² *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)
20 (finding membership in a business entity is not sufficient in and of itself to confer
21 personal jurisdiction); *Mountain Funding, LLC v. Blackwater Crossing, LLC*,
22 2006 U.S. Dist. LEXIS 96763, *7-8, 2006 WL 1582403 (W.D.N.C. June 5, 2006);
23 see also *Lasalle Bank N.A. v. Mobile Hotel Props., LLC*, 274 F.Supp.2d 1293,
24 1300 (S.D. Ala. 2003); *Graymore, LLC v. Gray*, 2007 U.S. Dist. LEXIS 25882,
25 *23, 2007 WL 1059004 (D. Colo. Apr. 6, 2007) (“[p]ersonal jurisdiction over a
[LLC] does not automatically extend to its members)

26 ⁷³ *Id.*

27 ⁷⁴ *Schmitz v. Xiqing Diao*, 2013 U.S. Dist. LEXIS 160685, *25, 2013 WL
28 5965882 (D. Wyo. Nov. 7, 2013) (Individual Defendants' positions as directors
and/or officers of a Wyoming corporation and their actions as such simply are not
enough to justify forcing them before a Wyoming court); *In re Terrorist Attacks*
on Sept. 11, 2001, 718 F. Supp. 2d 456, 471, 2010 U.S. Dist. LEXIS 69371, *77-

1 directors, officers, employees - must have the requisite minimum contacts with the
2 forum state independently of the limited liability company.
3

4 Caroline has not pled any claims or decisions or acts as manager of FHT
5 Holdings, LLC, which may provide the sufficient minimum contacts for this court
6 to assert *in personam* jurisdiction over Christopher as manager of FHT Holdings,
7 LLC. These failures equate to a lack of personal jurisdiction over Christopher as
8 manager of FHT Holdings, LLC.
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11 Although heavily criticized by other courts and the Nevada federal district
12 court as a departure from the well-established *Shaffer v. Heitner* United States
13 Supreme Court decision, this Court has allowed a district court to exercise
14 personal jurisdiction over an officer or director that has “purposefully directed
15 harm towards a Nevada citizen.”⁷⁵ Even so, Caroline has failed to allege or make
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20 78 (S.D.N.Y. 2010) (“Jurisdiction over a corporation's board member, officer or
21 employee, in his or her individual capacity, must be premised on the defendant's
22 own personal contacts with the forum, and not the acts and/or contacts carried out
23 by the defendant in his or her corporate capacity”); *Pilates, Inc. v. Pilates Inst.,*
24 *Inc.*, 891 F.Supp. 175, 180-181 (S.D.N.Y. 1995) (“[I]t is well established that
25 individual officers and employees of a corporation are not automatically subject to
26 personal jurisdiction in New York simply because a court can exercise jurisdiction
27 over the corporation.”).

28 ⁷⁵ *Consipio Holding, BV v. Carlberg*, 282 P.3d 751, 755, (Nev. 2012), but see
Andes Indus. v. Chen Sun Lan, 2014 U.S. Dist. LEXIS 163571, *17 (D. Nev. Nov.
19, 2014) (“Like the district court in *Schmitz v. Xiqing Dio*, the undersigned
believes that *Consipio Holding, BV v. Carlberg* is contrary to the United States
Supreme Court's decision in *Shaffer v. Heitner*, and that a court does not have

1 a claim that Christopher has purposefully directed harm toward FHT Holdings,
2 LLC as either an officer or director, to warrant the exercise of personal
3 jurisdiction. Because the property purportedly owned by the LLC is not located or
4 administered in Nevada, there is no harm directed towards Nevada or any of its
5 citizens.⁷⁶ Furthermore, Caroline does not claim that she is a Nevada citizen that
6 has been harmed.
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9 Lastly, the DC recognized that FHT Holdings, LLC was not a party to this
10 action.⁷⁷ When Christopher alerted the DC that FHT Holdings, LLC had not been
11 served with process, the DC indicated that, “Well, maybe they want to go do
12 that.”⁷⁸ Although she knew his address in Missouri and California and the Court’s
13 admonishment to serve, Caroline did not personally serve Christopher in his
14 capacity as manager of FHT Holdings, LLC.⁷⁹
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20 personal jurisdiction over nonresident shareholders based solely on the fact that
21 the plaintiff is incorporated in the forum.) and *Viega*, 328 P.3d at 1154.

22 ⁷⁶ Appendix I:148

23 ⁷⁷ Appendix IX:1470:lines 21-23.

24 ⁷⁸ Appendix X: 1644:lines 11-12.

