

SOLOMON | DWIGGINS | FREER^{LTD}
TRUST AND ESTATE ATTORNEYS

The Honorable Gloria J. Sturman
RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015

Page 2
September 14, 2015

Counsel's contention or implication that Ms. Davis' counsel requested the proposed Amended Order be executed is misleading and patently false.

Therefore, Ms. Davis respectfully requests that Your Honor execute the **Certification Of Intent**. Upon execution of the Certification Of Intent, Ms. Davis' counsel further requests that they be notified so that the same may be retrieved by this office.

Sincerely,



Mark A. Solomon

MAS/

Enclosure: (As Stated)

cc: Charlene N. Renwick, Esq.; Harriet H. Roland, Esq.; Jonathan W. Barlow, Esq.; and Anthony L. Barney, Esq.

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Attorneys for Caroline Davis, Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

Case No.: P-15-083867-T
Dept.: 26

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

**CERTIFICATE OF SERVICE OF COPY OF CORRESPONDENCE TO JUDGE
STURMAN WITH ENCLOSURES DATED SEPTEMBER 9, 2015**

I hereby certify that on the 9th day of September 2015, I mailed a true and correct copy of the
above and foregoing Correspondence to the following persons at their last known address, by
depositing a copy of the same in the United States Mail, addressed as follows

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

WINFIELD B. DAVIS
Skyland Terrace Apts.
930 Figueroa Terr., Apt. 529
Los Angeles, California 90012-3072

ACE DAVIS c/o
WINFIELD B. DAVIS
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1 Cheryl Davis
2 5403 West 134 Terrace, #1525
3 Overland Park, Kansas 66209

4 Registered Agent Solutions, Inc
5 Registered Agent for FHT Holdings, LLC,
6 A Nevada Limited Liability Company
7 4625 W. Nevso Drive, Suite 2
8 Las Vegas, Nevada 89103


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September 9, 2015

Via Hand Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, Nevada 89155

**RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015**

Dear Judge Sturman:

This matter came on for hearing on Caroline D. Davis' ("Ms. Davis") Motion Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3) (the "Motion To Amend") and Christopher D. Davis' Petition For Reconsideration Of The Order Dated May 19, 2015, etc. (the Petition For Reconsideration") on September 2, 2015. As you are aware, jurisdiction was originally assumed over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014 (the "Trust") under the theory of "constructive trust". This was subsequently confirmed in the Order, dated May 19, 2015, which was filed on June 24, 2015. During the September 2, 2015, hearing you indicated that sufficient evidence was now presented demonstrating that the First Amendment and the transfer of the Trust's situs were completed in compliance with Article 14, Section 6 of the Trust, and that jurisdiction over the Trust under NRS 164.010 was proper. You further indicated that you would certify your intent to enter an order to that effect should this matter be remanded back to the District Court.

Pursuant to your statement at the September 2, 2015 hearing, enclosed for your review are: (1) a Certification Of Intent; and (2) a proposed Amended Order to be entered if the Supreme Court remands the matter. If the terms and provisions of both documents are to your satisfaction, please execute the Certification Of Intent. Additionally, please let us know when the Certification Of Intent has been executed so that we may retrieve the same.

SOLOMON | DWIGGINS | FREER^{LTD}
TRUST AND ESTATE ATTORNEYS

The Honorable Gloria J. Sturman

RE: The Beatrice B. Davis Family Heritage Trust

Case No. P-15-083867-T

Hearing Date: September 2, 2015

Page 2

September 9, 2015

Thank you,

A handwritten signature in black ink, appearing to read "Mark A. Solomon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark A. Solomon

MAS/

Enclosure: (As Stated)

cc: Charlene N. Renwick, Esq.; Harriet H. Roland, Esq.; Jonathan W. Barlow, Esq.; and Anthony L. Barney, Esq.

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13 *Attorneys for Caroline Davis, Petitioner*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

17 The BEATRICE B. DAVIS FAMILY
18 HERITAGE TRUST, dated July 28, 2000, as
19 amended on February 24, 2014

Hearing Date: September 2, 2015
Hearing Time: 9:00 A.M.

20 **ORDER ON HEARING OF SEPTEMBER 2, 2015**
21 **AND AMENDING ORDER DATED MAY 19, 2015**

22 This matter came on for hearing on September 2, 2015 on Christopher D. Davis'
23 PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE:
24 PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
25 HERITAGE TRUST, DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014; TO
26 ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
27 ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO
28 CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE; AND FOR
IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM
CHRISTOPHER D. DAVIS (the "PETITION FOR RECONSIDERATION") and Caroline D.
Davis' MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)
("MOTION TO AMEND"). Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua

1 M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H.
2 Roland, Esq.; and counsel for Dunham Trust Company, Charlene N. Renwick, Esq. were present.

3 The Court having reviewed the pleadings, examined the evidence, and heard the
4 arguments of counsel, and for good cause appearing makes the following Findings and Orders:

5 **FINDINGS**

6 1. Due and legal notice of the time and place of the hearing has been given in this
7 matter as required by law.

8 2. On April 22, 2015, a hearing was held on Caroline D. Davis' Petition To Assume
9 Jurisdiction, filed on February 10, 2015, and Christopher D. Davis' Motion To Dismiss, filed on
10 March 3, 2015.

11 3. In his Reply to Caroline D. Davis' Opposition to the Motion To Dismiss, which
12 was filed only two (2) days before the April 22, 2015 hearing, Christopher D. Davis first raised
13 the following issues:

14 (a) Tarja Davis, Christopher D. Davis' wife, was a beneficiary of the Beatrice B.
15 Davis Family Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent
16 to the execution of the First Amendment or the transfer in situs;

17 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
18 the First Amendment to the Trust, dated February 24, 2014 (the "First
19 Amendment"), and did not provide its consent to execution of the First
20 Amendment or the transfer in situs; and

21 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
22 execution of the First Amendment.

23 4. The Court, at the April 22, 2015 Hearing, assumed jurisdiction over the Trust
24 under the theory of "constructive trust", more accurately called a "de facto trust", because:

25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
27 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
28

1 execution of the First Amendment and to the transfer of the Trust's situs from
2 Alaska to Nevada;

3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;

6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;

8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher D. Davis accepted his appointment as Investment Trust Advisor
10 pursuant to NRS 163.5543;

11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;

14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher D. Davis as the sole Manager thereof;

17 (g) Christopher D. Davis has been acting as Investment Trust Advisor since his
18 acceptance of such position;

19 (h) Christopher D. Davis has been acting as sole Manager of FHT Holdings, LLC
20 since his appointment of such position;

21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and

23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.

27 5. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher D. Davis, as all parties consented to the execution of the

1 First Amendment and to the transfer of the Trust's situs from Alaska to Nevada, and all parties
2 before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 6. The Court's Order, dated May 19, 2015, which was subsequently filed on June 24,
5 2015 (the "May 19, 2015 Order"), assumed jurisdiction over the Trust to ensure that the Trust was
6 properly within a competent jurisdiction, and further to ensure that the Trust was not adrift in that
7 it would be left without a trustee.

8 7. The May 19, 2015 Order confirmed Christopher D. Davis as Investment Trust
9 Advisor and further required the production of all information in his possession, custody or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC, a Nevada limited liability company wholly owned by the Trust.

12 8. The Court has been presented with evidence in the form of a Declaration of Tarja
13 Davis, Christopher D. Davis' wife, indicating that Tarja Davis was married to Christopher D.
14 Davis on February 22, 2012, and that they were married on February 24, 2014, that date the First
15 Amendment was executed.

16 9. In response to the issues raised by Christopher D. Davis' in his Reply and the
17 PETITION FOR RECONSIDERATION, Caroline D. Davis submitted the following to this
18 Court:

19 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
20 and requires the marital union of a beneficiary and his or her spouse, if entered into
21 after the signing date of the Trust, to exist continuously for a period of ten (10)
22 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
23 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
24 were married after the signing date of the Trust, and have not been married for ten
25 (10) continuous years;

26 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
27 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
28 was the currently serving Trustee on the date the First Amendment was executed

1 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
2 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
3 conclusive under NRS 47.240(2);

4 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
5 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
6 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
7 the Trust, indicating that he had communicated with both Alaska USA Trust
8 Company and Dunham and provided an opinion of counsel; and

9 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14,
10 Section 6 of the Trust, indicating that Nevada met the requirements of an
11 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
12 state for jurisdiction at the time.

13 10. Christopher D. Davis did not present sufficient new evidence or legal basis to
14 reconsider the May 19, 2015 Order.

15 11. Sufficient evidence has been submitted to the Court that the First Amendment, and
16 consequently the transfer of the Trust's situs, was valid.

17 12. Upon submission of Caroline D. Davis' evidence regarding the validity of the First
18 Amendment and the proper transfer of the Trust's situs giving rise to this Court's authority to
19 assume jurisdiction, the burden to prove the invalidity of the First Amendment and the improper
20 transfer of situs became Christopher D. Davis' burden to overcome.

21 13. Christopher D. Davis has not presented any evidence to support his contentions
22 regarding the invalidity of the First Amendment raised in his Reply and in his PETITION FOR
23 RECONSIDERATION.

24 14. Because Christopher D. Davis did not provide sufficient cause, the PETITION
25 FOR RECONSIDERATION should be denied.

26 15. *In personam* jurisdiction over Christopher D. Davis, as Manager of FHT Holdings,
27 LLC, was also proper under Fulbright & Jaworski v. Eighth Jud. Dist. Ct., 342 P.3d 997 (Nev.
28 2015) and Viega GmbH v. Eighth Jud. Dist. Ct., 328 P.3d 1152 (Nev. 2014), as he is the current

1 sole Manager of FHT Holdings, LLC, a Nevada limited liability company, doing business in
2 Clark County, Nevada, whose membership interest is wholly owned by the Trust and under
3 management by Christopher D. Davis, as Investment Trust Advisor.

4 16. Because sufficient evidence supporting the validity of the First Amendment, as
5 well as the proper transfer of the Trust's situs from Alaska to Nevada has been submitted, the
6 Court certified its intent to assume jurisdiction over the Trust as a proceeding *in rem* pursuant to
7 NRS 164.010 should the matter be remanded from the Supreme Court back to the District Court.

8 17. The Court clarified the interlineations contained in the May 19, 2015 Order, and
9 the provision containing such interlineations should read as follows: "IT IS FURTHER
10 ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of
11 Documents and Information From Christopher D. Davis is granted as to all information in his
12 possession, custody, or control in his role as Investment Trust Advisor, and in his role as Manager
13 of FHT Holdings, LLC."

14 ORDER

15 As the Nevada Supreme Court has now remanded this matter back to the Eighth Judicial
16 District Court,

17 **IT IS HEREBY ORDERED** that Christopher D. Davis' *Petition for Reconsideration of*
18 *the Order Dated May 19, 2015 Re: Petition to Assume Jurisdiction over the Beatrice B Davis*
19 *Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume*
20 *Jurisdiction over Christopher D Davis as Investment Trust Advisor, Stephen K. Lehnardt as*
21 *Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for*
22 *Immediate Disclosure of Documents and Information from Christopher D Davis* is **DENIED** in
23 its entirety.

24 **IT IS HEREBY FURTHER ORDERED** that the Court assumes jurisdiction over the
25 Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014,
26 as a proceeding *in rem* pursuant to NRS 164.010.

27 **IT IS HEREBY FURTHER ORDERED** that Dunham Trust Company is confirmed as
28 the Directed Trustee.

1 **IT IS HEREBY FURTHER ORDERED** that Christopher D. Davis is confirmed as the
2 Investment Trust Advisor.

3 **IT IS HEREBY FURTHER ORDERED** that the Court shall abstain from assuming
4 jurisdiction over Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, until such
5 time that Petitioner provides a more definite statement or otherwise asserts a demand or claim for
6 relief against Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, at which time
7 this Court may assume personal jurisdiction over him.

8 **IT IS HEREBY FURTHER ORDERED** that the Christopher D. Davis shall forthwith
9 produce to Caroline D. Davis' counsel any and all information in his possession, custody, or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC.

12 **IT IS HEREBY FURTHER ORDERED** all further matters will be heard by the probate
13 judge.

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1 **IT IS HEREBY FURTHER ORDERED** that this Order shall amend the Court's Order
2 of May 19, 2015 consistent herewith.

3 Dated this ____ day of September, 2015.

4
5 **DISTRICT COURT JUDGE**

6 **Prepared and submitted by:**
7 **SOLOMON DWIGGINS & FREER, LTD.**

Approved as to Form and Content:
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14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

17 The BEATRICE B. DAVIS FAMILY
18 HERITAGE TRUST, dated July 28, 2000, as
19 amended on February 24, 2014

20 **CERTIFICATION OF INTENT TO AMEND ORDER**

21 Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To*
22 *NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For*
23 *Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over*
24 *The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24,*
25 *2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen*
26 *K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed*
27 *Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D.*
28 *Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of
counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage
litigation, finds as follows:

1. Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over*
The Beatrice B. Davis Family Heritage Trust, As Amended On February 24, 2014; Petition To
Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K.

1 *Lehnardt As Distribution Trust Advisor; Petition To Confirm Dunham Trust Company As*
2 *Directed Trustee; And Petition For Immediate Disclosure Of Documents And For Information*
3 *From Christopher D. Davis* on February 10, 2015 (the "Petition To Assume Jurisdiction").

4 2. Christopher D. Davis ("Christopher") filed his *Motion To Dismiss Pursuant To*
5 *NRCP 12(b) And NRCP 19* on March 4, 2015 (the "Motion To Dismiss"). Thereafter, Ms. Davis
6 filed her Opposition to the Motion To Dismiss on April 13, 2015.

7 3. On April 20, 2015, two (2) days before the hearing on Ms. Davis' Petition To
8 Assume Jurisdiction and Christopher's Motion To Dismiss, Christopher filed his Reply to Ms.
9 Davis' Objection to the Motion To Dismiss.

10 4. In his Reply, Christopher first raised the following issues:

- 11 (a) Tarja Davis, Christopher's wife, was a beneficiary of the Beatrice B. Davis Family
12 Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent to the
13 execution of the First Amendment or the transfer in situs;
- 14 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
15 the First Amendment to the Trust, dated February 24, 2014 (the "First
16 Amendment"), and did not provide its consent to execution of the First
17 Amendment or the transfer in situs; and
- 18 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
19 execution of the First Amendment.

20 5. On April 22, 2015, a hearing was held on Ms. Davis' Petition To Assume
21 Jurisdiction and Christopher's Motion To Dismiss. Because the Court did not have sufficient
22 evidence before it regarding the issues raised by Christopher in his Reply, the Court assumed
23 jurisdiction over the Trust under the theory of "constructive trust", more accurately called a "de
24 facto trust", because:

- 25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher;
27 (ii) Ms. Davis; (iii) and Winfield B. Davis, all consented to the execution of the
28

First Amendment to the Trust, dated February 24, 2014 (the "First Amendment") and to the transfer of the Trust's situs from Alaska to Nevada;

- (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company resigned as Trustee;
- (c) Based upon such good faith reliance of the validity of the First Amendment, Dunham had been administering the Trust in Nevada for more than one (1) year;
- (d) Based upon a good faith reliance of the validity of the First Amendment, Christopher accepted his appointment as Investment Trust Advisor pursuant to NRS 163.5543;
- (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to NRS 163.5537;
- (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings, LLC, a Nevada limited liability company wholly owned by the Trust, and appointed Christopher as the sole Manager thereof;
- (g) Christopher has been acting as Investment Trust Advisor since his acceptance of such position;
- (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his appointment of such position;
- (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving as Directed Trustee in Nevada; and
- (j) The Court had no evidence before it, namely an affidavit of any other purported beneficiary, that any other beneficiary was entitled to take under the Trust, and, therefore entitled to notice or that such beneficiary's consent was required to Transfer of the Trust's situs from Alaska to Nevada.

6. The Court noted that it was appropriate to assume jurisdiction over the Trust and its fiduciaries, Dunham and Christopher, as all parties consented to the execution of the First

1 Amendment to the Trust and to the transfer of the Trust's situs from Alaska to Nevada, and all
2 parties before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 7. The Order, dated May 19, 2015, filed on June 24, 2015, was thereafter entered on
5 July 1, 2015 (the "May 19, 2015 Order"), assuming jurisdiction over the Trust under the theory of
6 "constructive trust" (more accurately called a "de facto trust").

7 8. Christopher Filed his Petition For Reconsideration on July 14, 2015, setting forth
8 the same arguments contained in his Reply. *See*, ¶ 4 above.

9 9. Christopher then filed his Notice Of Appeal and Case Appeal Statement, appealing
10 the May 19, 2015 Order, on July 30, 2015.

11 10. Christopher's appeal divested the Court of jurisdiction to modify the May 19, 2015
12 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev.
13 2010) (also known as a "Huneycutt Motion").

14 11. On August 10, 2015, Ms. Davis filed her Motion To Amend (Huneycutt Motion),
15 wherein she requested that the District Court amend or modify its May 19, 2015 Order and
16 assume jurisdiction over the Trust in its entirety as a proceeding *in rem*; and further requested
17 that, if the District Court is inclined to grant such relief, that the District Court certify to the
18 Nevada Supreme Court its intent to do so.

19 12. On September 2, 2015, the District Court heard oral arguments on Christopher's
20 Petition For Reconsideration and Ms. Davis' Motion To Amend.

21 13. The District Court was presented with evidence (a Declaration Of Tarja Davis,
22 filed on July 28, 2015) regarding Christopher's contention that Tarja Davis, Christopher's wife,
23 was a purported beneficiary of the Trust, and that Tarja Davis did not consent to the First
24 Amendment or to the transfer of the Trust's situs from Alaska to Nevada.

25 14. In response to Christopher's Petition For Reconsideration, Ms. Davis introduced
26 the following evidence to the District Court to support her Motion To Amend:

27 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
28 and requires the marital union of a beneficiary and his or her spouse, if entered into

1 after the signing date of the Trust, to exist continuously for a period of ten (10)
2 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
3 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
4 were married after the signing date of the Trust, and have not been married for ten
5 (10) continuous years;

6 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
7 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
8 was the currently serving Trustee on the date the First Amendment was executed
9 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
10 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
11 conclusive under NRS 47.240(2);

12 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
13 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
14 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
15 the Trust, indicating that he had communicated with both Alaska USA Trust
16 Company and Dunham and provided an opinion of counsel; and

17 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant to Article 14,
18 Section 6 of the Trust, indicating that Nevada met the requirements of an
19 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
20 state for jurisdiction at the time.

21 15. Based upon the foregoing, the Court found that sufficient evidence had now been
22 submitted to the Court's satisfaction that the Trust's situs was properly transferred from Alaska to
23 Nevada pursuant to the terms of the Trust, and that upon submission of such evidence, the burden
24 to prove the invalidity of the First Amendment and the improper transfer of situs became
25 Christopher's burden, which he failed to overcome.

26 16. Accordingly, the limited basis upon which this Court assumed jurisdiction under
27 the theory of "constructive trust" should be expanded and jurisdiction should be assumed over the
28 Trust de jure as a proceeding *in rem* pursuant to NRS 164.010.

1 Good cause appearing therefore,

2 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
3 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
4 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
5 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
6 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
7 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
8 as grant any and all additional relief as the District Court deems proper.

9 DATED this ____ day of _____, 2015.

10
11 _____
12 DISTRICT COURT JUDGE
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NOW SEE THE EX-PARTE ORDER (CERTIFICATION OF INTENT TO AMEND ORDER) THAT WAS APPARENTLY SUBMITTED TO COURT AND SIGNED RECENTLY ON OCTOBER 14, 2015.

THE CERTIFICATION ORDER SIGNED ON OCTOBER 14, 2015 IS 2 PAGES, WHILE THE CERTIFICATION ORDER COPIED TO COUNSEL BACK ON SEPTEMBER 14, 2015 IS 6 PAGES. THIS ORDER WAS CLEARLY SUBMITTED, AND SIGNED WITHOUT CIRCULATING IT TO COUNSEL.

DURING THE SEPTEMBER 30, 2014, IT CLEAR THAT THE COURT WOULD DO A HONEYCUTT ORDER IF THE NEVADA SUPREME COURT REQUESTED IT. (SEE TRANSCRIPT DATED 10/13/2015 AT PAGE 41). WE HAVE NOT RECEIVED ANY REQUEST FROM THE NEVADA SUPREME COURT FOR CERTIFICATION, AND THE ORDER SIGNED WAS PREPARED EX-PARTE WITHOUT NOTICE TO ANY OTHER COUNSEL BY CAROLINE'S ATTORNEYS, NOT THE NEVADA SUPREME COURT.

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Electronically Filed
Oct 19 2015 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorneys for Caroline Davis, Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of:

Sup. Ct. Case No.: 68542

Dist. Ct. Case No.: P-15-083867-T

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

**MOTION FOR REMAND TO THE
EIGHTH JUDICIAL DISTRICT COURT**

Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014, by and through her counsel, the law firm of Solomon Dwiggin & Freer, Ltd., moves this Court, pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev. 2010), for an Order remanding this matter back to the Eighth Judicial District Court because the District Court has certified its intent to amend the Order from which this appeal lies in a manner that would affect the issues on appeal. This Motion is based upon the Memorandum Of Points And Authorities, all attached exhibits, and any oral argument that this honorable Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background.

On February 10, 2015, Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition To Assume Jurisdiction"). Christopher D.

1 Davis ("Christopher") then filed his *Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19*
2 on March 4, 2015 (the "Motion To Dismiss") contending, inter alia, that Ms. Davis: (1) failed to
3 join necessary parties; (2) failed to provide requisite notice to proper parties; and (3) further
4 claimed that the Court lacked subject matter jurisdiction.

5 In response, Ms. Davis filed her *Opposition To Christopher D. Davis' Motion To Dismiss*
6 *Pursuant to NRCP (12)(b) And NRCP 16* on April 13, 2015 (the "Opposition To Motion To
7 Dismiss"), contending that the Court may properly assume jurisdiction over the Trust and
8 respective parties and grant the relief requested in the Petition To Assume Jurisdiction.
9 Additionally, Ms. Davis set forth arguments as to why the prior trustees, Alaska Trust Company
10 and Alaska USA Trust Company ("Alaska USA"), are not necessary or indispensable parties, and
11 that Ms. Davis properly served all interested parties. On April 20, 2015, just two (2) days before
12 the hearing on Ms. Davis' Petition To Assume Jurisdiction and Christopher's Motion To Dismiss,
13 Christopher filed the *Christopher D. Davis' Reply To Caroline D. Davis' Opposition To His*
14 *Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19* (the "Reply").

15 In his Reply, Christopher raised for the first time the following issues: (1) Tarja Davis,
16 Christopher's wife, was a beneficiary of the Trust and did not consent to the execution of the First
17 Amendment or to the transfer of the Trust's situs from Alaska to Nevada; (2) Alaska USA
18 resigned prior to the execution of the First Amendment and there was no acting trustee to provide
19 the requisite consent to the transfer of situs; and (3) that no advice of counsel was obtained for
20 Alaska USA prior to the transfer of situs.

21 On April 22, 2015, the District Court heard oral arguments on Ms. Davis' Petition To
22 Assume Jurisdiction and Christopher's Motion To Dismiss. As the District Court did not have
23 sufficient evidence to grant Christopher's Motion To Dismiss and the Court was not aware of
24 Christopher's Reply,¹ the District Court, based upon the fact that all parties before the Court had
25 been relying on the validity of the First Amendment and the proper transfer of the Trust's situs,
26

27
28 ¹ See, Transcript of April 22, 2015 Hearing, at p. 24:9, a true and correct copy of which is attached hereto as
Exhibit 1, wherein the Court stated "I have no Reply from Mr. Baney (sic)."