25 ⁷⁹ In a belated attempt to establish minimum contacts, Caroline misrepresented to
26 this Court that Christopher “directed the creation of FHT Holdings, LLC, and
27 transferring the Policy to such entity”. See Page 4, Lines 10-12, Caroline D.
28 Davis’s Reply to Christopher D. Davis’s Response to Caroline Davis’s Motion to
Remand and Supplement Thereto, filed on November 17, 2015. Christopher did
not direct the creation of FHT Holdings, LLC – its establishment was directed by
the purported First Amendment before Christopher’s alleged appointment as
investment trust advisor therein. See Appendix I:135-144.

1 To require Christopher or his attorneys to provide documents as manager
2 would force him to breach a fiduciary duty to the LLC and put him at risk of being
3 liable to the LLC, who is clearly not a party to the action, and ultimately to the
4 FHT. For the DC to create an order requiring such an act is, in and of itself, an
5 abuse of discretion by the DC when it had already acknowledged that FHT
6 Holdings, LLC, was not a party to the case.⁸⁰ The DC's order regarding FHT
7 Holdings, LLC, or Christopher's role therein is improper and void for lack of
8 proper notice, service of process, and jurisdiction.

12 ***IV. NRS 163.5555 does not automatically grant in personam jurisdiction over***
13 ***Christopher.***

14 The role of trust adviser derives its powers from the role of trustee and has a
15 smaller subset of the duties and powers of a trustee.⁸¹ As a possible quasi-trustee,
16 the same jurisdictional limitations would exist as with a trustee under NRS
17 164.010. In other words, NRS 163.5555 does not authorize personal jurisdiction –
18 it is derived from *in rem* jurisdiction over the property under a trust adviser's
19 control based on decisions made by the adviser in that role.⁸² Without establishing
20 *in personam* jurisdiction over the trust adviser by effectuating personal service of
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27 ⁸⁰ Appendix IX:1470:lines 21-23.

28 ⁸¹ *Wilmington Trust Co. v. Stuart*, 1983 Del. Ch. LEXIS 524, *25 (Del. Ch. July 19, 1983), describing a trust advisor as a “quasi-trustee”.

1 process and a jurisdictional analysis under NRS 14.065 and Nevada case law,
2 NRS 163.5555 could only grant *in rem* jurisdiction over the role itself (e.g. to
3 appoint/remove a investment trust adviser) or property affected by the trust
4 adviser's decisions or actions.
5

6
7 Article Eleven, Section 7 of the FHT also states: "No successor Trustee
8 shall be required to examine the accounts, records, and acts of any previous
9 Trustees."⁸³ If Christopher is, in fact, deemed to be a trustee, he would not be
10 required to account for previous trustees even if the DC asserted *in rem*
11 jurisdiction. Any attempt to coerce disclosure of information from Christopher
12 which is not based on a decision or action taken by him as a purported investment
13 trust adviser is really an attempt to exercise *in personam* jurisdiction over him
14 without due process.⁸⁴ The DC's orders to produce documents relating to
15 Christopher personal and financial affairs for seven plus years, clearly unrelated to
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21 ⁸² NRS 163.5555 "a trust protector or a trust adviser may be made a party to an
22 action or proceeding arising out of a decision or action of the trust protector or
23 trust adviser.

24 ⁸³ Appendix I:86.

25 ⁸⁴ See *World-Wide Volkswagen*, 444 US 286, 292 (1980). Notably, even the DC
26 recognized jurisdictional limitations of NRS 163.5555 when, at the April 22, 2015
27 hearing, it explained it could not automatically take jurisdiction over the trust
28 protector Stephen Lenhardt until a more definite statement was provided, showing
any actions taken by Lenhardt which would justify the exercise of jurisdiction.
See Appendix III, 403:15-18; 408:10-12,15-16; 410:13-25, 411:1-19, 424:20-25;
425:1-11.