1 assumed jurisdiction over the Trust under the theory of "constructive trust", more accurately
2 called a "de facto trust" for the following reasons:

- 3 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
4 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
5 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
6 execution of the First Amendment and to the transfer of the Trust's situs from
7 Alaska to Nevada;
- 8 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
9 accepted tenure as Directed Trustee of the Trust and Alaska USA resigned as
10 Trustee;
- 11 (c) Based upon such good faith reliance of the validity of the First Amendment,
12 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 13 (d) Based upon a good faith reliance of the validity of the First Amendment,
14 Christopher accepted his appointment as Investment Trust Advisor pursuant to
15 NRS 163.5543;
- 16 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
17 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
18 NRS 163.5537;
- 19 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
20 LLC, a Nevada limited liability company wholly owned by the Trust, and
21 appointed Christopher D. Davis as the sole Manager thereof;
- 22 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
23 such position;
- 24 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
25 appointment of such position;
- 26 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
27 as Directed Trustee in Nevada; and
28

(j) The Court had no evidence before it, namely an affidavit of any other purported beneficiary, that any other beneficiary was entitled to take under the Trust, and, therefore entitled to notice or that such beneficiary's consent was required to Transfer of the Trust's situs from Alaska to Nevada.

Thereafter, an Order, dated May 19, 2015, was filed on June 24, 2015, and subsequently entered on July 1, 2015 (the "May 19, 2015 Order"). A true and correct copy of the May 19, 2015 Order is attached hereto as **Exhibit 2**. The May 19, 2015 Order assumed jurisdiction over the Trust as a "constructive trust" to ensure that the Trust was properly within a competent jurisdiction, and to further ensure that the Trust was not adrift in that it would be left without a trustee.

On July 14, 2015, Christopher filed his *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: The Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"). The Petition For Reconsideration sets forth the same arguments as provided in his Motion To Dismiss and his Reply.

Shortly thereafter, Christopher filed his Notice Of Appeal and Case Appeal Statement on July 30, 2015. Upon filing his Notice Of Appeal and Case Appeal Statement, Christopher divested the District Court of jurisdiction to modify the May 19, 2015 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev.Adv.Op. (Nev. 2010) (also known as a "Huneycutt Motion"). As such, Ms. Davis filed her *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* on August 10, 2015 (the "Motion To Amend") wherein she requested that the District Court Amend or Modify the May 19, 2015 Order and assume jurisdiction over the Trust as a proceeding *in rem*, and further requested that, if the District Court is inclined to grant such relief, that the District Court certify to the Nevada Supreme Court its intent to do so.

On September 2, 2015, the District Court, after having reviewed Ms. Davis' Motion To Amend and Christopher's Petition For Reconsideration and papers and exhibits before the Court, held oral arguments on said pleadings. During such hearing, the District Court was presented with a Declaration Of Tarja Davis, which indicated that Tarja Davis was married to Christopher on February 22, 2012, that they were married on the date the First Amendment was executed, and further alleging that Tarja Davis is a beneficiary of the Trust. In response to Christopher's contentions raised in his Petition For Reconsideration, and in light of the Declaration Of Tarja Davis, Ms. Davis submitted the following evidence to the District Court:

- (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse", and requires the marital union of a beneficiary and his or her spouse, if entered into after the signing date of the Trust, to exist continuously for a period of ten (10) years before such beneficiary's spouse can qualify as a "spouse" under the Trust, and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher were married after the signing date of the Trust, and have not been married for ten (10) continuous years;
- (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company was the currently serving Trustee on the date the First Amendment was executed and that Alaska USA Trust Company, as the Trustee, expressly consented to the transfer of situs from Alaska to Nevada and that such RECITAL is presumed conclusive under NRS 47.240(2);
- (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood, Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt, Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of the Trust, indicating that he had communicated with both Alaska USA Trust Company and Dunham and provided an opinion of counsel; and
- (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14, Section 6 of the Trust, indicating that Nevada met the requirements of an

1 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
2 state for jurisdiction at the time.

3 Based upon the evidence presented by Ms. Davis, the District Court found that sufficient
4 evidence had now been submitted to the District Court's satisfaction that the Trust's situs was
5 properly transferred from Alaska to Nevada pursuant to the terms of the trust, and Christopher
6 failed to meet the burden to prove the invalidity of the First Amendment and the transfer of situs
7 to Nevada was improper. Although the District Court is currently without jurisdiction to modify
8 the May 19, 2015 Order, the Honorable Judge Gloria J. Sturman stated her intention to amend the
9 May 19, 2015 Order and "enter an order to assume jurisdiction over the [Trust] de jure as a
10 proceeding *in rem* pursuant to NRS 164.010, as well as grant any additional relief the District
11 Court deems proper" if the case is remanded back to the District Court. *See*, Certification Of
12 Intent To Amend Order (the "Certification Of Intent"). A true and correct copy of the
13 Certification of Intent is attached hereto was **Exhibit 3**.

14 II. Legal Argument.

15 Christopher's filing of the notice of appeal "divest[ed] the district court of jurisdiction to
16 act and vests jurisdiction in [the Nevada Supreme Court]." Foster v. Dingwall, 228 P.3d 453, 445-
17 445, 126 Nev. Adv. Op. __ (citing Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529
18 (2006) (quoting Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382
19 (1987)). The District Court, however, retains limited jurisdiction to entertain a party's motion to
20 "alter, vacate or otherwise change or modify an order" if such party, prior to filing a motion for
21 remand, "file[s] a motion for relief from the order or judgment in the district court." Foster, 228
22 P.3d, at 455 (citing Mack-Manley, 122 Nev. at 855-56, 138 P.3d at 529-30; Hunevutt v.
23 Hunevutt, 94 Nev. 97, 80-81, 575 P.2d 585, 585-86 (Nev. 1978).

24 The limited jurisdiction retained by the District Court permits such court to "direct
25 briefing on the motion, hold a hearing regarding the motion, and enter an order denying the
26 motion, but [the District Court] lacks jurisdiction to enter an order granting such motion." Foster,
27 228 P.3d, at 455 (citing Hunevutt, 94 Nev., at 80-81, 575 P.2d, at 585-86). When the District
28 Court exercises this limited jurisdiction, "if the district court is inclined to grant the requested

1 relief, then it may certify its intent to do so.” Foster, 228 P.3d, at 455 (citing Mack–Manley, 122
2 Nev., at 855, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d, at 586.). Once the District
3 Court has certified its intent to grant the requested relief to alter, vacate or otherwise change or
4 modify an order, it is “appropriate for the moving party to file a motion (to which the district
5 court’s certification of its intent to grant relief is attached) with this court seeking a remand to the
6 district court for an entry of an order granting the requested relief.” Foster, 228 P.3d, at 455
7 (citing Mack–Manley, 122 Nev., at 855-56, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d,
8 at 586.).

9 Christopher appealed the May 19, 2015 Order. Thereafter, Ms. Davis sought the District
10 Court’s certification of intent to amend the May 19, 2015 Order to assume jurisdiction over the
11 Trust as a proceeding *in rem*, as well as grant any further relief the District Court deemed proper.
12 The District Court certified its intent to grant the relief requested by Ms. Davis. *See*, Ex. 3.

13 Based upon the foregoing, Ms. Davis respectfully requests that this Court exercise its
14 discretion and remand this matter back to the Eight Judicial District Court so that the District
15 Court may amend the May 19, 2015 Order.

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SOLOMON
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Dated this 16th day of October, 2015.

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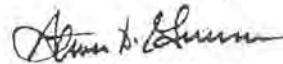
Attorneys for Caroline D. Davis

Exhibit 1

Exhibit 1

TRAN

DISTRICT COURT



CLERK OF THE COURT

CLARK COUNTY, NEVADA

* * * * *

IN THE MATTER OF THE TRUST OF:) CASE NO. P-15-082867
THE BEATRICE DAVIS HERITAGE) DEPT. NO. XXVI
TRUST.)
Transcript of Proceedings

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO
DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO
ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID AS
INVESTMENT TRUST ADVISOR AND STEPHEN K. LEHNARDT AS
DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY
AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF
DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS

WEDNESDAY, APRIL 22, 2015

APPEARANCES:

For Caroline Davis: MARK ALAN SOLOMON, ESQ.
JOSHUA M. HOOD, ESQ.
For Christopher Davis: ANTHONY L. BARNEY, ESQ.
For Stephen Lehnardt: JONATHAN W. BARLOW, ESQ.
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument
11 that, you know, they specified the grounds for invalidity
12 in this motion and then reinforced them in the Reply. They
13 didn't. All they said is: We have the burden to prove the
14 validity of the first amendment before we could move
15 forward and our response was: Well, take a look at NRS
16 47.250 subsection 18(c). There's a rebuttal for resumption
17 that it's valid. And then we said: Nobody has suggested
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only
20 person challenging it, expressly consented to it. Not
21 once, but twice in two different documents you just looked
22 at. So how can he raise it? I don't think he can even
23 raise this issue he's now trying to raise with respect to
24 some other party, especially when he consented to it and
25 then he took repeated actions.

1 CERTIFICATION

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3
4 I certify that the foregoing is a correct transcript from
5 the audio-visual recording of the proceedings in the
6 above-entitled matter.
7

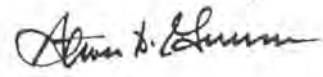
8 AFFIRMATION

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10 I affirm that this transcript does not contain the social
11 security or tax identification number of any person or
12 entity.
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22 
23 KRISTEN LUNKWITZ
24 INDEPENDENT TRANSCRIBER
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Exhibit 2

Exhibit 2



CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of:

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

15 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
16 at the time the first amendment was signed.

18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20 IT IS SO FOUND.

21 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
22 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
23 granted without prejudice.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
26 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
27 more definite statement is filed.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

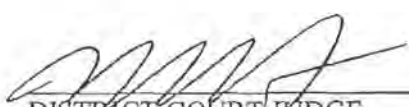
3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{custody or control} in his role as Investment Trust Advisor, and on his
6 role as manager of FHY Holdings

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

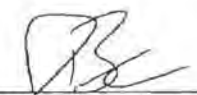
12 DATED this 18th day of May, 2015.

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DISTRICT COURT JUDGE

Respectfully Submitted by the Following:

Approved as to Form and Content:


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Attorneys for Caroline D. Davis

Exhibit 3

Exhibit 3

CERT

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Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T

Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks

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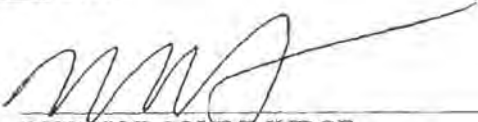
SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1 jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94
2 Nev. 79, 575 P.2d 585, (1978):

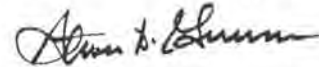
3 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
4 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
6 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
7 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
8 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
9 as grant any and all additional relief as the District Court deems proper.

10 DATED this 14th day of October 2015.

11
12 
13 DISTRICT COURT JUDGE
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28

ATTACHMENT 3

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN THE MATTER OF THE TRUST OF:)
THE BEATRICE DAVIS HERITAGE)
TRUST)
_____)

CASE NO: P-15-083867-T
DEPT NO: XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

MOTION TO COMPEL: CAROLINE D. DAVIS'S MOTION TO COMPEL
HARRIET ROLAND, ESQ. TO PRODUCE DOCUMENTS RESPONSIVE TO
SUBPOENA DUCES TECUM; FOR ATTORNEY'S FEES AND COSTS
MOTION: CAROLINE D. DAVIS'S MOTION TO HOLD CHRISTOPHER D.
DAVIS IN CONTEMPT AND FOR ATTORNEYS' FEES AND COSTS

WEDNESDAY, SEPTEMBER 30, 2015

APPEARANCES:

FOR THE PETITIONERS: DANA DWIGGINS, ESQ.
JOSHUA HOOD, ESQ.

FOR THE RESPONDENTS: ANTHONY BARNEY, ESQ.
HARRIET ROLAND, ESQ.

RECORDED BY KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 But I did review the hearing last week, or not -- or
2 I'm sorry, the hearing from the last hearing, as well as the
3 pleadings, and I think the jurisdictional issue has been beat
4 to death. I understand he objects to your findings. He has
5 filed an appeal. You have already indicated your intent to
6 certify full jurisdiction. So to be quite candid, I'm not
7 sure why we're still arguing about jurisdiction.

8 As Mr. Solomon also pointed out at the last hearing,
9 NRS 163.5555 specifically gives this Court in personam
10 jurisdiction over anyone that has assumed the role as an
11 investment trust advisor. So again, I'm not sure why we're
12 talking about jurisdiction.

13 I know he dedicates a significant portion of his
14 brief to whether or not your delineations into the order were
15 the word "or" or "in" and the different meanings. My
16 understanding is that's a moot issue. But when I read the
17 order, to me it was pretty clear it was or. And then
18 obviously he addresses the procedural issues in regard to the
19 affidavit, which I think we resolved that matter, and then
20 obviously we just discussed the different judge.

21 I think consistent with the order that you made in
22 connection with the subpoena of Ms. Roland last month, it's
23 clear that the time for compliance of the order isn't from the
24 date in which he became the investment advisor or the manager,
25 which was in February of 2014, but in fact goes back to 2007,

1 These folks -- why it always surprises me, these folks don't
2 seem to get along, so I don't know what that is.

3 MR. BARNEY: So you're not issuing the order today
4 is my understanding.

5 THE COURT: No. I'm continuing it. Continue it.
6 My only order today is that initial disclosures are due on
7 October 23, so we can discuss at the status check on this
8 hearing. And with respect to Ms. Roland, we can discuss on
9 the 28th and set a discovery plan.

10 MR. BARNEY: Your Honor, also a point in clarity
11 with one of the things that Ms. Dwiggins raised, she said that
12 you certified an order. I've not seen a certification of the
13 order.

14 MS. DWIGGINS: I don't believe I said that, and if I
15 did I misspoke. My understanding was you said you were intent
16 to certify if it came to that point with the Supreme Court.

17 THE COURT: They asked for a Honeycutt order.

18 MS. DWIGGINS: Yes.

19 MR. HOOD: Right.

20 MS. DWIGGINS: Because we had filed a Honeycutt
21 motion.

22 THE COURT: We discussed Honeycutt order, if we
23 would need a Honeycutt order.

24 MS. DWIGGINS: Correct.

25 MR. BARNEY: And no order's been issued.

1 MS. DWIGGINS: Correct.

2 THE COURT: Oh, no. Absolutely. The Supreme Court
3 has not —

4 MS. DWIGGINS: My understanding is you had indicated
5 your intent to do so if one is requested.

6 THE COURT: Right. If requested.

7 MS. DWIGGINS: Yes.

8 THE COURT: If requested to do a Honeycutt order, we
9 would certainly do a Honeycutt order.

10 MS. DWIGGINS: Yes. That's all I meant to state, so
11 if it came out wrong, I apologize.

12 MR. BARNEY: I just don't know the — I don't know
13 the extent of what Honeycutt order that would be, I guess.

14 THE COURT: Yeah. And that's why I said we —

15 MR. BARNEY: We're flying blind still.

16 THE COURT: It's only if it's requested, if the
17 court says, you know, we need to know if the Supreme Court
18 would take up such and such issue, then certainly we'll
19 respond to that. That's all we were talking about, I think,
20 the last time.

21 MR. BARNEY: Thank you, Your Honor. Thank you for
22 bearing with me.

23 THE COURT: Yes. Thank you.

24 MR. BARNEY: I'm not in tip-top shape today.

25 THE COURT: No. Go home and go back to bed, and

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

KARR REPORTING, INC.
Aurora, Colorado


KIMBERLY LAWSON

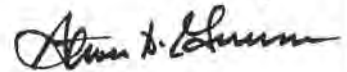
KARR Reporting, Inc.

Exhibit 15

CERT

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Joshua M. Hood, Esq.
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Attorneys for Caroline Davis, Petitioner



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks

jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585, (1978):

THIS COURT CERTIFIES that if this case is remanded back to the District Court, the District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the theory of "constructive trust", more accurately called a "de facto trust", and enter an order to assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well as grant any and all additional relief as the District Court deems proper.

DATED this 14th day of October 2015.



DISTRICT COURT JUDGE

Exhibit 16

Anthony L. Barney, M.S., J.D., LL.M.
Attorney at Law
Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.
Attorney at Law
Licensed in Nevada

Mary L. Martell, J.D.
Law Clerk

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Zachary D. Holyoak
Law Clerk
Neva Liebe
Administrative Assistant

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December 15, 2015

Honorable Judge Gloria J. Sturman
Department 26
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Joshua M. Hood, Esq.
Mark A. Solomon, Esq.
Solomon Dwiggin Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");
Case No. P-15-083867-T
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND HAND DELIVERY

Dear Judge Sturman and Mr. Hood/Solomon,

This letter follows my previous letter dated October 19, 2015, and is in response to the proposed order claiming to grant Caroline's motion to amend and deny Christopher's petition for reconsideration. In my previous letter I expressed concerns about the differences in the certification of intent as submitted and the certification of intent as it was later signed. I have attached that letter for your review as Attachment 1. I have a number of additional concerns with the new proposed order which I hope the court can address.

First, I am extremely concerned that this new proposed order is far beyond the scope provide by the Supreme Court. The Supreme Court lifted the stay on this case "for the limited purpose of allowing the district court to enter its amended order."¹ However, Mr. Solomon's proposed order appears to grant subsequent motions and deny subsequent petitions. Not only is the proposed order beyond the scope provided by the Supreme Court, but it also claims to grant Caroline's motion to amend and deny Christopher's petition for reconsideration. This is contrary to what the Supreme Court directed. Further, the only motion to amend of which I am aware is

¹ See Supreme Court order filed December 9, 2015 page 2 last paragraph, attached to Mr. Solomon's letter to Judge Sturman dated December 14, 2015

Caroline's motion to amend or modify order pursuant to NRCP 60(b)(3).² The claimed legal basis of this motion was that Christopher was alleged to have fraudulently advanced legal arguments. It should be noted that Caroline's counsel subsequently withdrew many of the statements made in the motion to amend and other pleadings under threat of NRCP 11 request for sanctions. More importantly, the court never indicated that there was any such fraud behind Christopher's legal arguments.

Ironically, the misrepresentations of Caroline's counsel do in fact provide a basis for amending the order based on NRCP 60(b)(3). Caroline's counsel misrepresented at the original hearing that a constructive trust was a vehicle whereby the court could assume jurisdiction. Caroline's counsel has continually misrepresented that a de-facto trust is a vehicle whereby the court could assume jurisdiction. There is no evidence of fraud by Christopher or his counsel, however the misrepresentations of the law by Caroline's counsel provide a basis for NRCP 60(b)(3) modifications against Caroline. The court did not allow Christopher to brief either of the theories of jurisdiction by constructive trust or de-facto trust, therefore, no findings were made regarding the misrepresentations by Caroline's counsel. In short this Court never made any findings which would justify a rule 60(b)(3) modification to the June 24, 2015 order.

Because Caroline has not made another motion to amend under a different legal theory, the order could only be modified based on the legal argument presented in Christopher's petition for reconsideration. This Court will recall that Christopher's petition for reconsideration specifically pointed out that it was a clear error of law for the court to assume jurisdiction based on a theory of a constructive trust.³ It is telling that in nearly all of her subsequent pleadings Caroline has defended the constructive trust argument or has attempted to re-brand it as a de facto trust. The proposed order submitted yesterday afternoon does the same. The simple fact remains that it was Christopher's petition which provided the legal basis for amending the order. For the preceding reasons Caroline's motion to amend does not provide a valid legal basis to amend the order.

My next concern is regarding Caroline's apparent attempt to backfill the order with findings that are not part of the oral or written record. As you know Caroline has not provided any evidence of any specific actions taken by Christopher in his alleged roles as investment advisor or manager of the FHT Holdings LLC. Yet, Mr. Solomon's proposed order makes the finding that "Christopher D Davis has been acting as investment trust advisor since his acceptance of the position."⁴ Additionally, Mr. Solomon's proposed order makes the findings that "Christopher D. Davis has been acting as sole manager of FHT Holdings, LLC since his appointment of such position."⁵ These two findings are not supported by the record as there is no allegation or finding of any specific action or decision made by Christopher in either of his alleged roles.

² See Motion to amend or modify order pursuant to NRCP 60(b)(3) attached hereto and incorporated as Attachment 2

³ See the relevant pages of Christopher's petition for reconsideration attached hereto and Incorporated as Attachment 3

⁴ See proposed order page 3 lines 26-27 attached to attorney Solomon's letter to Judge Gloria Sturman dated December 14, 2015.

⁵ Id at page 4 lines 1-2.

Another example of a finding in the proposed order which is unsupported and is actually contradicted by the record, is the finding that "Christopher did not present sufficient new evidence or legal basis to reconsider the May 19, 2015 Order." The reality is that Christopher presented the legal argument that a constructive trust is not a vehicle for obtaining jurisdiction. This Court clearly stated that "I was wrong in accepting Mr. Solomon's description of that as a constructive trust. Technically you're right. It's not a constructive trust."⁶ Additionally, this court stated that the affidavit presented by Tarja Davis was "helpful" new evidence.⁷ Clearly Christopher did present sufficient new evidence and a legal basis for reconsideration of the order.

Finally, as mentioned above, I am concerned that the findings of fact in Mr. Solomon's original proposed certification of intent (which this court opted not sign) and the proposed order are strikingly similar to this most recently proposed order. I have attached the original proposed order, original certification of intent, and the certification of intent as signed as Attachments 4, 5, and 6 respectively. This court rejected the original certification of intent, in favor of a second version (submitted ex-parte), which corrected only the constructive trust defect. This court must have felt that the original certification of intent and proposed order were not accurate regarding its findings, because it did not sign it. However, the court is now presented with a nearly identical order to the one it apparently rejected initially.

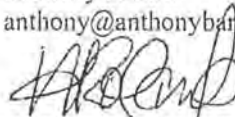
Based on the above, I have attached a competing order for your review. It follows the certification of intent which this court previously signed and properly attributes the changes to the legal argument made in the petition to reconsider and not the motion to amend based upon Caroline's allegation of fraud of which this Court clearly did not make a finding.

I appreciate your consideration of this matter.

Sincerely,



ANTHONY L. BARNEY
Attorney at Law
anthony@anthonybarney.com



HARRIET ROLAND
Attorney at Law
ROLAND LAW FIRM

cc: Via U.S. Mail:
Client
Mark A. Solomon, Esq.
Joshua M. Hood, Esq.
Charlene Renwick, Esq.
Jonathan Barlow, Esq.

⁶ See transcript of hearing dated September 2, 2015, page 59 lines 23-25.

⁷ Id at page 18 line 24.

ATTACHMENT 1

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October 20, 2015

Honorable Judge Gloria J. Sturman
Department 26
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Joshua M. Hood, Esq.
Mark A. Solomon, Esq.
Solomon Duggins Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");
Case No. P-15-083867-T
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND HAND DELIVERY

Dear Judge Sturman and Mr. Hood and Mr. Solomon:

We are in receipt of the Motion for Remand to the Eighth Judicial District Court ("Motion") filed with the Nevada Supreme Court on October 19, 2015 whereupon attached as Exhibit 3 to the documents is a Certification of Intent to Amend Order ("Certification"). The Motion and Exhibits are enclosed herewith as Attachment 1. Caroline's September 14, 2015 correspondence is enclosed as Attachment 2. During the hearing on September 30, 2015, the following exchange occurred:

Dana Duggins: "...You have already indicated your intent to certify full jurisdiction.... (Page 9:5-6)

Mr. Barney: "...I've not seen a certification of the order..." (Page 40:12-13)

Ms. Duggins: "My understanding is you had indicated your intent to do so if one is requested." (Page 41:4-5)

The Court: "If requested to do a Honeycutt order, we would certainly do a Honeycutt order."

Mr. Barney: "I just don't know the—I don't know the extent of what Honeycutt order that would be, I guess." (Page 41:12-13).

The Court: "Yeah. And that's why I said we —...It's only if it's requested, if the court says, you know, we need to know if the Supreme Court would take up such and such issue, then certainly

October 20, 2015

Page 2 of 2

we'll respond to that..." (Page 41:14,16-19). These transcript pages are enclosed herein as Attachment 3.

The proposed certification that was submitted on September 14, 2015 with a letter to this Court and copied upon Christopher's counsel was six pages in length. The certification submitted to Supreme Court had been revised to two pages by Caroline's counsel and signed by this Court on October 14, 2015.¹ Based upon the previous concerns that we expressed regarding the order dated July 1, 2015,¹ and the corresponding ex-parte correspondence to this Court from Caroline's counsel, we again express our concerns to this Court.

This Court indicated that it would only do a certification (Honeycutt order) if it was requested [by the Supreme Court]. (See Transcript, Page 41:14, 16-19). None of the attorneys besides Caroline's counsel made such a request, and the previous request by Caroline's attorney on September 14, 2015 provided a substantially different proposed certification than the one that was signed by the Court on October 14, 2015. Even if Caroline later alleges there was no ex-parte communications that accompanied the revised certification that was signed by this Court on October 14, 2015 [and not provided to Christopher's counsel until it was served with the Motion, how would Caroline's counsel have known to submit a revised certification from the one previously submitted to the Court with their correspondence dated September 14, 2015?

We are respectfully requesting that we be provided with a copy of Caroline's request or a letter detailing verbal discussions that accompanied the revised certification [later signed by this Court on October 14, 2015] which was submitted to the Court. Thank you for your anticipated response in this regard.

Sincerely,



ANTHONY L. BARNEY

Attorney at Law

anthony@anthonybarney.com



HARRIET ROLAND

Attorney at Law

ROLAND LAW FIRM

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

¹ See Order dated May 19, 2015 and filed June 24, 2015 enclosed as Exhibit 1 to Attachment 1.

ATTACHMENT 2

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6 *Attorneys for Caroline Davis, Petitioner*

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

10 The BEATRICE B. DAVIS FAMILY
11 HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

Hearing Date: August 12, 2015
Hearing Time: 9:00 A.M.

12
13 **MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)**

14 Caroline D. Davis ("Ms. Davis"), as beneficiary of the Beatrice B. Davis Family Heritage
15 Trust, dated July 28, 2000, as amended February 24, 2014, by and through her counsel, the law
16 firm of Solomon Dwiggs & Freer, Ltd., hereby files this Motion To Amend Or Modify Order
17 Pursuant to NRCP 60(b)(3) (the "Motion"). The foregoing Motion is made and based on the
18 pleadings and papers on file in this action, the attached Memorandum Of Points And Authorities,
19 all attached exhibits, and any oral argument that this honorable Court may entertain at the time of
20 hearing.

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27 ///

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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

From this inception of this matter, Christopher D. Davis ("Christopher") has continued to present misrepresentation after misrepresentation to this Court. Indeed, it is apparent that from the first pleading Christopher filed with this Court, he has taken it upon himself to conceal the true nature of the facts and circumstances related to the transfer of the Trust's situs from Alaska to Nevada. Specifically, Christopher has knowingly misidentified the true beneficiaries of the Trust, has perpetually misrepresented that there was no acting Trustee during the time in which the Trust's situs was transferred, has concealed the fact that consent was provided by the then-serving Trustee to transfer the situs, and has blatantly lied about the fact that legal advice was obtained by the Trustee prior to transferring the situs. Based upon the facts and evidence discovered throughout the duration of this matter, it is obvious that Christopher and his counsel have dissembled the true and correct facts, have exhibited a complete lack of candor to this Court, to Ms. Davis, and the other interested parties.

Indeed, Christopher's fraudulent misrepresentations with respect to the First Amendment caused this Court to enter an order assuming jurisdiction over the Trust based upon the theory of "constructive trust." As fully set forth below, the First Amendment is valid in its entirety and the transfer of the Trust's situs is proper under the terms of the Trust. As such, this Court should amend or modify its June 24, 2015 Order, and assume jurisdiction over the Trust in its entirety as a proceeding *in rem* pursuant to NRS 164.010.

II. Factual Background.

Beatrice B. Davis ("Beatrice") created the Trust on July 28, 2000, naming Alaska Trust Company ("Alaska") as the initial Trustee and Stephen K. Lehnardt ("Mr. Lehnardt") as Trust Protector. As fully set forth in the prior pleadings before this Court, the primary asset that was held in the Trust is an Ashley Cooper Life Insurance Policy (the "Policy"), with a face cover value of \$35,000,000.00 and a revolving line of credit for \$4,000,000.

Pursuant to Article Three of the Trust, during Beatrice's lifetime, the primary beneficiaries were Christopher, Ms. Davis, and Christopher's son, Winfield Davis ("Winfield"). On August 2, 2011, Mr. Lehnardt, as Trust Protector, removed Alaska as Trustee and appointed Alaska USA Trust Company ("Alaska USA"). During Alaska and Alaska USA's tenure as Trustee, certain loans were taken against the Policy and further distributed to Christopher in his individual capacity, his capacity as Trustee of the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and his capacity as Manager of the Davis Family Office, a Missouri limited liability company (the "Davis Family Office").

On October 30, 2013, Alaska USA executed a "Resignation of Trustee", indicating that the effective date of such resignation was intended to be "December 5, 2013 or upon the acceptance of trusteeship by a successor, whichever occurs earlier." Dunham Trust Company ("Dunham") was thereafter appointed and accepted tenure as successor Trustee of the Trust on February 24, 2014. Contemporaneously with the appointment and acceptance of trusteeship by Dunham, Mr. Lehnardt, by and through the authority vested in him as Trust Protector, transferred the situs of the Trust from Alaska to Nevada. The transfer of the Situs was acknowledged and consented to by Ms. Davis, Christopher, and Winfield.

Pursuant Article One, Section 2 of the First Amendment, the Trust situs is now Nevada, and the Trust and all trusts created thereunder are governed by Nevada law. Article Thirteen, Section 2.d. of the First Amendment, appointed Dunham as the "Directed Trustee" pursuant to NRS §163.553 et. seq. Article Thirteen, Section 2.d. of the First Amendment, further appointed Christopher as the "Investment Trust Advisor" pursuant to NRS §163.5543, and designated him as a "Fiduciary" under NRS §16.554. Pursuant to the First Amendment, Christopher is provided the "full power to manage the investments and reinvestments of the trust", and Dunham, as Directed Trustee, has no authority act or interfere with the actions of Christopher, as the Investment Trust Advisor, unless otherwise directed. Article Thirteen, Section 2.d. of the First Amendment, appointed Mr. Lehnardt, in his capacity as the Trust Protector of the Trust, as the "Distribution Trust Advisor" pursuant to NRS §163.5537, and designated him as "Fiduciary" pursuant to NRS §163.554.

1 Shortly after Dunham's appointment as Directed Trustee and Christopher's appointment
2 as Investment Trust Advisor, Dunham created FHT Holdings, LLC, a Nevada limited liability
3 company, to which the Policy was transferred. Christopher is currently serving as the sole
4 Manager FHT Holdings, LLC.

5 Although Ms. Davis has attempted to acquire the documentation and information related
6 to the Policy and the related loans without court intervention, Christopher has consistently
7 stonewalled Ms. Davis and refused to provide information regardless of the fact that: (1)
8 Christopher is acting as a Fiduciary of the Trust, and (2) Ms. Davis is a beneficiary of the Trust
9 entitled to such information.

10 III. Procedural Background

11 This Court will recall that Ms. Davis filed her Original Petition, on February 10, 2015,¹
12 requesting that this Court: (1) assume jurisdiction over the Trust² as a proceeding *in rem*; (2)
13 assume jurisdiction over Christopher as Investment Trust Advisor; (3) assume jurisdiction over
14 Stephen K. Lehnardt ("Mr. Lehnardt") as Distribution Trust Advisor; (4) confirm Dunham Trust
15 Company ("Dunham") as Directed Trustee; and (5) require Christopher, as Investment Trust
16 Advisor and as Manager of FHT Holdings, LLC, to disclose any and all documentation and
17 information related to the Trust with specific reference to certain loans that were taken against the
18 Trust's primary asset (i.e. the Policy with a face cover value of \$35,000,000.00).³

19 On March 3, 2015, Christopher filed his Motion To Dismiss,⁴ contending that Ms. Davis:
20 (1) failed to join necessary parties; (2) failed to provide requisite notice to proper parties; and (3)

21
22 ¹ Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As
23 Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor
24 And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee;
And For Immediate Disclosure Of Documents And Information From Christopher D. Davis, filed with this Court on
February 10, 2015 (the "Original Petition").

25 ² The Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014 (the
26 "Trust"), a true and correct copy of which is attached to the Original Petition, at Ex. 1.

27 ³ See, Original Petition at p. 9, ¶¶ 1-5.

28 ⁴ See, Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) And NRCP 16, previously filed
with this Court on March 3, 2015.

1 further claimed that the Court lacked subject matter jurisdiction.⁵ Christopher's Motion To
2 Dismiss hinged upon his a blatant misrepresentation that the First Amendment, which transferred
3 situs of the Trust from Alaska to Nevada, was invalid and that the validity of such document must
4 first be determined before the Court could assume jurisdiction.⁶

5 In response, Ms. Davis filed her Opposition to the Motion To Dismiss on April 13, 2015.⁷
6 In her Opposition to the Motion To Dismiss, Ms. Davis argued that the Court may properly
7 assume jurisdiction over the Trust and respective parties and grant the relief requested in the
8 Original Petition.⁸ Additionally, Ms. Davis set forth arguments as to why the prior trustees,
9 Alaska and Alaska USA, are not necessary or indispensable parties,⁹ and that Ms. Davis properly
10 served all interested parties.¹⁰ Christopher filed a Reply to Ms. Davis' Opposition to the Motion
11 To Dismiss on April 20, 2015.¹¹ It is important to note, however, that Ms. Davis and her counsel
12 were not served with a copy of Christopher's Reply until after the hearing regarding the
13 Original Petition, the Motion To Dismiss, and related pleadings was held on April 22, 2015
14 (the "Hearing").

15 This Court will also recall that Christopher's counsel, Mr. Barney, for the first time at the
16 Hearing, attempted to make several factual arguments not presented in his Motion To Dismiss.
17 First, Mr. Barney argued that Christopher's wife, Tarja Davis ("Tarja"), was a beneficiary of the
18 Trust and did not provide the requisite consent to the transfer of the Trust's situs from Alaska to
19

20
21 ⁵ *Id.*

22 ⁶ *Id.*, at p. 11:7-8.

23 ⁷ See, Opposition To Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) and NRCP 19,
24 previously filed with this Court on April 13, 2015.

25 ⁸ *Id.*, at Section II.

26 ⁹ *Id.*, at Section III.

27 ¹⁰ *Id.*, at Section IV.

28 ¹¹ See, Christopher D. Davis' Reply To Caroline Davis' Opposition To His Motion To Dismiss Pursuant To
NRCP 12(b) And NRCP 19, previously filed with this Court on April 20, 2015.

1 Nevada.¹² Indeed, raising such argument at the Hearing was completely contrary to the
2 facts presented to this Court in Christopher's Motion To Dismiss. Specifically, Christopher
3 identified: (1) himself; (2) his son, Winfield; and (3) Ms. Davis as the "three descendants [that]
4 are the current beneficiaries of the Trust."¹³ Christopher and Mr. Barney, however, are fully
5 aware, and have always been fully aware, that Tarja does not qualify as a "spouse", and otherwise
6 is not entitled to receive mandatory or discretionary distributions under the Trust; therefore, her
7 consent was not required to effectuate the transfer of situs.

8 Second, Mr. Barney also argued, for the first time at the Hearing, that there was not "an
9 acting Alaska Trustee at the point to consent to the transfer" of the Trust's situs.¹⁴ As Mr. Barney
10 is well aware, a trustee's duties do not terminate upon the submission of a resignation when no
11 successor trustee has been appointed and accepted. Furthermore, and illustrative of Christopher
12 and Mr. Barney's dissembling to this Court, the Resignation, Release, Acknowledgement,
13 Consent And Indemnification Agreement, attached as Exhibit 1 to Christopher's Motion To
14 Dismiss, which was executed by Christopher, expressly provides that Alaska USA was the
15 then-serving Trustee of the Trust on the date on which the situs was transferred to Nevada, and
16 that Alaska USA consented to the same. As Such, Christopher had full and complete knowledge
17 that: (1) Alaska USA was serving as trustee at the point when the situs was changed; and (2)
18 Alaska USA provided its consent to transfer the Trust's situs. Notwithstanding the same,
19 Christopher and his counsel have continuously misrepresented the same to this Court by arguing
20 to the contrary. Indeed, both of Christopher and Mr. Barney's fabricated arguments at the
21 Hearing are patently false.

22 Notwithstanding such misrepresentation, after hearing oral arguments of the parties'
23 respective counsel, this Court issued its Findings and Orders (the "Order"), which was
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25

26 ¹² See, Hearing transcript at p. 8:10-11, a true and correct copy of which is attached hereto as Exhibit 1.

27 ¹³ See, Motion To Dismiss, at p. 3:14-18. (Emphasis added).

28 ¹⁴ See, Ex. 1, at lines 12-13.



1 subsequently filed on June 24, 2015, and notice of entry Order was filed on July 1, 2015.¹⁵

2 Pursuant to the Order, the Court found that:

3 "...since the first amendment, Christopher has been directing the trust in Nevada,
4 and that everyone involved relied on this amendment as being proper.

5 ...the Court has no affidavit that another beneficiary existed at the time the first
6 amendment was signed.

7 ...the Court has jurisdiction as a constructive trust because action on behalf of the
8 trust has been taken in Nevada."¹⁶

9 Additionally, the Court ordered that: (1) the Original Petition be granted without
10 prejudice;¹⁷ (2) the court would not assume jurisdiction over Mr. Lehnardt, as Distribution Trust
11 Advisor, "until a more definite statement is made";¹⁸ (3) Dunham be confirmed as Directed
12 Trustee;¹⁹ (4) that Christopher is required to disclose "all information in his possession, custody,
13 or control, as Investment Trust Advisor, and in his role as Manager of FHT Holdings, LLC";²⁰ (5)
14 that Christopher's Motion To Dismiss is denied;²¹ and (6) and that the Court "retain[ed]
15 jurisdiction and all matters will be heard by the probate judge."²²

16 On July 14, 2015, Christopher filed and noticed his Petition For Reconsideration, which
17 was scheduled to be heard before this Court on August 19, 2015. Notwithstanding the fact that
18 this Court already addressed each of Christopher's arguments set forth in his Motion To Dismiss,
19 Christopher asserted that this Court improperly assumed jurisdiction over the Trust because: (1)

20 ¹⁵ See, Order, previously filed with this Court on June 24, 2015, and Notice Of Entry of Order, previously filed
21 with this Court on July 1, 2015.

22 ¹⁶ See, Order, at p. 2:13-19.

23 ¹⁷ Id., at p. 2:21-24.

24 ¹⁸ Id., at p. 2:25-28.

25 ¹⁹ Id., at p. 3: 1-2.

26 ²⁰ Id., at p. 3: 3-6.

27 ²¹ Id., at p. 3: 7-8.

28 ²² Id., at p. 3:9-10.

1 lack of subject matter jurisdiction due to the absence of conditions precedent to the change of the
2 Trust's situs from Alaska to Nevada as provided for in the First Amendment;²³ (2) the failure to
3 add indispensable parties;²⁴ and (3) the failure to provide notice and/or service to requisite
4 parties.²⁵ The Petition For Reconsideration was nothing more than a regurgitation of the
5 misrepresented facts presented in Christopher's prior pleadings and his oral argument before the
6 Court on April 22, 2015.

7 In addition to his recapitulation misrepresented facts, Christopher's Petition For
8 Reconsideration also boldly misstates that Alaska did not receive an opinion of counsel with
9 respect to transferring the situs of the Trust from Alaska to Nevada. As set forth below, Mr.
10 Lehnardt, as Trust Protector, retained the services of Dennis Brislawn, Esq. ("Mr. Brislawn") in
11 2014, to provide support with the transition of the Trust from Alaska to Nevada. Mr. Brislawn
12 communicated with Mr. Lehnardt, Dunham Trust, and Alaska USA, and provided an opinion of
13 counsel regarding the transfer of the Trust's situs to Nevada. Indeed, as set forth in Mr.
14 Lehnardt's billing records, Christopher was integrally involved with the transfer of situs and met
15 with or conferred with Mr. Lehnardt to discuss the same. Each and every allegation made by
16 Christopher and Mr. Barney in Christopher's Motion To Dismiss and his Petition For
17 Reconsideration regarding the "invalidity" of the transfer of situs are false, and they have
18 continued to perpetuate these material misrepresentations to this Court in an effort to avoid
19 providing the required information to Ms. Davis pursuant to the June 24, 2015 Order.

20 Ms. Davis filed her Objection And Counterpetition For Sanctions on July 31, 2015,²⁶
21 wherein Ms. Davis argued, among other things, that the Petition For Reconsideration is
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23 ²³ See, Petition For Reconsideration, at p. 6:19-20.

24 ²⁴ *Id.*, at p. 15:17-18, p. 21:10-11, and p. 23:6-7.

25 ²⁵ *Id.*, at p. 15:17-18, and p. 19:11-12.

26 ²⁶ See, Objection To Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume
27 Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24,
28 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As
Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate
Disclosure Of Documents And Information From Christopher D. Davis; And Counterpetition For Sanctions, filed on
July 31, 2015 (the "Objection And Counterpetition").

1 procedurally improper as it does not present new evidence or facts, does not identify a change in
2 controlling law, and does not identify any clear error made by this Court.²⁷ Additionally, Ms.
3 Davis presented evidence that Christopher and/or his counsel has continued to make material
4 misrepresentations to this Court.

5 Specifically, Ms. Davis provided evidence that Christopher's wife, Tarja, is not a
6 "spouse" under the terms of the Trust since she and Christopher have not been married for ten
7 (10) continuous years as required by Article Fourteen, Section 1(j) of the Trust.²⁸ As such, Tarja
8 is not a "beneficiary then eligible to receive mandatory or discretionary distributions" pursuant to
9 Article 8, Section 3(d), and, therefore, her consent is not required to transfer situs under Article
10 Fourteen, Section 6.²⁹

11 Second, and notwithstanding Christopher and Mr. Barney's representation to the contrary,
12 Ms. Davis provided evidence that Alaska USA was the then-serving Trustee of the Trust when the
13 First Amendment was executed, and that Alaska USA did consent to the transfer of situs from
14 Alaska to Nevada pursuant to Article Fourteen, Section 6 of the Trust.³⁰ Lastly, and in
15 contradiction to Christopher and Mr. Barney's false representation to this Court, Ms. Davis
16 presented evidence that Alaska USA did receive advice of counsel pursuant to Article Fourteen,
17 Section 6 of the Trust³¹ prior to transferring the Trust's situs.

18 On July 30, 2015, Christopher also filed a Notice Of Appeal and Case Appeal Statement,³²
19 appealing the Court's June 24, 2015 Order pursuant to NRS 155.190(h) to the Nevada Supreme
20 Court. Although Mr. Barney may argue that this Court does not have the authority to entertain
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22
23 ²⁷ *Id.*, at § II(A).

24 ²⁸ *Id.*, at § II(B).

25 ²⁹ *Id.*

26 ³⁰ *Id.*, at § II(C).

27 ³¹ *Id.*, at § II(D).

28 ³² *See*, Notice Of Appeal and Case Appeal Statement, previously filed with this Court on July 30, 2015.

1 arguments related to the Petition For Reconsideration, this Court does have the authority to
2 entertain collateral or independent matters involved in the same case or controversy. Ms. Davis'
3 Motion To Amend Or Modify Order Pursuant to NRCP 60(b)(3) is a collateral matter, involving
4 the same facts and circumstances, that this Court may entertain.³³

5 III. LEGAL ARGUMENT

6 NRCP 60(b), in relevant part, provides that "[o]n motion and upon such terms as are just,
7 the court may relieve a party...from a final judgment, order, or proceeding for the following
8 reasons...(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or
9 other misconduct of an adverse party." Further, pursuant to Foster v. Dingwall, 228 P.3d 453,
10 455 (Nev. 2010), "a party seeking to alter, vacate, or otherwise change or modify an order or
11 judgment challenged on appeal should file a motion for relief from the order of judgment in the
12 district Court."

13 As such, and for the reasons set forth herein, Ms. Davis hereby requests that this Court: (1)
14 amend or modify its Order assuming jurisdiction over the trust under the theory of "constructive
15 trust"; (2) assume jurisdiction over the trust in its entirety as a proceeding *in rem* pursuant to NRS
16 164.010; and (3) make a specific finding that the transfer of the Trust's situs Alaska to Nevada
17 was consistent with the terms of the Trust. Additionally, if this Court is inclined to amend or
18 modify its Order, Ms. Davis further requests that this Court certify its intent to grant the relief so
19 that this matter may be remanded back "to the district court for entry of an order granting the
20 requested relief." *Id.* Such certification would render the issues currently raised on appeal moot.

21 A. Christopher Fraudulently Misrepresented That Tarja's Consent To 22 The First Amendment And The Change In Situs Was Required.

23 In his Petition For Reconsideration, Christopher's contends that "all the facts and evidence
24 prove the change of situs (a condition precedent) was invalid and not permitted under the terms of
25 the [Trust]"³⁴ is without merit. Christopher relies heavily on the fact that his current wife, Tarja,

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27 ³³ See, Foster v. Dingwall, 228 P.3d 453 (Nev. 2010).

28 ³⁴ See, Petition For Reconsideration, at p. 7:6-8.

1 did not consent to the transfer in situs.³⁵ Christopher, however, knew that Tarja's consent to the
2 change in situs was not required to effectuate the same. Indeed, Christopher and his counsel
3 Anthony L. Barney, Esq. ("Mr. Barney") and Harriet H. Roland, Esq. ("Ms. Roland") each have a
4 copy of the trust, and are familiar with the terms and provision thereof, including (1) the provision
5 defining "spouse",³⁶ (2) the provision related to distributions to a "spouse",³⁷ and (3) the
6 provision related to the transfer of situs and the requirements therefor.³⁸

7 Specifically, Article Fourteen, Section 6 of the Trust provides, in relevant part, as follows:

8 "Except as expressly provided herein, the situs of this agreement or any subtrust
9 established hereunder may be changed by the **unanimous consent of all**
10 **beneficiaries then eligible to receive mandatory or discretionary distributions**
11 of net income under this agreement or such subtrust, with the consent of any then-
12 acting Protector and the Trustee thereof, which shall be given only after the
Trustee has obtained advice from counsel as to the tax and other consequences of
a change in situs."³⁹

13 While Article 8, Section 3(d) permits a trustee to "make distributions from the trust share
14 of a Primary Beneficiary to or for the health, education, maintenance and support of the spouse of
15 the Primary Beneficiary,"⁴⁰ such person must first qualify as a "spouse" pursuant to the express
16 terms of the Trust.

17 Article Fourteen of the Trust, entitled "Definitions and General Provisions", provides that
18 "[f]or purposes of this agreement, the following words and phrases shall be defined as follows."⁴¹
19 Section 1(j), defines "Spouses":

20 "An individual is a 'spouse' if such individual is the then current spouse of a child
21 of mine on the signing date of this trust. If an individual enters into a valid

22 ³⁵ *Id.*, at p.8:17-21.

23 ³⁶ *See*, Original Petition, at Ex. 1, Art. 14, §1(j).

24 ³⁷ *Id.*, at Ex. 1, Art 8, §3(d).

25 ³⁸ *Id.*, at Ex. 1, Art 14, §6.

26 ³⁹ *Id.*, at Ex. 1, Art. 14, § 6. (Emphasis added).

27 ⁴⁰ *Id.*, at Ex. 1, Art. 8, §3(d). (Emphasis added).