1 his purported role as investment trust adviser and the accompanying threats of
2 sanctions for alleged noncompliance with the DC's orders are improper.⁸⁵
3

4 Finally, even if NRS 163.5555 does allow for *in personam* jurisdiction, it
5 would not be automatic, because such an assumption would violate due process.⁸⁶
6
7 Jurisdiction over a non-resident under NRS 163.5555 would still be contingent on
8 satisfying the requirements of NRS 14.065 and due process as discussed above. In
9 summary, this Court should direct the DC to grant Christopher's motion to dismiss
10 and dismiss Christopher as a defendant.
11

12 CONCLUSION

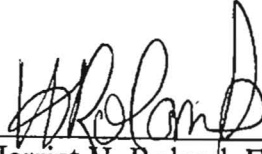
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14 For the foregoing reasons, Christopher respectfully requests this Court find
15 that the DC does not have *in rem* jurisdiction over FHT or him under a theory of
16 constructive trust; find that the DC does not have *in personam* jurisdiction over
17 Christopher personally or in any other role; dismiss Christopher as a party from
18 the underlying action; and grant any further relief as deemed proper.
19
20
21

22 ⁸⁵ Even the DC recognized jurisdictional limitations of NRS 163.5555 when, at the
23 April 22, 2015 hearing, it explained it could not automatically take jurisdiction
24 over the trust protector Stephen Lenhardt until a more definite statement was
25 provided, showing any actions taken by Lenhardt which would justify the exercise
26 of jurisdiction. See Appendix III, 403:15-18; 408:10-12,15-16; 410:13-25, 411:1-
19, 424:20-25; 425:1-11.

27 ⁸⁶ It would have a negative impact on trust creation in Nevada if a person or entity
28 discovered that by simply being named in a trust document, his/her/its personal
affairs could be exposed through an automatic exercise of personal jurisdiction
over them.

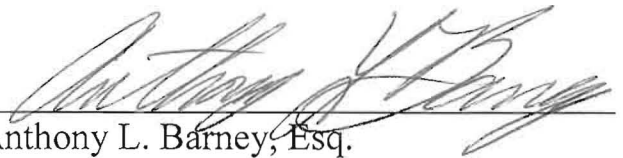
1 DATED this 1st day of December, 2015.
2

3 Respectfully Submitted,
4 **ROLAND LAW FIRM**

5 
6

7 Harriet H. Roland, Esq.
8 *Attorney for Christopher D. Davis*
9 Nevada Bar No. 5471
10 2470 E. St. Rose Pkwy, Ste. 105
11 Henderson, NV 89074
12 Telephone: (702) 452-1500
13 Facsimile: (702) 920-8903
14 hroland@rolandlawfirm.com

15 Respectfully Submitted,
16 **ANTHONY L. BARNEY, LTD.**

17 
18

19 Anthony L. Barney, Esq.
20 Nevada Bar No. 8366
21 3317 W. Charleston Blvd., Suite B
22 Las Vegas, NV 89102
23 Telephone: (702) 438-7878
24 Facsimile: (702) 259-1116
25 office@anthonybarney.com
26 *Attorney for Christopher D. Davis*
27
28

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- 26
- 27
- 28

Cheryl Davis
5403 West 134 Terrace, Unit 1525
Overland Park, KS 66209

Tarja Davis
3005 North Beverly Glen Circle
Los Angeles, California 90077
And
514 West 26th Street, #3E
Kansas City, Missouri 64108

Winfield B. Davis
Skyline Terrace Apts.
930 Figueroa Terr. Apt. 529
Los Angeles, California 90012-3072

Ace Davis
c/o Winfield B. Davis
Skyline Terrace Apts.
930 Figueroa Terr. Apt. 529
Los Angeles, California 90012-3072

Christopher D. Davis
3005 North Beverly Glen Circle
Los Angeles, California 90077
And
514 West 26th Street, #3E
Kansas City, Missouri 64108

1 Registered Agent Solutions, Inc.
2 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability
3 Company
4 4625 West Nevso Drive, Suite 2
5 Las Vegas, Nevada 89103

6 JONATHAN W. BARLOW, ESQ.
7 CLEAR COUNSEL LAW GROUP
8 50 Stephanie Street, Suite 101
9 Henderson, Nevada 89012
10 Jonathan@clearcounsel.com
11 Attorneys for Stephen K. Lenhardt

12 Mark Solomon, Esq.
13 Joshua Hood, Esq.
14 **SOLOMON DWIGGINS & FREER, LTD.**
15 9060 W. Cheyenne Ave.
16 Las Vegas, NV 89129
17 *Attorney for Petitioner Caroline Davis*

18 DUNHAM TRUST COMPANY
19 SHANNA CORESSAL, CTFA
20 c/o Charlene Renwick, Esq.
21 Lee, Hernandez, Landrum & Garofalo
22 7575 Vegas Drive, #150
23 Las Vegas, Nevada 89128

24 Honorable Judge Sturman
25 Dept. 26, Eighth Judicial Dist. Court
26 Regional Justice Center
27 200 Lewis Ave.
28 Las Vegas, NV 89101


Employee of Anthony L. Barney, Ltd.