28 ⁴¹ *Id.*, at Ex. 1, Art 14, § 1.

marital union, as defined in paragraph a. of this section, with a child of mine or a beneficiary of mine following the signing of this trust, then such individual may qualify as a 'spouse' if that if the (sic) marital union exists continuously for a period of ten years, and that individual is not legally separated from the person under a decree of divorce or separate maintenance."⁴²

According to the Declaration Of Tarja Davis, a true and correct copy of which is attached hereto as **Exhibit 1**, Christopher and Tarja did not get married until February 22, 2012. As Christopher and Tarja were only married for a little over two (2) years at the time the situs was transferred, February 24, 2014, Tarja did not meet the ten (10) year criteria as set forth in the Trust and, therefore, did not qualify as a "spouse" thereunder. Indeed, pursuant to the terms of the Trust, Tarja still does not qualify as a "spouse". Consequently, and despite Christopher's intentional misrepresentation of the facts, Tarja is not, and was not, a "beneficiary then eligible to receive mandatory or discretionary distributions"⁴³ and her consent was not required to transfer the situs from Alaska to Nevada. As such, Christopher's contention that Tarja's consent was necessary is meritless.

B. Christopher Fraudulently Misrepresented that Alaska USA Was Not The Then-Acting Trustee At The Point In Time In Which The Trust's Situs Was Changed And Did Not Consent To Such Transfer Of Situs.

Replete throughout Christopher's pleadings before this Court, and from Christopher's counsel's oral arguments at the April 22, 2015 Hearing, Christopher has continued to materially misrepresent the facts related to the validity of the transfer of situs from Alaska to Nevada. Indeed, Christopher has continued to falsely represent to this Court that "there was no acting Trustee to provide informed consent to the change in situs."⁴⁴ Christopher fabricated this contention because Alaska USA tendered its resignation as of December 5, 2013, and the First Amendment effectuating the change in situs was executed on February 24, 2014. As Christopher's counsel, Mr. Barney and Ms. Roland are clearly aware, simply submitting a

⁴² *Id.*, at Ex. 1, Art 14, §1(j). (Emphasis added).

⁴³ *Id.*, at Ex. 1, Art. 14, § 6.

⁴⁴ *See*, Petition For Reconsideration, at p. 8:13-14.

1 resignation of trusteeship does not, in and of itself, obviate a trustee of its duties to act, nor does it
2 automatically remove the trustee from its role as such.⁴⁵ Indeed, pursuant to the Declaration Of
3 Janet K. Tempel, Senior Trust Officer at Alaska USA, because “[a] successor trustee was not
4 designated on or before December 5, 2013, [] Alaska USA retained the duties of trustee and
5 powers necessary to protect the trust property pursuant to Alaska law...Pursuant to the
6 [Resignation, Release, Acknowledgement, Consent And Indemnification Agreement], Alaska
7 USA effectively resigned as Trustee of the Trust on February 24, 2014, as Dunham Trust
8 Company was contemporaneously appointed as successor Trustee.”⁴⁶

9 Moreover, pursuant to the recitals set forth in the Resignation, Release,
10 Acknowledgement, Consent And Indemnification Agreement (the “Release”), which was signed
11 by Christopher, Alaska USA was still serving as Trustee of the Trust on February 24, 2014, the
12 date the First Amendment was executed. Specifically, the pertinent recital of the Release
13 provides as follows: “WHEREAS, AUTC⁴⁷ is the currently serving trustee of the Trust...”⁴⁸
14 NRS 47.240, entitled “Conclusive presumptions” provides that “[t]he truth of the fact recited,
15 from the recital in a written instrument between the parties thereto...” is presumed
16 conclusive. Therefore, contrary to Christopher’s misplaced assertion, there was an acting Trustee
17 (i.e. Alaska USA) acting on behalf of the Trust to transfer the situs from Alaska to Nevada on
18 February 24, 2014.

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21
22 ⁴⁵ Alaska has codified such principle in Alaska Statutes, Section 13.36.077(1), which provides that “unless a
23 co-trustee remains or the court otherwise orders, and until the trust property is delivered to a successor trustee or
24 another qualified person entitled to the trust property, a trustee who has resigned or been removed has the duties of
25 a trustee and the powers necessary to protect the trust property.”

26 ⁴⁶ See, Declaration Of Janet K. Tempel, Senior Trust Officer, a true and correct copy of which is attached
27 hereto as Exhibit 2, at ¶¶ 5 and 7. (Emphasis added).

28 ⁴⁷ See, Resignation, Release, Acknowledgement, Consent And Indemnification Agreement, a true and correct
copy of which is attached hereto as Exhibit 3 (defining Alaska USA Trust Company of Anchorage, Alaska as
“AUTC”).

⁴⁸ *Id.* (Emphasis added).

Christopher's assertion that "the change in situs under the purported First Amendment must be presumed invalid until such evidence of an acting Trustee's consent can be produced"⁴⁹ is without merit. Another well-known tenet of trust law is that a trust or amendment thereto is presumed to be valid unless proven otherwise, and the burden of proving the invalidity of such instrument rests upon the person so claiming.⁵⁰ Notwithstanding the burden of proof resting upon Christopher's shoulders, Christopher has not produced a single piece of evidence to support his position that Alaska USA did not consent to the transfer of situs, which he so adamantly contends. Indeed, the fact that Alaska USA executed the Release, which includes within it a provision entitled "Consent to Change of Situs and Amendment of Trust", is sufficient evidence that Alaska USA, as the "the currently serving trustee of the Trust", expressly consented to the transfer of the Trust's situs from Alaska to Nevada. Section 1 of the Release, in relevant part, specifically provides that "AUTC (Alaska USA) and the Protector hereby consent to the changing of the situs of the Trust from Alaska to Nevada."⁵¹ Given the facts and circumstances regarding the transfer in situs (i.e. the First Amendment and Release), it cannot reasonably be argued that Alaska USA did not provide the requisite consent for such action. Notwithstanding the clear evidence and Christopher's knowledge of such evidence, Christopher continues to fraudulently misrepresent the fact that Alaska USA was serving as Trustee of the Trust and consented to the transfer of the Trust's situs on February 24, 2014.

C. Christopher Fraudulently Misrepresented That Alaska USA Did Not Receive Advice Of Counsel.

Notwithstanding Christopher's intimate involvement throughout the drafting and execution of the First Amendment, the appointment of Dunham Trust as Directed Trustee, and the facts and circumstances regarding the transfer of the Trust's situs, Christopher continually

⁴⁹ See, Petition For Reconsideration, at p. 11:19-20.

⁵⁰ See, *In re Melter*, 167 Wash.App. 285, 298, 273 P.3d 991, 998 (Wash.App. 2012) (providing that unless proven otherwise, "[a] will [or trust] is presumed to be valid. It may be disregarded when a will [or trust] contestant presents clear, cogent and convincing evidence" that it is invalid).

⁵¹ See, Ex. 3, at ¶ 1, p. 2.

1 represents to this Court that “[a]ny amendment to change the situs of the [Trust] would require the
2 opinion of legal counsel as to its effect...[and that] [t]here is simply no evidence to suggest that
3 such an opinion was obtained...”⁵². **Such representation is patently false.** Indeed, Alaska USA
4 received a legal opinion from Mr. Brislawn regarding the transfer of the Trust’s situs from Alaska
5 to Nevada.⁵³ Specifically, Mr. Brislawn was retained by Mr. Lehnardt, as Trust Protector, “to
6 provide limited support in changing trust situs from Alaska (where [he] is also licensed to
7 practice) to Nevada.”⁵⁴ In so doing, Mr. Brislawn “communicated with **both trust companies**
8 (referring to Dunham and Alaska USA) in documenting the transfer...[and] **provided an opinion**
9 **of counsel** with documentation supporting trust protector action.”⁵⁵

10 Christopher’s contention that Alaska USA did not obtain advice of counsel is a gross
11 misrepresentation of the facts to this Court. A review of several of Mr. Lehnardt’s billing
12 invoices indicates that Christopher was deeply aware of the facts and circumstances regarding the
13 transfer of the Trust’s situs and Mr. Brislawn’s involvement:

- 14 (a) 12/23/2013 – Emails from and to D Brislawn regarding change of trustee
15 and capital and surplus issue, **telephone call to C Davis regarding the**
16 **same;**⁵⁶
- 17 (b) 01/07/2014 – telephone call to D Brislawn (msg) regarding AK Trust
18 modification, **Telephone call from C Davis regarding trustee change**
19 **and multiple related items, discussion of Dunham trust and**
20 **modification;**⁵⁷
- 21 (c) 01/15/2014 – **Telephone calls from C Davis regarding transfer of**
22 **trustee...**email to D Brislawn regarding same;⁵⁸

23 ⁵² See, Petition For Reconsideration, at p. 14:25-15:1; 15:3-4.

24 ⁵³ See, Email communication from Dennis Brislawn, Esq. to Joshua M. Hood, Esq., dated August 22, 2014, a
25 true and correct copy of which is attached hereto as **Exhibit 4**.

26 ⁵⁴ *Id.*

27 ⁵⁵ *Id.* (Emphasis added).

28 ⁵⁶ See, Lehnardt & Lehnardt, LLC invoices, true and correct copies of which are attached hereto as **Exhibit 5**.

⁵⁷ *Id.*

⁵⁸ *Id.*

- (d) 01/17/2014 – Emails from and to D Brislawn regarding transfer of trustee, **Telephone call from C Davis regarding trustee**, Telephone call to D Brislawn to discuss trustee transfer and modification of trust document;⁵⁹
- (e) 01/24/2014 – Emails to D Brislawn and S. Coressel regarding trustee transfer and LLC items, Telephone call from J Tempel regarding transfer of trustee status, **telephone call to C Davis regarding the same**;⁶⁰
- (f) 02/04/2014 – Telephone call from C Davis regarding trustee change, telephone call from D Brislawn regarding same, review documents, **telephone call to C Davis regarding same**;⁶¹
- (g) 02/18/2014 – Prepare for and Meeting with C Davis, discuss with D Brislawn regarding Trust Distribution Advisor and trustee changes;⁶²

Based upon the fact that: (1) Tarja's consent was not required to transfer situs; (2) Alaska USA was acting as Trustee at the time the situs was transferred and consented to such transfer; and (3) Alaska USA did obtain advice of counsel regarding the transfer of situs, the Trust was properly and validly transferred from Alaska to Nevada.

III. Conclusion

Notwithstanding Christopher's continued intentional and fraudulent misrepresentation to this Court that Tarja's consent is required in order to effectively amend the Trust or to transfer situs, the First Amendment is valid, and the steps required to effectuate the transfer of the Trust's situs were properly executed. As fully set forth above, Tarja does not qualify as a "spouse" under the terms of the Trust, she was not entitled to receive distributions from the Trust, and her consent was not required to transfer the situs from Alaska to Nevada.

Article Fourteen, Section 6, in relevant part, requires "the unanimous consent all of the beneficiaries then eligible to receive mandatory or discretionary distributions." As evidenced by the "Acknowledgment And Consent Of Beneficiary" attached to the First Amendment, each of

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

1 the beneficiaries then eligible to receive distributions from the Trust, namely: (1) Ms. Davis; (2)
2 Christopher; and (3) Winfield, provided their consent. Moreover, Ms. Davis, Christopher, and
3 Winfield each executed the Release, which contain a provision entitled "Consent to Change Of
4 Situs and Amendment of Trust". Said provision, in relevant part, provides that "[t]he
5 Beneficiaries hereby unanimously consent to changing the situs of the Trust from Alaska to
6 Nevada..."⁶³

7 Article Fourteen, Section 6, in relevant part, further requires that the Trustee provide its
8 consent to the transfer of situs, "which shall be given only after the Trustee has obtained advice of
9 counsel..." As fully set forth above, Alaska USA was the "then-acting" trustee, and provided its
10 express consent to the transfer of situs after receiving the advice of Dennis Brislaw, Esq.

11 In conclusion, Christopher's blatant and fraudulent misrepresentations of fact regarding
12 the validity of the First Amendment and the transfer of the Trust's situs caused this Court to
13 mistakenly assume jurisdiction over the Trust under the theory of "constructive trust". But for
14 Christopher's intentional misrepresentations, this Court would have properly assumed jurisdiction
15 over the Trust in its entirety as a proceeding *in rem* pursuant to NRS 164.010. Therefore, Ms.
16 Davis respectfully requests that this Court enter an Order amending or modifying the June 24,
17 2014 Order and assume jurisdiction over the Trust as a proceeding *in rem*. Ms. Davis further
18 requests that, if this Court is inclined to grant such relief, this Court certify its intent to grant the
19 relief so that this matter may be remanded back "to the district court for entry of an order granting
20 the requested relief" pursuant to Nevada Supreme Court case Foster v. Dingwall, 228 P.3d 453,
21 455 (Nev. 2010).

22 **WHEREFORE**, Caroline Davis respectfully request that:

23 (1) This Court Order amending or modifying the June 24, 2014 Order and assume
24 jurisdiction over the Trust as a proceeding *in rem*; and

25 ///

26 ///

27
28 ⁶³ See, Ex. 3, at ¶ 1. (Emphasis added).

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1 (2) if this Court is inclined to grant such relief, that this Court certify its intent to grant
2 the relief so that this matter may be remanded back "to the district court for entry of an order
3 granting the requested relief" pursuant to Nevada Supreme Court case Foster v. Dingwall.

4 Dated this 6th day of August, 2015.

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ATTACHMENT 3

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13 EIGHTH JUDICIAL DISTRICT COURT
14 CLARK COUNTY, NEVADA

15
16 In the matter of:

Case No.: P-15-083867-T

17 The BEATRICE B. DAVIS FAMILY HERITAGE
18 TRUST, dated July 28, 2000, as amended on
19 February 24, 2014.
20
21

Dept. No.: 26

22
23 NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE
24 ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION
25 OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY
26 28, 2000, AS AMENDED ON FEBRUARY 24, 2014, TO ASSUME
27 JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
28 ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR,
TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE, AND
FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION
FROM CHRISTOPHER D. DAVIS;

1 especially in light of the fact that proper service has not been effectuated on them for an order or
2 judgment to be rendered against them in this matter.

3 Curiously, Caroline then requests the Court to seek relief from Christopher individually
4 if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully
5 asks the court to order Christopher to provide the documents that are in the possession of Alaska
6 and Alaska USA's without gaining proper jurisdiction over him individually. She wrongfully
7 alleges that such a request would allegedly not be prejudicial to Christopher and allegedly
8 would be an adequate remedy, although the requested documents would be in the Trustee's
9 possession.
10
11

12 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over
13 Christopher, erroneously citing NRCP 19(b) for this proposition.²⁷ With proper service to
14 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has
15 jurisdiction over the FHT.²⁸
16

17 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in
18 Christopher's Motion to Dismiss and herein. If their joinder is not feasible, then this matter
19 must be dismissed, because they are necessary and indispensable parties to this matter.

20 **G. The Court Cannot Assume Jurisdiction based on the Remedy of Constructive Trust**
21 **as Jurisdiction is Subject to Statutory and Due Process Limitations**
22

23
24
25 ²⁷ See Caroline's Opposition, Page 9, lines 14-15 and fn 24.

26 ²⁸ See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as
27 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the
28 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and
management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary
when acting as an advisor to the trust.; See also AS 13.36.035 (a) The court has exclusive jurisdiction of
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section

1 The Nevada Supreme Court reviews jurisdictional issues de novo.²⁹ In rem jurisdiction only
2 allows the Court to enter judgment against specific property.³⁰ NRS § 164.010 provides that the
3 court may take in rem jurisdiction over a trust statutorily if requisite evidence is found by the
4 Court to exist. NRS 164.010 provides in pertinent part that:

6 1. Upon petition of any person appointed as trustee of an express trust by any written
7 instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district
8 court of the county in which the trustee resides or conducts business, or in which the trust has
9 been domiciled, shall consider the application to confirm the appointment of the trustee and
10 specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the
11 trust as a proceeding in rem.
12

13 2. If the court grants the petition, it may consider at the same time any petition for
14 instructions filed with the petition for confirmation.
15

16 3. At any time, the trustee may petition the court for removal of the trust from continuing
17 jurisdiction of the court.

18 4. As used in this section, "written instrument" includes, without limitation, an electronic
19 trust as defined in NRS 163.0015.

20 However, this Court took jurisdiction not based upon the statutory prerequisites set forth in
21 NRS § 164.010, but purportedly upon the theory of constructive trust.
22

23 Without even determining whether Christopher resides or conducts business here in the
24 capacity of a trustee, the Court reasoned that purportedly since action has been taken here, the
25

26 are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of
27 other matters involving trustees and beneficiaries of trusts.

28 ²⁹ *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, (2000).

³⁰ *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (2013).

1 Court had the power to construct a trust and take jurisdiction. However, a constructive trust is a
2 remedy the court can pronounce after establishing jurisdiction, not a means to obtain it.

3 In order to create a constructive trust the court must first have jurisdiction over the property.
4 Here, the Court has no valid basis for jurisdiction over the Trust property. The change in situs is
5 facially deficient because it does not have unanimous consent of all beneficiaries nor does it
6 have the consent of an Alaska trustee provided after obtaining an opinion of counsel.
7 Additionally, the sole asset of the trust, the Ashley Cooper Life Insurance Policy, is not within
8 the state of Nevada. Finally, with an invalid change in situs the trust is still an Alaska trust, the
9 role of investment trust advisor does not exist, and there is no connection whatsoever to Nevada.
10 Alaska has jurisdiction over the trust and has the power to create a constructive trust over any
11 property in Nevada. This Court simply did not have jurisdiction to create a constructive trust
12 and therefore cannot exercise jurisdiction over the Trust or Christopher D. Davis based on the
13 theory of constructive trust.
14

15 Even improbably assuming *arguendo* that there is some basis for *in rem* jurisdiction, where a
16 state statute authorizes consent to jurisdiction based upon a finding of *in rem* jurisdiction, that
17 statute is still subject to the requirements of federal due process.³¹ Federal due process requires
18 that the defendant has purposely developed substantial minimum contacts with the forum state
19 and that the assumption of jurisdiction does not violate traditional notions of justice and fair
20 play.³² NRS §163.5555 provides that:
21

22 If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust
23 **subject to the laws of this State**, the person submits to the jurisdiction of the courts of this
24 State, regardless of any term to the contrary in an agreement or instrument. A trust protector
25

26
27 ³¹ *Doe v. Unocal Corp.*, 248 F.3d 915, 922, (9th Cir. 2001)

28 ³² *Id.*

1 or a trust adviser may be made a party to an action or proceeding arising out of a
2 decision or action of the trust protector or trust adviser.³³ (emphasis added).

3 Assuming the untenable position that this Court had jurisdiction to create a constructive
4 trust, this fact standing alone does not provide a basis for jurisdiction over Christopher D. Davis.
5 NRS § 163.5555 provides jurisdiction over trust advisors, however the trust adviser may only be
6 made a party to an action or proceeding based upon a determinative decision or action.
7

8 In order to understand the extent of jurisdiction granted under NRS § 163.5555, several
9 factors must be considered. First, this statute must be read in conjunction with NRS § 164.010
10 which only provides the court limited *in rem* jurisdiction over trusts. Therefore, jurisdiction
11 under NRS 164.010 acts as a condition precedent to a finding of jurisdiction under NRS
12 §163.5555, where the powers of an advisor are simply a subset of the overall fiduciary powers
13 granted to a trustee, who may be confirmed under NRS 164.010.
14

15 Second, in order for NRS § 163.5555 to provide for jurisdiction over the trust adviser, it
16 must comply with the requirements of federal due process. These requirements include a finding
17 that the defendant has sufficient minimum contacts with the forum state, that the defendant
18 purposefully availed himself of the laws of the forum state and that the assumption of
19 jurisdiction does not offend traditional notions of justice and fair play. This court made no
20 findings of minimal contacts, purposeful availment, or whether jurisdiction would offend
21 notions of justice and fair play. The statute itself highlights that fact that a "trust adviser may be
22 made a party to an action or proceeding arising out of a decision or action." Clearly, if the
23 decision or action causing sufficient minimum contacts with the Trust in the state of Nevada is
24 absent, there can be no jurisdiction over the trust adviser. This means, in effect, that liability is
25
26
27

28 ³³ Nev. Rev. Stat. § 163.5555

1 tied to the decisions made by the advisor in the capacity of trust advisor. Therefore, this Court's
2 exercise of jurisdiction over Christopher in his purported role as investment adviser is improper,
3 as there is no evidence of any decision or action with the Trust in the state of Nevada.
4

5 This Court also lacks jurisdiction over Christopher as manager of FHT holdings. Assuming
6 the court finds that the change in situs was not deficient or that it can legitimately assume
7 jurisdiction over the Trust based on a theory of constructive trust and that NRS § 163.5555
8 allows the court to assume jurisdiction over Chris as investment trust adviser, the Court still did
9 not properly establish jurisdiction over Christopher in his role as manager of the FHT. There is
10 no statute that grants *in rem* jurisdiction individually over the manager of an LLC solely based
11 on his or her acceptance of an officer's position. Additionally, as discussed above, due process
12 requires a finding of minimum contacts, purposeful availment and that jurisdiction does not
13 offend the notions of justice and fair play. Again this court entered no such findings to justify
14 jurisdiction over Christopher as manager of the LLC. Christopher respectfully requests that this
15 Court reconsider its order and grant his requested relief.
16
17

18 III. CONCLUSION

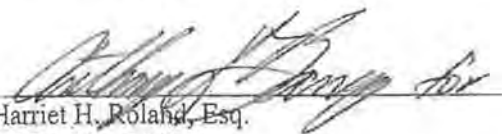
19 For the foregoing reasons, Christopher respectfully requests the Court do the following,

- 20 1. Reconsider the Order filed June 24, 2015, and grant Christopher D. Davis's motion to
21 dismiss pursuant to NRCP 12(b) and NRCP 19;
22
- 23 2. Reconsider the Order filed June 24, 2015, and vacate its finding of jurisdiction over
24 Christopher D. Davis in his role as investment trust advisor and in his role as manager of
25 FHT Holdings, LLC;
26
- 27 3. Reconsider the Order filed June 24, 2015, and find that this Court lacks jurisdiction over
28 the Trust and over Christopher D. Davis based on the lack of condition precedent in the

1 form of a failure to procure unanimous consent by the Trust beneficiaries to change the
2 Trust situs purportedly effectuated by the First Amendment dated February 24, 2014,
3 and/or alternatively, based upon lack of statutory prerequisites as defined under NRS
4 §164.010 to form a basis for jurisdiction and/or lack of determinant action or decision
5 under NRS §163.5555 by the purported trust adviser.
6

7 DATED this 14 day of July, 2015.

8 Respectfully Submitted,
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14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

17 The BEATRICE B. DAVIS FAMILY
18 HERITAGE TRUST, dated July 28, 2000, as
19 amended on February 24, 2014

Hearing Date: September 2, 2015
Hearing Time: 9:00 A.M.

20 **ORDER ON HEARING OF SEPTEMBER 2, 2015**
21 **AND AMENDING ORDER DATED MAY 19, 2015**

22 This matter came on for hearing on September 2, 2015 on Christopher D. Davis'
23 PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE:
24 PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
25 HERITAGE TRUST, DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014; TO
26 ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
27 ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO
28 CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE; AND FOR
IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM
CHRISTOPHER D. DAVIS (the "PETITION FOR RECONSIDERATION") and Caroline D.
Davis' MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)
("MOTION TO AMEND"). Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua

1 M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H.
2 Roland, Esq.; and counsel for Dunham Trust Company, Charlene N. Renwick, Esq. were present.

3 The Court having reviewed the pleadings, examined the evidence, and heard the
4 arguments of counsel, and for good cause appearing makes the following Findings and Orders:

5 **FINDINGS**

6 1. Due and legal notice of the time and place of the hearing has been given in this
7 matter as required by law.

8 2. On April 22, 2015, a hearing was held on Caroline D. Davis' Petition To Assume
9 Jurisdiction, filed on February 10, 2015, and Christopher D. Davis' Motion To Dismiss, filed on
10 March 3, 2015.

11 3. In his Reply to Caroline D. Davis' Opposition to the Motion To Dismiss, which
12 was filed only two (2) days before the April 22, 2015 hearing, Christopher D. Davis first raised
13 the following issues:

14 (a) Tarja Davis, Christopher D. Davis' wife, was a beneficiary of the Beatrice B.
15 Davis Family Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent
16 to the execution of the First Amendment or the transfer in situs;

17 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
18 the First Amendment to the Trust, dated February 24, 2014 (the "First
19 Amendment"), and did not provide its consent to execution of the First
20 Amendment or the transfer in situs; and

21 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
22 execution of the First Amendment.

23 4. The Court, at the April 22, 2015 Hearing, assumed jurisdiction over the Trust
24 under the theory of "constructive trust", more accurately called a "de facto trust", because:

25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
27 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
28

1 execution of the First Amendment and to the transfer of the Trust's situs from
2 Alaska to Nevada;

3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;

6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;

8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher D. Davis accepted his appointment as Investment Trust Advisor
10 pursuant to NRS 163.5543;

11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;

14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher D. Davis as the sole Manager thereof;

17 (g) Christopher D. Davis has been acting as Investment Trust Advisor since his
18 acceptance of such position;

19 (h) Christopher D. Davis has been acting as sole Manager of FHT Holdings, LLC
20 since his appointment of such position;

21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and

23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.

27 5. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher D. Davis, as all parties consented to the execution of the

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P.C. AND LEGAL ATTORNEYS

1 First Amendment and to the transfer of the Trust's situs from Alaska to Nevada, and all parties
2 before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 6. The Court's Order, dated May 19, 2015, which was subsequently filed on June 24,
5 2015 (the "May 19, 2015 Order"), assumed jurisdiction over the Trust to ensure that the Trust was
6 properly within a competent jurisdiction, and further to ensure that the Trust was not adrift in that
7 it would be left without a trustee.

8 7. The May 19, 2015 Order confirmed Christopher D. Davis as Investment Trust
9 Advisor and further required the production of all information in his possession, custody or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC, a Nevada limited liability company wholly owned by the Trust.

12 8. The Court has been presented with evidence in the form of a Declaration of Tarja
13 Davis, Christopher D. Davis' wife, indicating that Tarja Davis was married to Christopher D.
14 Davis on February 22, 2012, and that they were married on February 24, 2014, that date the First
15 Amendment was executed.

16 9. In response to the issues raised by Christopher D. Davis' in his Reply and the
17 PETITION FOR RECONSIDERATION, Caroline D. Davis submitted the following to this
18 Court:

19 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
20 and requires the marital union of a beneficiary and his or her spouse, if entered into
21 after the signing date of the Trust, to exist continuously for a period of ten (10)
22 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
23 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
24 were married after the signing date of the Trust, and have not been married for ten
25 (10) continuous years;

26 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
27 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
28 was the currently serving Trustee on the date the First Amendment was executed

1 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
2 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
3 conclusive under NRS 47.240(2);

4 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
5 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
6 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
7 the Trust, indicating that he had communicated with both Alaska USA Trust
8 Company and Dunham and provided an opinion of counsel; and

9 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14,
10 Section 6 of the Trust, indicating that Nevada met the requirements of an
11 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
12 state for jurisdiction at the time.

13 10. Christopher D. Davis did not present sufficient new evidence or legal basis to
14 reconsider the May 19, 2015 Order.

15 11. Sufficient evidence has been submitted to the Court that the First Amendment, and
16 consequently the transfer of the Trust's situs, was valid.

17 12. Upon submission of Caroline D. Davis' evidence regarding the validity of the First
18 Amendment and the proper transfer of the Trust's situs giving rise to this Court's authority to
19 assume jurisdiction, the burden to prove the invalidity of the First Amendment and the improper
20 transfer of situs became Christopher D. Davis' burden to overcome.

21 13. Christopher D. Davis has not presented any evidence to support his contentions
22 regarding the invalidity of the First Amendment raised in his Reply and in his PETITION FOR
23 RECONSIDERATION.

24 14. Because Christopher D. Davis did not provide sufficient cause, the PETITION
25 FOR RECONSIDERATION should be denied.

26 15. *In personam* jurisdiction over Christopher D. Davis, as Manager of FHT Holdings,
27 LLC, was also proper under Fulbright & Jaworski v. Eighth Jud. Dist. Ct., 342 P.3d 997 (Nev.
28 2015) and Viega GmbH v. Eighth Jud. Dist. Ct., 328 P.3d 1152 (Nev. 2014), as he is the current

1 sole Manager of FHT Holdings, LLC, a Nevada limited liability company, doing business in
2 Clark County, Nevada, whose membership interest is wholly owned by the Trust and under
3 management by Christopher D. Davis, as Investment Trust Advisor.

4 16. Because sufficient evidence supporting the validity of the First Amendment, as
5 well as the proper transfer of the Trust's situs from Alaska to Nevada has been submitted, the
6 Court certified its intent to assume jurisdiction over the Trust as a proceeding *in rem* pursuant to
7 NRS 164.010 should the matter be remanded from the Supreme Court back to the District Court.

8 17. The Court clarified the interlineations contained in the May 19, 2015 Order, and
9 the provision containing such interlineations should read as follows: "IT IS FURTHER
10 ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of
11 Documents and Information From Christopher D. Davis is granted as to all information in his
12 possession, custody, or control in his role as Investment Trust Advisor, and in his role as Manager
13 of FHT Holdings, LLC."

14 ORDER

15 As the Nevada Supreme Court has now remanded this matter back to the Eighth Judicial
16 District Court,

17 **IT IS HEREBY ORDERED** that Christopher D. Davis' *Petition for Reconsideration of*
18 *the Order Dated May 19, 2015 Re: Petition to Assume Jurisdiction over the Beatrice B Davis*
19 *Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume*
20 *Jurisdiction over Christopher D Davis as Investment Trust Advisor, Stephen K. Lehnardt as*
21 *Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for*
22 *Immediate Disclosure of Documents and Information from Christopher D Davis* is **DENIED** in
23 its entirety.

24 **IT IS HEREBY FURTHER ORDERED** that the Court assumes jurisdiction over the
25 Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014,
26 as a proceeding *in rem* pursuant to NRS 164.010.

27 **IT IS HEREBY FURTHER ORDERED** that Dunham Trust Company is confirmed as
28 the Directed Trustee.

1 IT IS HEREBY FURTHER ORDERED that Christopher D. Davis is confirmed as the
2 Investment Trust Advisor.

3 IT IS HEREBY FURTHER ORDERED that the Court shall abstain from assuming
4 jurisdiction over Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, until such
5 time that Petitioner provides a more definite statement or otherwise asserts a demand or claim for
6 relief against Stephen K. Lehnardt, in his capacity as Distribution Trust Advisor, at which time
7 this Court may assume personal jurisdiction over him.

8 IT IS HEREBY FURTHER ORDERED that the Christopher D. Davis shall forthwith
9 produce to Caroline D. Davis' counsel any and all information in his possession, custody, or
10 control in his role as Investment Trust Advisor, and in his role as Manager of FHT Holdings,
11 LLC.

12 IT IS HEREBY FURTHER ORDERED all further matters will be heard by the probate
13 judge.

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1 IT IS HEREBY FURTHER ORDERED that this Order shall amend the Court's Order
2 of May 19, 2015 consistent herewith.

3 Dated this ____ day of September, 2015.

5 DISTRICT COURT JUDGE

6 Prepared and submitted by:
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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

1. Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, As Amended On February 24, 2014; Petition To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K.*

1 *Lehnardt As Distribution Trust Advisor; Petition To Confirm Dunham Trust Company As*
2 *Directed Trustee; And Petition For Immediate Disclosure Of Documents And For Information*
3 *From Christopher D. Davis* on February 10, 2015 (the "Petition To Assume Jurisdiction").

4 2. Christopher D. Davis ("Christopher") filed his *Motion To Dismiss Pursuant To*
5 *NRCP 12(b) And NRCP 19* on March 4, 2015 (the "Motion To Dismiss"). Thereafter, Ms. Davis
6 filed her Opposition to the Motion To Dismiss on April 13, 2015.

7 3. On April 20, 2015, two (2) days before the hearing on Ms. Davis' Petition To
8 Assume Jurisdiction and Christopher's Motion To Dismiss, Christopher filed his Reply to Ms.
9 Davis' Objection to the Motion To Dismiss.

10 4. In his Reply, Christopher first raised the following issues:

11 (a) Tarja Davis, Christopher's wife, was a beneficiary of the Beatrice B. Davis Family
12 Heritage Trust, dated July 28, 2000 (the "Trust") and did not consent to the
13 execution of the First Amendment or the transfer in situs;

14 (b) Alaska USA Trust Company, the prior trustee, resigned prior to the execution of
15 the First Amendment to the Trust, dated February 24, 2014 (the "First
16 Amendment"), and did not provide its consent to execution of the First
17 Amendment or the transfer in situs; and

18 (c) No advice of counsel was obtained for Alaska USA Trust Company prior to the
19 execution of the First Amendment.

20 5. On April 22, 2015, a hearing was held on Ms. Davis' Petition To Assume
21 Jurisdiction and Christopher's Motion To Dismiss. Because the Court did not have sufficient
22 evidence before it regarding the issues raised by Christopher in his Reply, the Court assumed
23 jurisdiction over the Trust under the theory of "constructive trust", more accurately called a "de
24 facto trust", because:

25 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
26 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher;
27 (ii) Ms. Davis; (iii) and Winfield B. Davis, all consented to the execution of the
28

- 1 First Amendment to the Trust, dated February 24, 2014 (the "First Amendment")
2 and to the transfer of the Trust's situs from Alaska to Nevada;
- 3 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
4 accepted tenure as Directed Trustee of the Trust and Alaska USA Trust Company
5 resigned as Trustee;
- 6 (c) Based upon such good faith reliance of the validity of the First Amendment,
7 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 8 (d) Based upon a good faith reliance of the validity of the First Amendment,
9 Christopher accepted his appointment as Investment Trust Advisor pursuant to
10 NRS 163.5543;
- 11 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
12 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
13 NRS 163.5537;
- 14 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
15 LLC, a Nevada limited liability company wholly owned by the Trust, and
16 appointed Christopher as the sole Manager thereof;
- 17 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
18 such position;
- 19 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
20 appointment of such position;
- 21 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
22 as Directed Trustee in Nevada; and
- 23 (j) The Court had no evidence before it, namely an affidavit of any other purported
24 beneficiary, that any other beneficiary was entitled to take under the Trust, and,
25 therefore entitled to notice or that such beneficiary's consent was required to
26 Transfer of the Trust's situs from Alaska to Nevada.
- 27 6. The Court noted that it was appropriate to assume jurisdiction over the Trust and
28 its fiduciaries, Dunham and Christopher, as all parties consented to the execution of the First

1 Amendment to the Trust and to the transfer of the Trust's situs from Alaska to Nevada, and all
2 parties before the Court acted upon a good faith reliance with respect to the validity of the First
3 Amendment.

4 7. The Order, dated May 19, 2015, filed on June 24, 2015, was thereafter entered on
5 July 1, 2015 (the "May 19, 2015 Order"), assuming jurisdiction over the Trust under the theory of
6 "constructive trust" (more accurately called a "de facto trust").

7 8. Christopher Filed his Petition For Reconsideration on July 14, 2015, setting forth
8 the same arguments contained in his Reply. *See*, ¶ 4 above.

9 9. Christopher then filed his Notice Of Appeal and Case Appeal Statement, appealing
10 the May 19, 2015 Order, on July 30, 2015.

11 10. Christopher's appeal divested the Court of jurisdiction to modify the May 19, 2015
12 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev.
13 2010) (also known as a "Huneycutt Motion").

14 11. On August 10, 2015, Ms. Davis filed her Motion To Amend (Huneycutt Motion),
15 wherein she requested that the District Court amend or modify its May 19, 2015 Order and
16 assume jurisdiction over the Trust in its entirety as a proceeding *in rem*; and further requested
17 that, if the District Court is inclined to grant such relief, that the District Court certify to the
18 Nevada Supreme Court its intent to do so.

19 12. On September 2, 2015, the District Court heard oral arguments on Christopher's
20 Petition For Reconsideration and Ms. Davis' Motion To Amend.

21 13. The District Court was presented with evidence (a Declaration Of Tarja Davis,
22 filed on July 28, 2015) regarding Christopher's contention that Tarja Davis, Christopher's wife,
23 was a purported beneficiary of the Trust, and that Tarja Davis did not consent to the First
24 Amendment or to the transfer of the Trust's situs from Alaska to Nevada.

25 14. In response to Christopher's Petition For Reconsideration, Ms. Davis introduced
26 the following evidence to the District Court to support her Motion To Amend:

27 (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse",
28 and requires the marital union of a beneficiary and his or her spouse, if entered into

1 after the signing date of the Trust, to exist continuously for a period of ten (10)
2 years before such beneficiary's spouse can qualify as a "spouse" under the Trust,
3 and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher
4 were married after the signing date of the Trust, and have not been married for ten
5 (10) continuous years;

6 (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated
7 February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company
8 was the currently serving Trustee on the date the First Amendment was executed
9 and that Alaska USA Trust Company, as the Trustee, expressly consented to the
10 transfer of situs from Alaska to Nevada and that such RECITAL is presumed
11 conclusive under NRS 47.240(2);

12 (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood,
13 Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt,
14 Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of
15 the Trust, indicating that he had communicated with both Alaska USA Trust
16 Company and Dunham and provided an opinion of counsel; and

17 (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant to Article 14,
18 Section 6 of the Trust, indicating that Nevada met the requirements of an
19 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
20 state for jurisdiction at the time.

21 15. Based upon the foregoing, the Court found that sufficient evidence had now been
22 submitted to the Court's satisfaction that the Trust's situs was properly transferred from Alaska to
23 Nevada pursuant to the terms of the Trust, and that upon submission of such evidence, the burden
24 to prove the invalidity of the First Amendment and the improper transfer of situs became
25 Christopher's burden, which he failed to overcome.

26 16. Accordingly, the limited basis upon which this Court assumed jurisdiction under
27 the theory of "constructive trust" should be expanded and jurisdiction should be assumed over the
28 Trust de jure as a proceeding *in rem* pursuant to NRS 164.010.

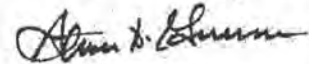
1 Good cause appearing therefore,

2 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
3 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
4 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
5 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
6 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
7 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
8 as grant any and all additional relief as the District Court deems proper.

9 DATED this ____ day of _____, 2015.

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11 _____
12 DISTRICT COURT JUDGE
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ATTACHMENT 6



CLERK OF THE COURT

CERT

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks

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DWIGGINS & PRER
TRUST AND ESTATE ATTORNEYS



1 jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94
2 Nev. 79, 575 P.2d 585, (1978):

3 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
4 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
6 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
7 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
8 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
9 as grant any and all additional relief as the District Court deems proper.

10 DATED this 14th day of October 2015.

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13 DISTRICT COURT JUDGE
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18 *Attorneys for Christopher D. Davis*

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15
16 In the matter of:

17
18 The BEATRICE B. DAVIS FAMILY HERITAGE
19 TRUST, dated July 28, 2000, as amended on
20 February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: September 2, 2015

Hearing Time: 9:00 a.m.

21
22 **AMENDED ORDER**

23 This matter initially came before the Court for hearing on the 22nd day of April, 2015 at
24 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and
25 NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis
26 Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume
27 Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as
28

1 Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for
2 Immediate Disclosure of Documents and Information from Christopher D. Davis. Christopher
3 D. Davis was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L.
4 Barney, Esq., of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by
5 Mark Solomon, Esq., of the law firm of Solomon Dwiggins and Freer, Ltd.; Stephen K.
6 Lehnardt was represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law
7 Group; and Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law
8 office of Lee Hernandez Landrum & Garofalo.
9

10
11 The Court order in the above hearing was entered on June 24, 2015. Christopher D.
12 Davis subsequently filed an appeal on the order and the Supreme Court later granted a stay on
13 all proceedings. Caroline D. Davis filed a motion to remand and this Court entered a signed
14 certification of intent on October 23, 2015. On December 9, 2015 the Supreme Court filed an
15 order which granted Caroline's motion to remand "for the limited purpose of allowing the
16 district court to enter its amended order." Pursuant to its inherent powers to manage litigation,
17 this Court having determined that the assumption of jurisdiction based on a constructive trust
18 was a clear error of law, and having been satisfied that jurisdiction over the Trust pursuant to
19 NRS 164.010 is now proper, hereby amends its June 24, 2015 order to read as follows:
20

21
22 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
23 Nevada, and that everyone involved relied on this amendment as being proper.

24 IT IS FURTHER FOUND that the Court has jurisdiction over the Beatrice B. Davis
25 Family Heritage Trust as a proceeding in rem pursuant to NRS 164.010.

26 IT IS SO FOUND.
27
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
2 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

3 IT IS SO ORDERED, ADJUDGED AND DECREED.
4

5
6 DATED this _____ day of _____, 2015.
7

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9 _____
DISTRICT COURT JUDGE

10
11 Respectfully Submitted by the Following:

12
13 
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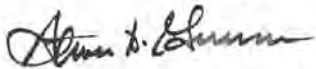
5 Winfield B. Davis
6 366-6 Habu Aridagawa Arida
7 Wakayama 643-0025
8 JAPAN

9 Mark Solomon, Esq.
10 Joshua Hood, Esq.
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19

20 
21 Employee of Anthony L. Bamey
22
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Exhibit 12


CLERK OF THE COURT

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6 *Attorneys for Caroline Davis, Petitioner*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

10 The BEATRICE B. DAVIS FAMILY
11 HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

Hearing Date: August 12, 2015
Hearing Time: 9:00 A.M.

12
13 **MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)**

14 Caroline D. Davis ("Ms. Davis"), as beneficiary of the Beatrice B. Davis Family Heritage
15 Trust, dated July 28, 2000, as amended February 24, 2014, by and through her counsel, the law
16 firm of Solomon Dwiggins & Freer, Ltd., hereby files this Motion To Amend Or Modify Order
17 Pursuant to NRCP 60(b)(3) (the "Motion"). The foregoing Motion is made and based on the
18 pleadings and papers on file in this action, the attached Memorandum Of Points And Authorities,
19 all attached exhibits, and any oral argument that this honorable Court may entertain at the time of
20 hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

From this inception of this matter, Christopher D. Davis ("Christopher") has continued to present misrepresentation after misrepresentation to this Court. Indeed, it is apparent that from the first pleading Christopher filed with this Court, he has taken it upon himself to conceal the true nature of the facts and circumstances related to the transfer of the Trust's situs from Alaska to Nevada. Specifically, Christopher has knowingly misidentified the true beneficiaries of the Trust, has perpetually misrepresented that there was no acting Trustee during the time in which the Trust's situs was transferred, has concealed the fact that consent was provided by the then-serving Trustee to transfer the situs, and has blatantly lied about the fact that legal advice was obtained by the Trustee prior to transferring the situs. Based upon the facts and evidence discovered throughout the duration of this matter, it is obvious that Christopher and his counsel have dissembled the true and correct facts, have exhibited a complete lack of candor to this Court, to Ms. Davis, and the other interested parties.

Indeed, Christopher's fraudulent misrepresentations with respect to the First Amendment caused this Court to enter an order assuming jurisdiction over the Trust based upon the theory of "constructive trust." As fully set forth below, the First Amendment is valid in its entirety and the transfer of the Trust's situs is proper under the terms of the Trust. As such, this Court should amend or modify its June 24, 2015 Order, and assume jurisdiction over the Trust in its entirety as a proceeding *in rem* pursuant to NRS 164.010.

II. Factual Background.

Beatrice B. Davis ("Beatrice") created the Trust on July 28, 2000, naming Alaska Trust Company ("Alaska") as the initial Trustee and Stephen K. Lehnardt ("Mr. Lehnardt") as Trust Protector. As fully set forth in the prior pleadings before this Court, the primary asset that was held in the Trust is an Ashley Cooper Life Insurance Policy (the "Policy"), with a face cover value of \$35,000,000.00 and a revolving line of credit for \$4,000,000.

1 Pursuant to Article Three of the Trust, during Beatrice's lifetime, the primary beneficiaries
2 were Christopher, Ms. Davis, and Christopher's son, Winfield Davis ("Winfield). On August 2,
3 2011, Mr. Lehnardt, as Trust Protector, removed Alaska as Trustee and appointed Alaska USA
4 Trust Company ("Alaska USA"). During Alaska and Alaska USA's tenure as Trustee, certain
5 loans were taken against the Policy and further distributed to Christopher in his individual
6 capacity, his capacity as Trustee of the Beatrice B. Davis Revocable Living Trust, dated April 4,
7 1990, as amended (the "Revocable Trust"), and his capacity as Manager of the Davis Family
8 Office, a Missouri limited liability company (the "Davis Family Office").

9 On October 30, 2013, Alaska USA executed a "Resignation of Trustee", indicating that
10 the effective date of such resignation was intended to be "December 5, 2013 or upon the
11 acceptance of trusteeship by a successor, whichever occurs earlier." Dunham Trust Company
12 ("Dunham") was thereafter appointed and accepted tenure as successor Trustee of the Trust on
13 February 24, 2014. Contemporaneously with the appointment and acceptance of trusteeship by
14 Dunham, Mr. Lehnardt, by and through the authority vested in him as Trust Protector, transferred
15 the situs of the Trust from Alaska to Nevada. The transfer of the Situs was acknowledged and
16 consented to by Ms. Davis, Christopher, and Winfield.

17 Pursuant Article One, Section 2 of the First Amendment, the Trust situs is now Nevada,
18 and the Trust and all trusts created thereunder are governed by Nevada law. Article Thirteen,
19 Section 2.d. of the First Amendment, appointed Dunham as the "Directed Trustee" pursuant to
20 NRS §163.553 et. seq. Article Thirteen, Section 2.d. of the First Amendment, further appointed
21 Christopher as the "Investment Trust Advisor" pursuant to NRS §163.5543, and designated him
22 as a "Fiduciary" under NRS §16.554. Pursuant to the First Amendment, Christopher is provided
23 the "full power to manage the investments and reinvestments of the trust", and Dunham, as
24 Directed Trustee, has no authority act or interfere with the actions of Christopher, as the
25 Investment Trust Advisor, unless otherwise directed. Article Thirteen, Section 2.d. of the First
26 Amendment, appointed Mr. Lehnardt, in his capacity as the Trust Protector of the Trust, as the
27 "Distribution Trust Advisor" pursuant to NRS §163.5537, and designated him as "Fiduciary"
28 pursuant to NRS §163.554.

1 Shortly after Dunham's appointment as Directed Trustee and Christopher's appointment
2 as Investment Trust Advisor, Dunham created FHT Holdings, LLC, a Nevada limited liability
3 company, to which the Policy was transferred. Christopher is currently serving as the sole
4 Manager FHT Holdings, LLC.

5 Although Ms. Davis has attempted to acquire the documentation and information related
6 to the Policy and the related loans without court intervention, Christopher has consistently
7 stonewalled Ms. Davis and refused to provide information regardless of the fact that: (1)
8 Christopher is acting as a Fiduciary of the Trust, and (2) Ms. Davis is a beneficiary of the Trust
9 entitled to such information.

10 **III. Procedural Background**

11 This Court will recall that Ms. Davis filed her Original Petition, on February 10, 2015,¹
12 requesting that this Court: (1) assume jurisdiction over the Trust² as a proceeding *in rem*; (2)
13 assume jurisdiction over Christopher as Investment Trust Advisor; (3) assume jurisdiction over
14 Stephen K. Lehnardt ("Mr. Lehnardt") as Distribution Trust Advisor; (4) confirm Dunham Trust
15 Company ("Dunham") as Directed Trustee; and (5) require Christopher, as Investment Trust
16 Advisor and as Manager of FHT Holdings, LLC, to disclose any and all documentation and
17 information related to the Trust with specific reference to certain loans that were taken against the
18 Trust's primary asset (i.e. the Policy with a face cover value of \$35,000,000.00).³

19 On March 3, 2015, Christopher filed his Motion To Dismiss,⁴ contending that Ms. Davis:
20 (1) failed to join necessary parties; (2) failed to provide requisite notice to proper parties; and (3)

21
22 ¹ Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As
23 Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor
24 And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee;
And For Immediate Disclosure Of Documents And Information From Christopher D. Davis, filed with this Court on
February 10, 2015 (the "Original Petition").

25 ² The Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014 (the
26 "Trust"), a true and correct copy of which is attached to the Original Petition, at Ex. 1.

27 ³ See, Original Petition at p. 9, ¶¶ 1-5.

28 ⁴ See, Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) And NRCP 16, previously filed
with this Court on March 3, 2015.

1 further claimed that the Court lacked subject matter jurisdiction.⁵ Christopher's Motion To
2 Dismiss hinged upon his a blatant misrepresentation that the First Amendment, which transferred
3 situs of the Trust from Alaska to Nevada, was invalid and that the validity of such document must
4 first be determined before the Court could assume jurisdiction.⁶

5 In response, Ms. Davis filed her Opposition to the Motion To Dismiss on April 13, 2015.⁷
6 In her Opposition to the Motion To Dismiss, Ms. Davis argued that the Court may properly
7 assume jurisdiction over the Trust and respective parties and grant the relief requested in the
8 Original Petition.⁸ Additionally, Ms. Davis set forth arguments as to why the prior trustees,
9 Alaska and Alaska USA, are not necessary or indispensable parties,⁹ and that Ms. Davis properly
10 served all interested parties.¹⁰ Christopher filed a Reply to Ms. Davis' Opposition to the Motion
11 To Dismiss on April 20, 2015.¹¹ It is important to note, however, that Ms. Davis and her counsel
12 were not served with a copy of Christopher's Reply until after the hearing regarding the
13 Original Petition, the Motion To Dismiss, and related pleadings was held on April 22, 2015
14 (the "Hearing").

15 This Court will also recall that Christopher's counsel, Mr. Barney, for the first time at the
16 Hearing, attempted to make several factual arguments not presented in his Motion To Dismiss.
17 First, Mr. Barney argued that Christopher's wife, Tarja Davis ("Tarja"), was a beneficiary of the
18 Trust and did not provide the requisite consent to the transfer of the Trust's situs from Alaska to
19

20
21 ⁵ *Id.*

22 ⁶ *Id.*, at p. 11;7-8.

23 ⁷ *See*, Opposition To Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) and NRCP 19,
24 previously filed with this Court on April 13, 2015.

25 ⁸ *Id.*, at Section II.

26 ⁹ *Id.*, at Section III.

27 ¹⁰ *Id.*, at Section IV.

28 ¹¹ *See*, Christopher D. Davis' Reply To Caroline Davis' Opposition To His Motion To Dismiss Pursuant To
NRCP 12(b) And NRCP 19, previously filed with this Court on April 20, 2015.

1 Nevada.¹² Indeed, raising such argument at the Hearing was completely contrary to the
2 facts presented to this Court in Christopher's Motion To Dismiss. Specifically, Christopher
3 identified: (1) himself; (2) his son, Winfield; and (3) Ms. Davis as the "three descendants [that]
4 are the current beneficiaries of the Trust."¹³ Christopher and Mr. Barney, however, are fully
5 aware, and have always been fully aware, that Tarja does not qualify as a "spouse", and otherwise
6 is not entitled to receive mandatory or discretionary distributions under the Trust; therefore, her
7 consent was not required to effectuate the transfer of situs.

8 Second, Mr. Barney also argued, for the first time at the Hearing, that there was not "an
9 acting Alaska Trustee at the point to consent to the transfer" of the Trust's situs.¹⁴ As Mr. Barney
10 is well aware, a trustee's duties do not terminate upon the submission of a resignation when no
11 successor trustee has been appointed and accepted. Furthermore, and illustrative of Christopher
12 and Mr. Barney's dissembling to this Court, the Resignation, Release, Acknowledgement,
13 Consent And Indemnification Agreement, attached as Exhibit 1 to Christopher's Motion To
14 Dismiss, which was executed by Christopher, expressly provides that Alaska USA was the
15 then-serving Trustee of the Trust on the date on which the situs was transferred to Nevada, and
16 that Alaska USA consented to the same. As Such, Christopher had full and complete knowledge
17 that: (1) Alaska USA was serving as trustee at the point when the situs was changed; and (2)
18 Alaska USA provided its consent to transfer the Trust's situs. Notwithstanding the same,
19 Christopher and his counsel have continuously misrepresented the same to this Court by arguing
20 to the contrary. Indeed, both of Christopher and Mr. Barney's fabricated arguments at the
21 Hearing are patently false.

22 Notwithstanding such misrepresentation, after hearing oral arguments of the parties'
23 respective counsel, this Court issued its Findings and Orders (the "Order"), which was
24

25
26 ¹² See, Hearing transcript at p. 8:10-11, a true and correct copy of which is attached hereto as Exhibit 1.

27 ¹³ See, Motion To Dismiss, at p. 3:14-18. (Emphasis added).

28 ¹⁴ See, Ex. 1, at lines 12-13.

1 subsequently filed on June 24, 2015, and notice of entry Order was filed on July 1, 2015.¹⁵

2 Pursuant to the Order, the Court found that:

3 "...since the first amendment, Christopher has been directing the trust in Nevada,
4 and that everyone involved relied on this amendment as being proper.

5 "...the Court has no affidavit that another beneficiary existed at the time the first
6 amendment was signed.

7 "...the Court has jurisdiction as a constructive trust because action on behalf of the
8 trust has been taken in Nevada."¹⁶

9 Additionally, the Court ordered that: (1) the Original Petition be granted without
10 prejudice;¹⁷ (2) the court would not assume jurisdiction over Mr. Lehnardt, as Distribution Trust
11 Advisor, "until a more definite statement is made";¹⁸ (3) Dunham be confirmed as Directed
12 Trustee;¹⁹ (4) that Christopher is required to disclose "all information in his possession, custody,
13 or control, as Investment Trust Advisor, and in his role as Manager of FHT Holdings, LLC";²⁰ (5)
14 that Christopher's Motion To Dismiss is denied;²¹ and (6) and that the Court "retain[ed]
15 jurisdiction and all matters will be heard by the probate judge."²²

16 On July 14, 2015, Christopher filed and noticed his Petition For Reconsideration, which
17 was scheduled to be heard before this Court on August 19, 2015. Notwithstanding the fact that
18 this Court already addressed each of Christopher's arguments set forth in his Motion To Dismiss,
19 Christopher asserted that this Court improperly assumed jurisdiction over the Trust because: (1)

20
21 ¹⁵ See, Order, previously filed with this Court on June 24, 2015, and Notice Of Entry of Order, previously filed
with this Court on July 1, 2015.

22 ¹⁶ See, Order, at p. 2:13-19.

23 ¹⁷ Id., at p. 2:21-24.

24 ¹⁸ Id., at p. 2:25-28.

25 ¹⁹ Id., at p. 3: 1-2.

26 ²⁰ Id., at p. 3: 3-6.

27 ²¹ Id., at p. 3: 7-8.

28 ²² Id., at p. 3:9-10.

1 lack of subject matter jurisdiction due to the absence of conditions precedent to the change of the
2 Trust's situs from Alaska to Nevada as provided for in the First Amendment;²³ (2) the failure to
3 add indispensable parties;²⁴ and (3) the failure to provide notice and/or service to requisite
4 parties.²⁵ The Petition For Reconsideration was nothing more than a regurgitation of the
5 misrepresented facts presented in Christopher's prior pleadings and his oral argument before the
6 Court on April 22, 2015.

7 In addition to his recapitulation misrepresented facts, Christopher's Petition For
8 Reconsideration also boldly misstates that Alaska did not receive an opinion of counsel with
9 respect to transferring the situs of the Trust from Alaska to Nevada. As set forth below, Mr.
10 Lehnardt, as Trust Protector, retained the services of Dennis Brislawn, Esq. ("Mr. Brislawn") in
11 2014, to provide support with the transition of the Trust from Alaska to Nevada. Mr. Brislawn
12 communicated with Mr. Lehnardt, Dunham Trust, and Alaska USA, **and provided an opinion of**
13 **counsel** regarding the transfer of the Trust's situs to Nevada. Indeed, as set forth in Mr.
14 Lehnardt's billing records, Christopher was integrally involved with the transfer of situs and met
15 with or conferred with Mr. Lehnardt to discuss the same. Each and every allegation made by
16 Christopher and Mr. Barney in Christopher's Motion To Dismiss and his Petition For
17 Reconsideration regarding the "invalidity" of the transfer of situs are false, and they have
18 continued to perpetuate these material misrepresentations to this Court in an effort to avoid
19 providing the required information to Ms. Davis pursuant to the June 24, 2015 Order.

20 Ms. Davis filed her Objection And Counterpetition For Sanctions on July 31, 2015,²⁶
21 wherein Ms. Davis argued, among other things, that the Petition For Reconsideration is
22

23 ²³ See, Petition For Reconsideration, at p. 6:19-20.

24 ²⁴ *Id.*, at p. 15:17-18, p. 21:10-11, and p. 23:6-7.

25 ²⁵ *Id.*, at p. 15:17-18, and p. 19:11-12.

26 ²⁶ See, Objection To Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume
27 Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24,
28 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As
Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate
Disclosure Of Documents And Information From Christopher D. Davis; And Counterpetition For Sanctions, filed on
July 31, 2015 (the "Objection And Counterpetition").

1 procedurally improper as it does not present new evidence or facts, does not identify a change in
2 controlling law, and does not identify any clear error made by this Court.²⁷ Additionally, Ms.
3 Davis presented evidence that Christopher and/or his counsel has continued to make material
4 misrepresentations to this Court.

5 Specifically, Ms. Davis provided evidence that Christopher's wife, Tarja, is not a
6 "spouse" under the terms of the Trust since she and Christopher have not been married for ten
7 (10) continuous years as required by Article Fourteen, Section 1(j) of the Trust.²⁸ As such, Tarja
8 is not a "beneficiary then eligible to receive mandatory or discretionary distributions" pursuant to
9 Article 8, Section 3(d), and, therefore, her consent is not required to transfer situs under Article
10 Fourteen, Section 6.²⁹

11 Second, and notwithstanding Christopher and Mr. Barney's representation to the contrary,
12 Ms. Davis provided evidence that Alaska USA was the then-serving Trustee of the Trust when the
13 First Amendment was executed, and that Alaska USA did consent to the transfer of situs from
14 Alaska to Nevada pursuant to Article Fourteen, Section 6 of the Trust.³⁰ Lastly, and in
15 contradiction to Christopher and Mr. Barney's false representation to this Court, Ms. Davis
16 presented evidence that Alaska USA did receive advice of counsel pursuant to Article Fourteen,
17 Section 6 of the Trust³¹ prior to transferring the Trust's situs.

18 On July 30, 2015, Christopher also filed a Notice Of Appeal and Case Appeal Statement,³²
19 appealing the Court's June 24, 2015 Order pursuant to NRS 155.190(h) to the Nevada Supreme
20 Court. Although Mr. Barney may argue that this Court does not have the authority to entertain
21

22
23 ²⁷ *Id.*, at § II(A).

24 ²⁸ *Id.*, at § II(B).

25 ²⁹ *Id.*

26 ³⁰ *Id.*, at § II(C).

27 ³¹ *Id.*, at § II(D).

28 ³² *See*, Notice Of Appeal and Case Appeal Statement, previously filed with this Court on July 30, 2015.

1 arguments related to the Petition For Reconsideration, this Court does have the authority to
2 entertain collateral or independent matters involved in the same case or controversy. Ms. Davis'
3 Motion To Amend Or Modify Order Pursuant to NRCP 60(b)(3) is a collateral matter, involving
4 the same facts and circumstances, that this Court may entertain.³³

5 III. LEGAL ARGUMENT

6 NRCP 60(b), in relevant part, provides that "[o]n motion and upon such terms as are just,
7 the court may relieve a party...from a final judgment, order, or proceeding for the following
8 reasons...(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or
9 other misconduct of an adverse party." Further, pursuant to Foster v. Dingwall, 228 P.3d 453,
10 455 (Nev. 2010), "a party seeking to alter, vacate, or otherwise change or modify an order or
11 judgment challenged on appeal should file a motion for relief from the order of judgment in the
12 district Court."

13 As such, and for the reasons set forth herein, Ms. Davis hereby requests that this Court: (1)
14 amend or modify its Order assuming jurisdiction over the trust under the theory of "constructive
15 trust"; (2) assume jurisdiction over the trust in its entirety as a proceeding *in rem* pursuant to NRS
16 164.010; and (3) make a specific finding that the transfer of the Trust's situs Alaska to Nevada
17 was consistent with the terms of the Trust. Additionally, if this Court is inclined to amend or
18 modify its Order, Ms. Davis further requests that this Court certify its intent to grant the relief so
19 that this matter may be remanded back "to the district court for entry of an order granting the
20 requested relief." *Id.* Such certification would render the issues currently raised on appeal moot.

21 A. Christopher Fraudulently Misrepresented That Tarja's Consent To 22 The First Amendment And The Change In Situs Was Required.

23 In his Petition For Reconsideration, Christopher's contends that "all the facts and evidence
24 prove the change of situs (a condition precedent) was invalid and not permitted under the terms of
25 the [Trust]"³⁴ is without merit. Christopher relies heavily on the fact that his current wife, Tarja,

26
27 ³³ See, Foster v. Dingwall, 228 P.3d 453 (Nev. 2010).

28 ³⁴ See, Petition For Reconsideration, at p. 7:6-8.

1 did not consent to the transfer in situs.³⁵ Christopher, however, knew that Tarja's consent to the
2 change in situs was **not required** to effectuate the same. Indeed, Christopher and his counsel
3 Anthony L. Barney, Esq. ("Mr. Barney") and Harriet H. Roland, Esq. ("Ms. Roland") each have a
4 copy of the trust, and are familiar with the terms and provision thereof, including (1) the provision
5 defining "spouse";³⁶ (2) the provision related to distributions to a "spouse";³⁷ and (3) the
6 provision related to the transfer of situs and the requirements therefor.³⁸

7 Specifically, Article Fourteen, Section 6 of the Trust provides, in relevant part, as follows:

8 "Except as expressly provided herein, the situs of this agreement or any subtrust
9 established hereunder may be changed by the **unanimous consent of all**
10 **beneficiaries *then eligible to receive mandatory or discretionary distributions***
11 of net income under this agreement or such subtrust, with the consent of any then-
12 acting Protector and the Trustee thereof, which shall be given only after the
Trustee has obtained advice from counsel as to the tax and other consequences of
a change in situs."³⁹

13 While Article 8, Section 3(d) permits a trustee to "make distributions from the trust share
14 of a Primary Beneficiary to or for the health, education, maintenance and support of the **spouse** of
15 the Primary Beneficiary,"⁴⁰ such person **must** first qualify as a "spouse" pursuant to the express
16 terms of the Trust.

17 Article Fourteen of the Trust, entitled "Definitions and General Provisions", provides that
18 "[f]or purposes of this agreement, the following words and phrases **shall** be defined as follows:"⁴¹
19 Section 1(j), defines "Spouses":

20 "An individual is a 'spouse' if such individual is the then current spouse of a child
21 of mine on the signing date of this trust. If an individual enters into a valid

22 ³⁵ *Id.*, at p.8:17-21.

23 ³⁶ *See*, Original Petition, at Ex. 1, Art. 14, §1(j).

24 ³⁷ *Id.*, at Ex. 1, Art 8, §3(d).

25 ³⁸ *Id.*, at Ex. 1, Art 14, §6.

26 ³⁹ *Id.*, at Ex. 1, Art. 14, § 6. (Emphasis added).

27 ⁴⁰ *Id.*, at Ex. 1, Art. 8, §3(d). (Emphasis added).

28 ⁴¹ *Id.*, at Ex. 1, Art 14, § 1.

1 marital union, as defined in paragraph a. of this section, with a child of mine or a
2 beneficiary of mine **following the signing of this trust, then such individual**
3 **may qualify as a 'spouse' if that if the (sic) marital union exists continuously**
4 **for a period of ten years**, and that individual is not legally separated from the
5 person under a decree of divorce or separate maintenance."⁴²

6 According to the Declaration Of Tarja Davis, a true and correct copy of which is attached
7 hereto as **Exhibit 1**, Christopher and Tarja did not get married until February 22, 2012. As
8 Christopher and Tarja were only married for a little over two (2) years at the time the situs was
9 transferred, February 24, 2014, Tarja **did not** meet the ten (10) year criteria as set forth in the
10 Trust and, therefore, **did not qualify as a "spouse"** thereunder. Indeed, pursuant to the terms of
11 the Trust, Tarja still does not qualify as a "spouse". Consequently, and despite Christopher's
12 intentional misrepresentation of the facts, Tarja is not, and was not, a "beneficiary then eligible to
13 receive mandatory or discretionary distributions"⁴³ and her consent was not required to transfer
14 the situs from Alaska to Nevada. As such, Christopher's contention that Tarja's consent was
15 necessary is meritless.

16 **B. Christopher Fraudulently Misrepresented that Alaska USA Was Not**
17 **The Then-Acting Trustee At The Point In Time In Which The Trust's**
18 **Situs Was Changed And Did Not Consent To Such Transfer Of Situs.**

19 Replete throughout Christopher's pleadings before this Court, and from Christopher's
20 counsel's oral arguments at the April 22, 2015 Hearing, Christopher has continued to materially
21 misrepresent the facts related to the validity of the transfer of situs from Alaska to Nevada.
22 Indeed, Christopher has continued to falsely represent to this Court that "there was no acting
23 Trustee to provide informed consent to the change in situs."⁴⁴ Christopher fabricated this
24 contention because Alaska USA tendered its resignation as of December 5, 2013, and the First
25 Amendment effectuating the change in situs was executed on February 24, 2014. As
26 Christopher's counsel, Mr. Barney and Ms. Roland are clearly aware, simply submitting a

26 ⁴² *Id.*, at Ex. 1, Art 14, §1(j). (Emphasis added).

27 ⁴³ *Id.*, at Ex. 1, Art. 14, § 6.

28 ⁴⁴ *See*, Petition For Reconsideration, at p. 8:13-14.

1 resignation of trusteeship does not, in and of itself, obviate a trustee of its duties to act, nor does it
2 automatically remove the trustee from its role as such.⁴⁵ Indeed, pursuant to the Declaration Of
3 Janet K. Tempel, Senior Trust Officer at Alaska USA, because “[a] successor trustee was not
4 designated on or before December 5, 2013, [] Alaska USA retained the duties of trustee and
5 powers necessary to protect the trust property pursuant to Alaska law...Pursuant to the
6 [Resignation, Release, Acknowledgement, Consent And Indemnification Agreement], Alaska
7 USA effectively resigned as Trustee of the Trust **on February 24, 2014**, as Dunham Trust
8 Company was contemporaneously appointed as successor Trustee.”⁴⁶

9 Moreover, pursuant to the recitals set forth in the Resignation, Release,
10 Acknowledgement, Consent And Indemnification Agreement (the “Release”), **which was signed**
11 **by Christopher**, Alaska USA was still serving as Trustee of the Trust on February 24, 2014, the
12 date the First Amendment was executed. Specifically, the pertinent recital of the Release
13 provides as follows: “WHEREAS, AUTC⁴⁷ **is the currently serving trustee of the Trust...**”⁴⁸
14 NRS 47.240, entitled “Conclusive presumptions” provides that “[t]he truth of the fact recited,
15 **from the recital in a written instrument between the parties thereto...**” is presumed
16 conclusive. Therefore, contrary to Christopher’s misplaced assertion, there was an acting Trustee
17 (i.e. Alaska USA) acting on behalf of the Trust to transfer the situs from Alaska to Nevada on
18 February 24, 2014.

19
20
21
22 ⁴⁵ Alaska has codified such principle in Alaska Statutes, Section 13.36.077(1), which provides that “unless a
23 co-trustee remains or the court otherwise orders, and until the trust property is delivered to a successor trustee or
24 another qualified person entitled to the trust property, **a trustee who has resigned** or been removed **has the duties of**
a trustee and the powers necessary to protect the trust property.”

25 ⁴⁶ See, Declaration Of Janet K. Tempel, Senior Trust Officer, a true and correct copy of which is attached
hereto as **Exhibit 2**, at ¶¶ 5 and 7. (Emphasis added).

26 ⁴⁷ See, Resignation, Release, Acknowledgement, Consent And Indemnification Agreement, a true and correct
27 copy of which is attached hereto as **Exhibit 3** (defining Alaska USA Trust Company of Anchorage, Alaska as
“AUTC”).

28 ⁴⁸ *Id.* (Emphasis added).

Christopher's assertion that "the change in situs under the purported First Amendment must be presumed invalid until such evidence of an acting Trustee's consent can be produced"⁴⁹ is without merit. Another well-known tenet of trust law is that a trust or amendment thereto is presumed to be valid unless proven otherwise, and the burden of proving the invalidity of such instrument rests upon the person so claiming.⁵⁰ Notwithstanding the burden of proof resting upon Christopher's shoulders, Christopher has not produced a single piece of evidence to support his position that Alaska USA did not consent to the transfer of situs, which he so adamantly contends. Indeed, the fact that Alaska USA executed the Release, which includes within it a provision entitled "Consent to Change of Situs and Amendment of Trust", is sufficient evidence that Alaska USA, as the "the currently serving trustee of the Trust", expressly consented to the transfer of the Trust's situs from Alaska to Nevada. Section 1 of the Release, in relevant part, specifically provides that "AUTC (Alaska USA) and the Protector hereby consent to the changing of the situs of the Trust from Alaska to Nevada."⁵¹ Given the facts and circumstances regarding the transfer in situs (i.e. the First Amendment and Release), it cannot reasonably be argued that Alaska USA did not provide the requisite consent for such action. Notwithstanding the clear evidence and Christopher's knowledge of such evidence, Christopher continues to fraudulently misrepresent the fact that Alaska USA was serving as Trustee of the Trust and consented to the transfer of the Trust's situs on February 24, 2014.

C. Christopher Fraudulently Misrepresented That Alaska USA Did Not Receive Advice Of Counsel.

Notwithstanding Christopher's intimate involvement throughout the drafting and execution of the First Amendment, the appointment of Dunham Trust as Directed Trustee, and the facts and circumstances regarding the transfer of the Trust's situs, Christopher continually

⁴⁹ See, Petition For Reconsideration, at p. 11:19-20.

⁵⁰ See, In re Melter, 167 Wash.App. 285, 298, 273 P.3d 991, 998 (Wash.App. 2012) (providing that unless proven otherwise, "[a] will [or trust] is presumed to be valid. It may be disregarded when a will [or trust] contestant presents clear, cogent and convincing evidence" that it is invalid).

⁵¹ See, Ex. 3, at ¶ 1, p. 2.

1 represents to this Court that “[a]ny amendment to change the situs of the [Trust] would require the
2 opinion of legal counsel as to its effect...[and that] [t]here is simply no evidence to suggest that
3 such an opinion was obtained...”⁵². **Such representation is patently false.** Indeed, Alaska USA
4 received a legal opinion from Mr. Brislawn regarding the transfer of the Trust’s situs from Alaska
5 to Nevada.⁵³ Specifically, Mr. Brislawn was retained by Mr. Lehnardt, as Trust Protector, “to
6 provide limited support in changing trust situs from Alaska (where [he] is also licensed to
7 practice) to Nevada.”⁵⁴ In so doing, Mr. Brislawn “communicated with **both trust companies**
8 (referring to Dunham and Alaska USA) in documenting the transfer...[and] **provided an opinion**
9 **of counsel** with documentation supporting trust protector action.”⁵⁵

10 Christopher’s contention that Alaska USA did not obtain advice of counsel is a gross
11 misrepresentation of the facts to this Court. A review of several of Mr. Lehnardt’s billing
12 invoices indicates that Christopher was deeply aware of the facts and circumstances regarding the
13 transfer of the Trust’s situs and Mr. Brislawn’s involvement:

- 14
- 15 (a) 12/23/2013 – Emails from and to D Brislawn regarding change of trustee
16 and capital and surplus issue, **telephone call to C Davis regarding the**
same;⁵⁶
- 17 (b) 01/07/2014 – telephone call to D Brislawn (msg) regarding AK Trust
18 modification, **Telephone call from C Davis regarding trustee change**
and multiple related items, discussion of Dunham trust and
modification;⁵⁷
- 19
- 20 (c) 01/15/2014 – **Telephone calls from C Davis regarding transfer of**
trustee...email to D Brislawn regarding same;⁵⁸
- 21

22 ⁵² See, Petition For Reconsideration, at p. 14:25-15:1; 15:3-4.

23 ⁵³ See, Email communication from Dennis Brislawn, Esq. to Joshua M. Hood, Esq., dated August 22, 2014, a
24 true and correct copy of which is attached hereto as **Exhibit 4**.

25 ⁵⁴ *Id.*

26 ⁵⁵ *Id.* (Emphasis added).

27 ⁵⁶ See, Lehnardt & Lehnardt, LLC invoices, true and correct copies of which are attached hereto as **Exhibit 5**.

28 ⁵⁷ *Id.*

⁵⁸ *Id.*

- (d) 01/17/2014 – Emails from and to D Brislawn regarding transfer of trustee, **Telephone call from C Davis regarding trustee**, Telephone call to D Brislawn to discuss trustee transfer and modification of trust document;⁵⁹
- (e) 01/24/2014 – Emails to D Brislawn and S. Coressel regarding trustee transfer and LLC items, Telephone call from J Tempel regarding transfer of trustee status, **telephone call to C Davis regarding the same**;⁶⁰
- (f) 02/04/2014 – Telephone call from C Davis regarding trustee change, telephone call from D Brislawn regarding same, review documents, **telephone call to C Davis regarding same**;⁶¹
- (g) 02/18/2014 – Prepare for and Meeting with C Davis, discuss with D Brislawn regarding Trust Distribution Advisor and trustee changes;⁶²

Based upon the fact that: (1) Tarja's consent was not required to transfer situs; (2) Alaska USA was acting as Trustee at the time the situs was transferred and consented to such transfer; and (3) Alaska USA did obtain advice of counsel regarding the transfer of situs, the Trust was properly and validly transferred from Alaska to Nevada.

III. Conclusion

Notwithstanding Christopher's continued intentional and fraudulent misrepresentation to this Court that Tarja's consent is required in order to effectively amend the Trust or to transfer situs, the First Amendment is valid, and the steps required to effectuate the transfer of the Trust's situs were properly executed. As fully set forth above, Tarja does not qualify as a "spouse" under the terms of the Trust, she was not entitled to receive distributions from the Trust, and her consent was not required to transfer the situs from Alaska to Nevada.

Article Fourteen, Section 6, in relevant part, requires "the unanimous consent all of the beneficiaries then eligible to receive mandatory or discretionary distributions." As evidenced by the "Acknowledgment And Consent Of Beneficiary" attached to the First Amendment, each of

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

1 the beneficiaries then eligible to receive distributions from the Trust, namely: (1) Ms. Davis; (2)
2 Christopher; and (3) Winfield, provided their consent. Moreover, Ms. Davis, Christopher, and
3 Winfield each executed the Release, which contain a provision entitled "Consent to Change Of
4 Situs and Amendment of Trust". Said provision, in relevant part, provides that "[t]he
5 Beneficiaries hereby unanimously consent to changing the situs of the Trust from Alaska to
6 Nevada..."⁶³

7 Article Fourteen, Section 6, in relevant part, further requires that the Trustee provide its
8 consent to the transfer of situs, "which shall be given only after the Trustee has obtained advice of
9 counsel..." As fully set forth above, Alaska USA was the "then-acting" trustee, and provided its
10 express consent to the transfer of situs after receiving the advice of Dennis Brislawn, Esq.

11 In conclusion, Christopher's blatant and fraudulent misrepresentations of fact regarding
12 the validity of the First Amendment and the transfer of the Trust's situs caused this Court to
13 mistakenly assume jurisdiction over the Trust under the theory of "constructive trust". But for
14 Christopher's intentional misrepresentations, this Court would have properly assumed jurisdiction
15 over the Trust in its entirety as a proceeding *in rem* pursuant to NRS 164.010. Therefore, Ms.
16 Davis respectfully requests that this Court enter an Order amending or modifying the June 24,
17 2014 Order and assume jurisdiction over the Trust as a proceeding *in rem*. Ms. Davis further
18 requests that, if this Court is inclined to grant such relief, this Court certify its intent to grant the
19 relief so that this matter may be remanded back "to the district court for entry of an order granting
20 the requested relief" pursuant to Nevada Supreme Court case Foster v. Dingwall, 228 P.3d 453,
21 455 (Nev. 2010).

22 **WHEREFORE**, Caroline Davis respectfully request that:

23 (1) This Court Order amending or modifying the June 24, 2014 Order and assume
24 jurisdiction over the Trust as a proceeding *in rem*; and

25 ///

26 ///

27 _____

28 ⁶³ See, Ex. 3, at ¶ 1. (Emphasis added).

1 (2) if this Court is inclined to grant such relief, that this Court certify its intent to grant
2 the relief so that this matter may be remanded back "to the district court for entry of an order
3 granting the requested relief" pursuant to Nevada Supreme Court case Foster v. Dingwall.

4 Dated this 6th day of August, 2015.

5 SOLOMON DWIGGINS & FREER, LTD



6
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12 Facsimile: (702) 853-5485
13 *Attorneys for Caroline D. Davis*

Exhibit 1

Exhibit 1

1 MR. BARNEY: Taria [phonetic] is the wife of
2 Christopher Davis.

3 THE COURT: Okay.

4 MR. SOLOMON: Not at the time of this.

5 THE COURT: Okay. All right.

6 MR. BARNEY: Yes. And, in fact, it's clear that
7 they understood she was a beneficiary because in their
8 Opposition to our Motion to Dismiss, they actually notice -
9 - they took to notice her, okay, but they hadn't previously
10 done so. Okay. It's clear that she did not consent to
11 this.

12 There also wasn't an acting Alaska Trustee at that
13 point to consent to the transfer. Mr. Solomon presented
14 evidence that was very clear that on December 5th that
15 Alaska Trust USA tendered their resignation and was no
16 longer the Trustee at that point. Then, allegedly, in
17 February, the first amendment was produced wherein the
18 change in situs occurred, allegedly, and a new Trustee was
19 appointed in that same document.

20 Now, Your Honor, that begs the question: How
21 could a Nevada Trustee based in Nevada who could only
22 operate within that situs be the Trustee that referred to
23 in the trust but had to receive counsel before they made
24 the change in situs that would also make the amendment
25 operative as a condition precedent and then go ahead and

Exhibit 2

Exhibit 2

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12 *Attorneys for Caroline Davis, Petitioner*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 In the Matter of:

Case No.: P-15-083867-T
Dept: Probate (26)

16 The BEATRICE B. DAVIS FAMILY
17 HERITAGE TRUST, dated July 28, 2000, as
18 amended on February 24, 2014

Hearing Date:
Hearing Time:

19 **DECLARATION OF JANET K. TEMPEL, SENIOR TRUST OFFICER**

20 I, JANET K. TEMPEL, Senior Trust Officer, declare as follows:

21 1. I am a Senior Trust officer at ATC Trust Company, formerly known as Alaska
22 USA Trust Company ("Alaska USA").

23 2. I have actual knowledge as to the matters stated herein, except for those matters
24 stated on information and belief, and as to those matter, I believe them to be true.

25 3. On October 30, 2013, I executed a Resignation of Trustee (the "Resignation"),
26 tendering Alaska USA's resignation as Trustee of the Beatrice B. Davis Family Heritage Trust,
27 dated July 28, 2000, as amended (the "Trust").

28 4. The Resignation states that the "resignation as trustee of the Trust [was] effective
as of December 5, 2013 or upon the acceptance of trusteeship by a successor trustee, whichever
occurs earlier."

5. A successor trustee was not designated on or before December 5, 2013, and,
therefore, Alaska USA retained the duties of trustee and powers necessary to protect the trust
property pursuant to Alaska law.

1 6. On February 24, 2014, I executed the Resignation, Release, Acknowledgement,
2 Consent And Indemnification Agreement (the "Agreement") in my capacity as Senior Trust
3 Officer for Alaska USA, as Trustee of the Trust.

4 7. Pursuant to the Agreement, Alaska USA effectively resigned as Trustee of the
5 Trust on February 24, 2014, as Dunham Trust Company was contemporaneously appointed as
6 successor Trustee.

7 Dated: 7/31/2015

JANET K. TEMPEL, Senior Trust Officer
ATC Trust Company (formerly known as Alaska
USA Trust Company)

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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

Exhibit 3

Exhibit 3

RESIGNATION, RELEASE, ACKNOWLEDGMENT, CONSENT AND INDEMNIFICATION AGREEMENT

This Agreement ("Agreement") is executed as of this 24th day of February, 2014, by and among Alaska USA Trust Company of Anchorage, Alaska ("AUTC"), Dunham Trust Company of Reno, Nevada ("Dunham"), Christopher D. Davis of Kansas City, Missouri ("Chris"), Caroline D. Davis of Seattle, Washington ("Caroline"), and Winfield B. Davis of Los Angeles, California ("Win") (Chris, Caroline and Win are collectively referred to herein as the "Beneficiaries"), and Stephen K. Lehnardt, in his capacity as "Protector" of the BEATRICE B. DAVIS FAMILY HERITAGE TRUST, dated July 28, 2000 (the "Trust").

RECITALS

WHEREAS, AUTC is the currently serving trustee of the Trust and has stated that it is unwilling to continue to serve as trustee and wishes to resign;

WHEREAS, Article Eleven, Section 3.b. of the Trust grants the Protector the authority to remove and replace the trustee when a trustee is unable or unwilling to serve;

WHEREAS, Article Twelve, Section 7 of the Trust indemnifies the trustee of the trust from all liability in connection with its service as trustee, excepting only willful misconduct or gross negligence;

WHEREAS, Article Fourteen, Section 6 of the Trust authorizes the change of situs of the trust, upon the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under the trust, and the consent of any then-acting Protector and Trustee. Article Fourteen, Section 6 further authorizes the Protector to amend the Trust in writing so as to change situs, conform the terms of the trust so that it may achieve its purposes in the new situs; and

WHEREAS, Dunham is willing to accept its appointment as successor trustee to AUTC, expressly conditioned on the appointment of one or more outside (non-Dunham) investment advisors and/or investment trustees so that Dunham serves as a directed trustee under Nevada law.

AGREEMENT

NOW, THEREFORE, the parties hereto agree to and do hereby take the following actions:

I. Consent to Change of Situs and Amendment of Trust. The Beneficiaries hereby unanimously consent to changing the situs of the Trust from Alaska to Nevada, and further

unanimously consent to the amendment of trust by the Protector to reflect the change of sites, applicable law, provision required by Dunham, and other amendments as required to allow the trust to achieve its purposes, substantially in the form of First Amendment to the Beatrice B. Davis Family Heritage Trust attached hereto as Exhibit 1. AUTC and the Protector hereby consent to changing the situs of the Trust from Alaska to Nevada.

2. Removal of AUTC and Appointment of Dunham. Protector shall, effective February 24, 2014, take the actions described in the Memorandum of Action by Protector, substantially in the form of memorandum attached hereto as Exhibit 2.1, and shall issue written notices to AUTC and Dunham, substantially in the forms attached hereto as Exhibit 2.2 and Exhibit 2.3, to remove AUTC as Trustee of the Trust, and Appoint Dunham as successor trustee of the Trust.

3. Acknowledgment of Indemnification of Trustee. AUTC, Dunham, and the Beneficiaries hereby acknowledge the provisions of the Trust which provide for the indemnification of Trustee from liability, excepting only willful misconduct or gross negligence.

4. Miscellaneous.

a. Independent Counsel. The parties hereto acknowledge and agree that each of them has had an opportunity to review this Agreement and all Exhibits and to seek its own independent legal counsel with respect to the legal consequences of entering this Agreement.

b. Attorney's Fees. In any action brought either party to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine to be appropriate.

c. Entire Agreement. This Agreement shall not be modified, amended or changed in any respect except by written document signed by all parties hereto. This Agreement and all attachments thereto, contain the entire agreement and understanding of the parties and supersedes any and all prior negotiations, understandings and written agreements.

d. Interpretation/Venue. If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. This Agreement has been made and entered into in the State of Alaska and shall be governed by the laws of the State of Alaska. Venue for any dispute shall be Anchorage, Alaska.

e. Headings. The headings used herein are for convenience only, and shall not be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

f. Binding Effect. This Agreement shall bind and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

g. Counterparts/Facsimile Signatures. This Agreement may be executed in counterparts, which together shall constitute one instrument. The parties hereto agree to accept signatures transmitted by facsimile.

[REMAINDER OF THIS PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ALASKA USA TRUST COMPANY

By: [Signature]
Name: Janet K. Tempel
Title: Senior Trust Officer

DUNHAM TRUST COMPANY

By: [Signature]
Name: Thomas Corradini
Title: Trust Officer

MANDATORY AND DISCRETIONARY
BENEFICIARIES

[Signature]
Christopher D. Davis

Caroline D. Davis

Winfield B. Davis

PROTECTOR of the
BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000

By: _____
Stephen K. Lehnardt, Protector

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ALASKA USA TRUST COMPANY

By: _____

Name: _____

Title: _____

BUNHAM TRUST COMPANY

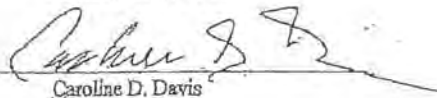
By: _____

Name: _____

Title: _____

MANDATORY AND DISCRETIONARY
BENEFICIARIES

Christopher D. Davis



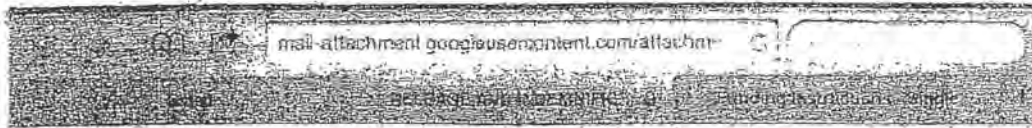
Caroline D. Davis

Winfield B. Davis

PROTECTOR of the
BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000

By: _____

Stephen K. Lehnardt, Protector



DUNHAM TRUST COMPANY

By:

Name:

Title:

MANDATORY AND DISCRETIONARY
BENEFICIARIES

Christopher D. Davis

Caroline D. Davis

Winfield B. Davis

PROTECTOR of the
BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000

By:

Stephen K. Lehnardt, Protector

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ALASKA USA TRUST COMPANY

By: _____

Name: _____

Title: _____

DUNHAM TRUST COMPANY

By: _____

Name: _____

Title: _____

MANDATORY AND DISCRETIONARY
BENEFICIARIES

Christopher D. Davis

Caroline D. Davis

Winfield B. Davis

PROTECTOR of the
BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000

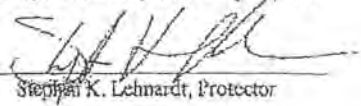
By: 
Stephen K. Lehnardt, Protector

Exhibit 4

Exhibit 4

Joshua M. Hood

Subject:

FW: Beatrice B. Davis Family Heritage Trust

From: Dennis Brislawn [mailto:dbrislawn@ohswlaw.com]

Sent: Friday, August 22, 2014 12:03 PM

To: Shanna Coressel; Joshua M. Hood

Cc: 'Stephen K Lehnardt'; Caroline D. Davis (cddavis@cddavismediation.com)

Subject: RE: Beatrice B. Davis Family Heritage Trust

I do not represent any party to the trust at present. Mr. Lehnardt requested a phone conversation with me today, in his capacity as Trust Protector, to discuss my current role, if any. I have no recollection or knowledge of pertinent information about the policies in question or any other trust investments.

In 1999 and 2000 or so I assisted attorney Lehnardt in case consulting and document drafting in his representation of Bea Davis. This year I was retained by Mr. Lehnardt, acting in his capacity as Trust Protector, to provide limited support in changing trust situs from Alaska (where I am also licensed to practice) to Nevada. I communicated with both trust companies in documenting that transfer consistent with the terms of the trust and requirements of the new jurisdiction/trustee, provided an opinion of counsel with documentation supporting trust protector action. My representation essentially concluded at that time as there was no additional service requested.

C. Dennis Brislawn, Jr., J.D. | Shareholder

Oseran Hahn, P.S.

Attn: Private Client Law Group

1430 Skyline Tower | 10900 N.E. Fourth Street | Bellevue, WA 98004

Main: (425) 455-3900 x 105 | Fax: (425) 455-9201 | E-mail: dbrislawn@ohswlaw.com

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Lehnardt & Lehnardt, LLC
20 Westwoods Drive
Liberty, MO 64068

Janet Tempel
Bea Davis Family Heritage Trust
c/o Alaska USA Trust Company
P.O. Box 196757
Anchorage, AK 99519-5757

Date: 1/20/2014

Regarding: Davis - BBD FHT
Invoice No: 39380

Services Rendered

Date	Staff	Description	Hours	Charges
12/02/2013	SKL	Email from and to N Williams regarding invoices, forward to C Davis and T Watts	0:20	\$63.00
12/03/2013	SKL	Telephone call from C Davis regarding FHT, emails to and from S Coressel at Dunham Trust and telephone call to same regarding FHT transfer (msg), Telephone call from S Coressel, discussed review of FHT and initial questions, review structure in brief, telephone call to C Davis with update	0:80	\$252.00
12/04/2013	SKL	Email from and to J Tempel regarding AUTC resignation	0:50	\$157.50
12/06/2013	SKL	Email from J Tempel regarding AC statements for FHT policy	0:30	\$94.50
12/10/2013	SKL	Emails to and from S Coressel regarding Dunham trust and change of trustee	0:40	\$126.00
12/11/2013	SKL	Email from and to S Coressel regarding review of AK trust, email to S Coressel regarding same, Telephone call from C Davis to discuss	0:40	\$126.00
12/16/2013	SKL	Email from S Coressel (Dunham Trust) regarding transfer of trusteeship, telephone call to C Davis regarding same and issues raised by S Coressel, review FHT for best method to modify	0:60	\$189.00
12/20/2013	BJM	Discuss with Stephen regarding trustee issues and trustee research regarding terms of the trust	0:40	\$86.00
12/20/2013	SKL	Emails from J Tempel regarding AUTC resignation and statements from policy	0:30	\$94.50
12/23/2013	SKL	Emails from and to D Brislawn regarding change of trustee and capital and surplus issue, telephone call to C Davis regarding same, email from J Tempel regarding change of trustee and email to J Tempel regarding status of same	0:60	\$189.00

Total Fees	\$1,377.50
	\$1,877.50

Total New Charges
Wire Transfer Instructions
Commerce Bank
1000 Walnut, Kansas City, MO 64106-3686
Lehnardt & Lehnardt, LLC
Routing # 101000019
Account # 2788305

Lehhardt & Lehhardt, LLC
20 Westwoods Drive
Liberty, MO 64068

1,332.00 Apr-14
7,514.53 Mar-14
9,125.50 Feb-14
4,960.00 Jan-14
1,377.50 Dec-13

Janet Tempel
Bea Davis Family Heritage Trust
c/o Alaska USA Trust Company
P.O. Box 196757
Anchorage, AK 99519-6757

24,309.03

Date: 2/10/2014

Regarding: Davis-BBD-FHT
Invoice No: 39428

Services Rendered

Date	Staff	Description	Hours	Charges
1/03/2014	SKL	Telephone call from C Davis regarding trustee transfer and update irrevocable instruction set for new bank accounts, discussion of method for transfer of trustee and beneficiary waivers and consent, emails from and to D Brislawn regarding coordinating same	0.90	\$283.50
1/06/2014	AJM	Call Jackson County Probate Court regarding filing issues for Davis probate matter	0.20	\$43.00
1/06/2014	SKL	Emails from and to D Brislawn and S Correse regarding transfer of trusteeship to Dunham trust and other matters	0.60	\$157.50
1/07/2014	SKL	Telephone call to C Davis returning his call of yesterday, email to C Davis regarding same, telephone call to D Brislawn (msg) regarding AK Trust modification, Telephone call from C Davis regarding trustee change and multiple related items, discussion of Dunham trust and modification	0.70	\$220.50
1/08/2014	AJM	Davis probate matters - discuss items with Jackson County probate court and draft and file continuance documents for probate proceedings	0.20	\$43.00
1/08/2014	SKL	Email from and to D Brislawn regarding trustee transfer, review FHT for Trust Protector power for change of trustee and change of jurisdiction, Telephone call from D Brislawn to discuss same and review trust restatement	0.80	\$252.00
1/10/2014	AJM	Review documents sent into office from clients, draft and submit response to Exception Letter regarding Davis probate matter	0.20	\$43.00
1/10/2014	SKL	Telephone call from J Tempel regarding trust transfer status, email from J Tempel regarding policy statements	0.40	\$126.00

1/13/2014	AJM	Phone call from Phyllis at the probate court regarding final submissions; draft additional waiver forms and submit to court.	0.20	\$43.00
1/13/2014	SKL	Telephone call to C Davis (msg); Telephone call from C Davis regarding same; email to D Brislawn regarding change of trustee (msg); review FHT for loan provisions; Telephone call from D Brislawn regarding trustee transfer considerations and best method of doing this as Trust Protector.	1.10	\$346.50
1/15/2014	SKL	Telephone calls from C Davis regarding transfer of trustee; email from J Tempel regarding transfer of trustee; email to D Brislawn regarding same; schedule telephone call with Dunham trust and Brislawn to review any items or questions.	0.80	\$252.00
1/16/2014	SKL	Telephone call to E Moseley to discuss NV; telephone call to conference with D Brislawn and S Coressel regarding change of trust; Telephone call from S Coressel regarding trust matters.	1.20	\$378.00
1/17/2014	SKL	Emails from and to D Brislawn regarding transfer of trustee; Telephone call from C Davis regarding trustee; Telephone call to D Brislawn to discuss trustee transfer and modification of trust document; email to S Coressel regarding same.	1.30	\$409.50
1/20/2014	SKL	Complete review of FHT document and email to D Brislawn for additional drafting and comments vis a vis change of jurisdiction and change of trustee, and additional work on trust.	0.80	\$252.00
1/23/2014	AJM	B Davis probate; review materials for filing and obtain final individual waivers and consents from beneficiaries.	0.30	\$84.50
1/24/2014	AJM	Probate items update and sending to client; discuss with Stephen regarding FHT next steps and client meeting.	0.40	\$86.00
1/24/2014	SKL	Emails to D Brislawn and S Coressel regarding trustee transfer and LLC items; Telephone call from J Tempel regarding transfer of trustee status; telephone call to C Davis regarding same.	1.30	\$409.50
1/27/2014	SKL	Review draft documents for change of trustee; email from D Brislawn; email to D Brislawn regarding same and my comments back; Telephone call from S Coressel regarding NV LLC discussion for NV Trust and LLC as solution to policy loans; telephone call to C Davis to discuss same; work on trust document drafts.	2.70	\$850.50
			Total Fees:	\$4,260.00
Expenses				
1/30/2014	Outside Counsel - Oseran, Hahn, Spring, Straight & Watts, P.S.			\$700.00
			Total Expenses	\$700.00

Total New Charges
Wire Transfer Instructions:
Commerce Bank
1000 Walnut, Kansas City, MO 64106-3686
Lehnardt & Lehnardt, LLC
Routing # 101000019
Account # 2768305

\$4,960.00

Lehnardt & Lehnardt, LLC
20 Westwood's Drive
Liberty, MD 21068

Janet Tempel
Bea Davis Family Heritage Trust
c/o Alaska USA Trust Company
P.O. Box 196757
Anchorage, AK 99519-6757

Date: 3/13/2014

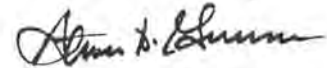
Regarding: Davis-BSD FHT
Invoice No: 39462

Services Rendered:

Date	Staff	Description	Hours	Charges
2/08/2014	SKL	Telephone call to Kathy (D Brislaw office) msg; Telephone call from Kathy regarding same, schedule telephone call to conf with D Brislaw	0.40	\$126.00
2/04/2014	SKL	Telephone call from C Davis regarding trustee change, telephone call to D Brislaw regarding same, review documents, telephone call to C Davis regarding same, telephone call to D Brislaw regarding additional items required for documents	1.10	\$346.60
2/07/2014	SKL	Telephone call from D Brislaw regarding amendment, draft questions	0.30	\$94.50
2/10/2014	SKL	Email from D Brislaw regarding trust amendment, drafts, review same and edit	2.00	\$630.00
2/12/2014	SKL	Continue editing FHT documents, email to D Brislaw regarding same, email from S Corresel regarding draft documents to Dunham acceptance committee for review and approval	2.40	\$756.00
2/13/2014	SKL	Telephone call from C Davis regarding trustee change, continue editing resignation and consent document, email to D Brislaw with changes	3.50	\$1,102.50
2/14/2014	SKL	Email to and from D Brislaw regarding attorney counsel regarding moving jurisdictions as required by trust agreement	0.40	\$126.00
2/18/2014	SKL	Prepare for and Meeting with C Davis, discuss with D Brislaw regarding Trust Distribution Advisor and trustee changes	3.20	\$1,008.00
2/19/2014	SKL	Emails from and to S Corresel regarding FHT questions	0.20	\$139.00
2/20/2014	SKL	Email from S Corresel regarding trust committee, approval of FHT transfer to Dunham Trust Company, email to S Corresel regarding same, finalize	0.90	\$283.50

		documents for transfer to Dunham and prepare packages for sending to C Davis for signature, review with A McCarter, email from and to D Brislaw and S Corresel regarding attorney letter and final documents for signature comments.		
2/21/2014	SKL	Telephone call from C Davis and T Watts regarding P Fordham questions on P Notes, review file and email to C Davis and T Watts regarding same, emails from and to D Brislaw and S Corresel regarding trustee transfer and final comments on documents, finalize documents for signature, emails to C Davis regarding same, draft Trustee Distribution Advisor letter to FHT beneficiaries	1:30	\$408.50
2/25/2014	SKL	Email to C Davis regarding final documents for signature by all beneficiaries for FHT trustee transfer and trust modification by trust protector	0:40	\$126.00
2/26/2014	AJM	Davis probate - finalize collection of documents and e-file with court	0:40	\$66.00
2/26/2014	SKL	Email from S Gallup regarding Caldwell statements	0:20	\$63.00
2/27/2014	AJM	FHT shutdown document prep	2:70	\$580.60
2/27/2014	SKL	Emails from and to D Brislaw regarding attorney letter, review and comment on same, and on Trust Distribution Advisor letter comments, email from T Watts regarding C Davis signed documents	0:20	\$220.50
2/28/2014	AJM	Nevada LLC updates and loan modification review issues	0:60	\$9.00
2/28/2014	SKL	Emails from and to C Davis and Caroline Davis and T Watts regarding beneficiary signature pages regarding trustee change, Telephone call from C Davis regarding questions by Caroline, telephone call to R Inoye regarding assistance in Japan with Win's signature, telephone call to C Davis regarding same	1:20	\$378.00
			Total Fees:	\$8,525.50
Expenses				
2/28/2014		Outside Counsel - Oseran, Hahn, Spring, Straight, & Watts, P.S.		\$2,600.00
			Total Expenses	\$2,600.00
Total New Charges				\$9,125.50
Wire Transfer Instructions: Commerce Bank 1000 Walnut, Kansas City, MO 64106-3636 Lehnardt & Lehnardt, LLC Routing # 101000019 Account # 2788305				

Exhibit 13


CLERK OF THE COURT

Mark A. Solomon, Esq.
Nevada Bar No. 418
msolomon@sdfnvlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
jhood@sdfnvlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline Davis, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

Case No.: P-15-083867-T
Dept.: Probate (26)

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

Hearing Date: April 22, 2015
Hearing Time: 9:00 A.M.

**ADDENDUM TO AND WITHDRAWAL OF CERTAIN STATEMENTS REFERENCED
IN THE:**

- (1) **OBJECTION TO PETITION FOR RECONSIDERATION OF THE ORDER
DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION OVER THE
BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY 28, 2000, AS
AMENDED ON FEBRUARY 24, 2014, TO ASSUME JURISDICTION OVER
CHRISTOPHER D. DAVIS AS INVESTMENT TRUST ADVISOR, STEPHEN K.
LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM
TRUST COMPANY AS DIRECTED TRUSTEE, AND FOR IMMEDIATE
DISCLOSURE OF DOCUMENTS AND INFORMATION FROM CHRISTOPHER
D. DAVIS; AND COUNTERPETITION FOR SANCTIONS;**
- (2) **AMENDMENT AND SUPPLEMENT TO COUNTERPETITION FOR
SANCTIONS; AND**
- (3) **MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3)**

Mark A. Solomon, Esq. ("Mr. Solomon") and Joshua M. Hood, Esq. ("Mr. Hood"), of the
law firm of Solomon Dwiggin & Freer, Ltd. hereby submit the following Addendum To: (1)
Objection To Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To
Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As

Amended On February 24, 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate Disclosure Of Documents And Information From Christopher D. Davis; And Counterpetition For Sanctions; (2) Amendment And Supplement To Counterpetition For Sanctions; And (3) Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3) (the "Addendum"). This Addendum is based on the Memorandum Of Points And Authorities, any exhibits attached hereto, and any oral argument that will be heard in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural History

Caroline D. Davis ("Ms. Davis") filed her Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis, filed with this Court on February 10, 2015 (the "Petition"). Pursuant to the Second Amended Notice Of Hearing on the Petition, filed with this Court on March 5, 2015, the hearing was scheduled to be heard on April 22, 2015, at 9:00 a.m.

Christopher D. Davis ("Christopher") subsequently filed his Motion To Dismiss¹ on March 3, 2015. Pursuant to Christopher's Notice on the Motion To Dismiss, filed on March 23, 2015, the hearing on Christopher's Motion To Dismiss was also scheduled to be heard before this Court on April 22, 2015, at 9:00 a.m. In response, Ms. Davis filed her Opposition to Christopher's Motion To Dismiss on April 13, 2015.²

¹ Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) And NRCP 19 (the "Motion To Dismiss").

² Opposition To Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) and NRCP 19 (the "Opposition").

Christopher thereafter filed a Reply³ to Ms. Davis' Opposition on April 20, 2015. Although the Reply was technically filed in accordance with the Nevada Electronic Filing And Conversion Rules, both Mr. Solomon and Mr. Hood were not aware of the Reply until after the April 22, 2015 Hearing, when it was received by the law office of Solomon Dwiggins & Freer, Ltd. on April 24, 2015, via U.S. Mail. Indeed, the Reply that was received via U.S. Mail on April 24, 2015 does not contain any designation or notification that the Reply was electronically filed. See, Reply received via U.S. Mail on April 24, 2015, a true and correct copy of which is attached hereto as **Exhibit 1**. Additionally, page 24 of the Reply, entitled "**CERTIFICATE OF SERVICE**", does not indicate that the Reply was electronically filed pursuant to the appropriate rule. Rather, page 24 provides as follows:

"I hereby certify that I am an employee of Anthony L. Barney, Esq., and not a party to this action. I further certify that except as otherwise noted on April 20, 2015, I served the foregoing **CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19** by *first class US mail*, postage prepaid, upon the following persons or entities:"⁴

Consequently, Mr. Solomon's statement during the April 22, 2015 Hearing regarding that being the first date and time he had been made aware of any arguments related to Christopher's wife, Tarja Davis ("Tarja"), being a purported beneficiary the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014 (the "Trust") were not intentional, material misrepresentations to this Court. Indeed, the Court itself noted at page twenty-four (24) of the transcript from the April 22, 2015, Hearing that "I have no Reply from Mr. Baney (sic)". See, April 22, 2015, Hearing Transcript, p. 24, a true and correct copy of which is attached hereto as **Exhibit 2**. Additionally, any statements made by Mr. Solomon and/or Mr. Hood in any pleadings before this Court that it was not until the April 22, 2015, Hearing that Christopher, at the April 22, 2015, Hearing first made his arguments that there was not an acting Alaska Trustee serving to provide the requisite consent to transfer the Trust's situs were made by Mr. Solomon

³ Christopher D. Davis' Reply To Caroline Davis' Opposition To His Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19 (the "Reply").

⁴ See, Ex. 1, at pp. 24-25. (Emphasis added at: "*first class US mail*").

1 and Mr. Hood without actual knowledge of the electronic filing of the Christopher's Reply brief.
2 Indeed, it was not until the Reply, sent via U.S. Mail, was received on April 24, 2015 (two (2)
3 days after the April 22, 2015 Hearing) that Mr. Solomon or Mr. Hood were aware of any
4 arguments raised in Christopher's Reply related to Tarja or the lack of an Alaska Trustee.

5 Based upon the fact that: (1) Mr. Solomon and Mr. Hood were unaware of the electronic
6 filing of the Reply on April 20, 2015; and (2) the Reply received via U.S. Mail, **which contained**
7 **no indication that it was electronically filed**, was not physically received by the law office of
8 Solomon Dwiggins & Freer, Ltd. until April 24, 2015, Mr. Solomon and Mr. Hood continued to
9 reiterate that Christopher failed to raise any arguments related to Tarja being a purported
10 beneficiary of the Trust or that there was no acting Alaska Trustee until the April 22, 2015
11 Hearing.

12 II. Addendum And Withdrawal Of Certain Statements.

13 Although Mr. Solomon and Mr. Hood did not intentionally misrepresent the facts and
14 statements made in: (1) Objection To Petition For Reconsideration Of The Order Dated May 19,
15 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust,
16 Dated July 28, 2000, As Amended On February 24, 2014, To Assume Jurisdiction Over
17 Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust
18 Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate
19 Disclosure Of Documents And Information From Christopher D. Davis; And Counterpetition For
20 Sanctions; (2) Amendment And Supplement To Counterpetition For Sanctions; And (3) Motion
21 To Amend Or Modify Order Pursuant To NRCP 60(b)(3) (collectively, the "Pleadings"), Mr.
22 Solomon and Mr. Hood hereby withdrawal from said Pleadings any reference that: (1) service of
23 the Reply was not received prior to the April 22, 2015 Hearing; (2) that the arguments related to
24 Tarja being a purported beneficiary of the Trust were not received prior to the April 22, 2015
25 Hearing; and (3) that there was not an acting Alaska Trustee serving to provide consent to the
26 transfer of situs of the Trust from Alaska to Nevada.

27 However, it is nevertheless noted that it was entirely improper for Christopher to raise his
28 new factual assertions and arguments in his Reply brief. Indeed, Christopher's introduction of

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
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1 new factual assertions and arguments is procedurally improper as it well exceeds the scope and
2 purpose of a reply brief and prejudiced Ms. Davis by depriving her of the opportunity to
3 adequately respond to the issues and evidence raised therein. *See, e.g., Baugh v. City of*
4 *Milwaukee*, 823 F. Supp. 1452, 1457 (E.D. Wis. 1993), *aff'd*, 431 F.3d 1510 (7th Cir. 1994)
5 (“Where new evidence is presented in either a party’s reply brief or affidavit in further
6 support...the district court should not permit the nonmoving party to respond to the new matters
7 prior to disposition of the motion or else strike that new evidence.”); *White v. Kent Med. Ctr.,*
8 *Inc. P.S.*, 810 P.2d 4, 8 (Wash.App. 1991) (“Allowing the moving party to raise new issues in its
9 rebuttal material is improper because the nonmoving party has not opportunity to respond. It is
10 for this reason that, in the analogous area of appellate review, the rule is well settled that the court
11 will not consider issues raised for the first time in a reply brief.”); *see generally, Weaver v. State,*
12 *Dep’t of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d, 198-99 (Nev. 2005) (stating that this court
13 need not consider issues raised for the first time in an appellant’s reply brief).

14 Respectfully submitted by:

15 SOLOMON DWIGGINS & FREER, LTD

16 

17 Mark A. Solomon, Esq. (Bar No. 418)

18 9060 Cheyenne Avenue

19 Las Vegas, Nevada

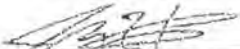
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SOLOMON
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TRUST AND ESTATE ATTORNEYS



CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of September 2015, I mailed a true and correct copy of the above and foregoing ADDENDUM TO AND WITHDRAWAL OF CERTAIN STATEMENTS REFERENCED IN THE: (1) OBJECTION TO PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY 28, 200, AS AMENDED ON FEBRUARY 24, 2014, TO ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE AND FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS AND COUNTERPETITION FOR SANCTIONS; (2) AMENDMENT AND SUPPLEMENT TO COUNTERPETITION FOR SANCTIONS; AND (3) MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRC 60(b)(3) to the following persons at their last known address, by depositing a copy of the same in the United States Mail, addressed as follows and further did eserve via the Court's electronic system to those listed on the service page of the Wiznet System pursuant to EDCR 8.05(a), 8.05(f) and Rule 9 of NEFCR:

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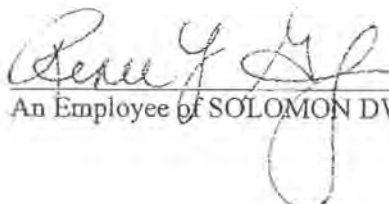
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An Employee of SOLOMON DWIGGINS & FREER, LTD.

EXHIBIT 1

EXHIBIT 1

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12 *Attorneys for Christopher D. Davis*

13 EIGHTH JUDICIAL DISTRICT COURT
14 CLARK COUNTY, NEVADA

15
16 In the matter of:

Case No.: P-15-083867-T

17 The BEATRICE B. DAVIS FAMILY HERITAGE
18 TRUST, dated July 28, 2000, as amended on
19 February 24, 2014.

Dept. No.: 26

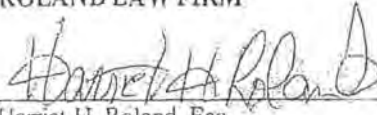
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23 CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS
24 MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19

25 CHRISTOPHER D. DAVIS ("Christopher"), by and through his attorneys HARRIET H.
26 ROLAND, Esq., of the ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law
27 office of ANTHONY L. BARNEY, LTD., and hereby submits his reply to Caroline Davis'
28 ("Caroline") opposition to his motion to dismiss the Petition of Caroline Davis ("Caroline")

1 pursuant to Nevada Rules of Civil Procedure 12(b) and for failure to join an indispensable party
2 under NRCP 19. This pleading is based on the Memorandum of Points and Authorities attached
3 hereto, any exhibits attached hereto, and any oral argument that will be heard in this matter.
4

5 DATED this 17th day of April, 2015.

6 Respectfully Submitted,
7 ROLAND LAW FIRM

8 
9 Harriet H. Roland, Esq.
10 Attorney for Christopher D. Davis
11
12
13
14

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3 MEMORANDUM OF POINTS AND AUTHORITIES

4 I. FACTS PRESENTED

5 Christopher Davis hereby incorporates the Facts Presented in his Motion to Dismiss
6 Pursuant to NRCP 12(b) and NRCP 19 ("Original Motion") as if set forth fully herein. By way
7 of summary, he alleges:

8 Christopher's mother, Beatrice B. Davis ("Beatrice"), a life-long resident of Missouri,
9 created several trusts and did extensive, sophisticated estate planning after her husband Ilius W.
10 Davis died. Her long-time attorney was the Missouri firm of Lehnhardt & Lehnardt. She
11 created the Beatrice B. Davis Revocable Trust, in Missouri, on April 4, 1990, (the Revocable
12 Trust) and the Beatrice B. Davis Family Heritage Trust (the "FHT"), in Missouri, on July 28,
13 2000. She participated in the Davis Family Office, a Missouri limited liability company, formed
14 on November 3, 1999. None of these entities had any Nevada contacts until the purported
15 appointment of Dunham Trust Company on February 24, 2014.
16

17
18 Christopher Davis ("Christopher") and his wife Tarja are residents of Missouri. Caroline
19 Davis is a resident of Washington. (Caroline and Christopher serve as co-trustees of the
20 Revocable Trust which is administered under Missouri law, in Missouri.) Winfield Davis and
21 his son Ace Davis are residents of Japan, but citizens of the United States. Stephen Lehnardt, the
22 Trust Protector, is a resident of Missouri. Alaska Trust Company and its successor in interest,
23 Alaska USA Trust Company, do business in Alaska and, upon information and belief, have no
24 Nevada contacts. Among all the entities and assets, the only contact with Nevada is Dunham
25 Trust Company, ("Dunham") which is alleged to be currently acting as directed trustee of the
26 FHT. Even the Ashley Cooper insurance policy (the product of a tax-free exchange from the
27
28

1 year 2000), which is the primary asset of the trust and the subject matter of Caroline's petition,
2 is not administered in Nevada. It is administered under a custodian domiciled in Puerto Rico,
3 and its investment advisor is a Canadian broker-dealer.

4
5 Dunham created FHT Holdings, LLC, ("FHT Holdings") on March 28, 2014, and
6 transferred the insurance policy to it. Dunham is the 100% owner/member of FHT Holdings.
7 Christopher is the manager, and Dunham purportedly acts as "directed trustee" pursuant to the
8 purported First Amendment to the FHT dated February 24, 2014. Upon information and belief,
9 the directed trustee and LLC structure was put into place by Dunham in an attempt to shield
10 itself from the fiduciary liability inherent in holding large assets without diversification.

11
12 Christopher Davis, as manager of FHT Holdings, has no power over the Ashley Cooper
13 policy, or over the Puerto Rico custodian, or over the Canadian broker-dealer investment
14 adviser. Upon information and belief, the sole purpose of his appointment and the formation of
15 FHT Holdings, LLC, was to shield Dunham from fiduciary liability for its action or inaction.
16 Christopher receives no compensation or benefit in his position as manager of FHT Holdings.

18 II. LEGAL AUTHORITY AND ARGUMENT

19 A. Lack of Subject Matter Jurisdiction Invalidates Nevada's Jurisdiction Due To 20 Absence of Conditions Precedent to Change of Situs from Alaska to Nevada.

21
22 The entirety of Caroline's petition and her opposition to the motion to dismiss, and her
23 request for the Nevada court to assert jurisdiction over Christopher and the Revocable Family
24 Trust, rests defectively upon the presumed validity of the change of situs of the Beatrice B.
25 Davis Family Heritage Trust dated July 28, 2000 (the "FHT") from Alaska to Nevada,
26 purportedly accomplished by the February 24, 2014 First Amendment.

1 It is important to note that the question of the validity of the change of situs is different
2 than the question of the validity of the First Amendment. Although Caroline asserts that the
3 purported First Amendment is "presumed to be valid unless proven otherwise", all the facts and
4 evidence prove the change of situs (a condition precedent to the amendment) was invalid and
5 not allowed under the terms of the FHT. The validity of the change of situs of the FHT (and
6 presumably the amendment purporting to accomplish it) must be determined under the express
7 mandate of Article 14, Section 6 of the FHT.

8
9 Section 6, Paragraph 1, of the FHT provides the requirements for a change of situs as:

10
11 Except as expressly provided herein, the situs of this agreement or any subtrust
12 established hereunder may be changed by the unanimous consent of all of the
13 beneficiaries then eligible to receive mandatory or discretionary distributions of net
14 income under this agreement or such subtrust, with the consent of any then-acting
Protector and the Trustee thereof, which shall be given only after Trustee has obtained
advice from counsel as to the tax and other consequences of a change in situs.¹

15 The conditions precedent to the change of situs require that all of the beneficiaries then eligible
16 to receive mandatory or discretionary distributions must consent to the change of the situs. In
17 addition, both the FHT Trust Protector and Trustee must consent to the change of situs after the
18 Trustee has been able to meet with an attorney to discuss the tax and other consequences of a
19 change in situs, and after all the current income beneficiaries of the FHT have consented. These
20 conditions did not occur. Therefore the situs of the FHT remains in Alaska until the conditions
21 are performed.

22
23 Caroline recognizes that Tarja Davis is a discretionary beneficiary of the FHT. This is
24 immediately clear by a simple review of the terms of the FHT² and by a simple review of the
25

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28 ¹ See Article 14, Section 4, Page 14-7, attached as Exhibit 1 to Caroline Davis's Original Petition (emphasis added).

² See Trust, Article Three, Section 1, Page 3-1; See also Article Eight, Section 3.d., Page 8-4, See also Article 8-
4.b.1-2, Pages 8-12 and 8-13 attached as Exhibit 1 to Caroline Davis' Original Petition.

1 certificate of service filed by Caroline.³ Furthermore, Caroline asserts and provides written
2 proof that Alaska USA Trust Company ("Alaska USA") resigned as Trustee on December 5,
3 2013. The resignation of Alaska USA as Trustee occurred almost three months prior to the
4 execution of the purported first amendment on February 24, 2014 and the appointment of
5 Dunham Trust Company ("Dunham") as successor Trustee.
6

7 There is no evidence that anyone or any entity assumed the office of Trustee and was in
8 authority to act and provide consent of the Trustee during the period between the resignation of
9 Alaska USA in December 2013 and the purported first amendment attempting the change of
10 situs and appointing Dunham almost three months later. In contravention of the terms of the
11 FHT, there was a purported change in situs made while there was no acting Trustee to provide
12 informed consent to the change in situs. Further, it appears everyone overlooked the necessity
13 of obtaining the consent Christopher's wife, Tarja, who was and is a beneficiary entitled to
14 discretionary distributions. Tarja did not consent to the change in situs, and her signature cannot
15 be found on any of the documents purporting to achieve the change in situs to Nevada and
16 Dunham's appointment as successor trustee.
17

18 The law of Alaska, as the situs and place of administration of the FHT before the
19 attempted change of situs, and the place of residence of Alaska USA Trust Company, the then
20 Trustee, governs the validity of the First Amendment's change of situs to Nevada, the
21 appointment of Dunham, and the other terms of the First Amendment, as well as the validity of
22 the Trust and the First Amendment itself.
23
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27
28 ³ See Certification of Service for Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP (12)(b) and NRCP 19 dated April 13, 2015 (This correction was made by Caroline Davis after Christopher Davis filed his Motion to Dismiss alerting the parties as to the defectiveness of both the service of process and the defective nature of the purported first amendment).

1 Article 12, Section 3 of the FHT requires "Any proceedings to seek judicial instructions
2 or a judicial determination shall be initiated by my Trustee in the appropriate state court having
3 original jurisdiction of those matters relating to the construction and administration of trusts.
4 Because under the terms of the FHT, questions of validity must be determined under Alaska
5 law, and Alaska is the venue which has original jurisdiction of the FHT until the attempted
6 change of situs is accomplished, and an Alaska court must determine whether the change of
7 situs and the First Amendment were valid. Only then should the Nevada court take jurisdiction
8 over the FHT, and only if jurisdiction is then appropriate.
9

10 Alaska law allows for modification of an irrevocable trust upon consent, but by court
11 approval. AS 13.36.360 Modification or Termination of Irrevocable Trust By Consent, reads:
12

13 (a) Except as otherwise provided by this section, on petition by a trustee,
14 settlor, or beneficiary, a court may modify or terminate an irrevocable trust if all of the
15 beneficiaries consent and if continuation of the trust on the existing terms of the trust is
16 not necessary to further a material purpose of the trust. However, the court, in its
17 discretion, may determine that the reason for modifying or terminating the trust under
18 the circumstances outweighs the interest in accomplishing the material purposes of the
19 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust
20 interests under AS 34.40.110 may constitute a material purpose of the trust under this
21 subsection, but is not presumed to constitute a material purpose of the trust under this
22 subsection.
23

24
25 (b) Unless otherwise provided in the trust instrument, an irrevocable trust
26 may not be modified or terminated under this section while a settlor is also a
27 discretionary beneficiary of the trust.
28

1 (c) If a beneficiary other than a qualified beneficiary does not consent to a
2 modification or termination of an irrevocable trust that is proposed by the trustee, settlor,
3 or other beneficiaries, a court may approve the proposed modification or termination if
4 the court determines
5

6 (1) if all the beneficiaries had consented, the trust could have been
7 modified or terminated under this section; and
8

9 (2) the rights of a beneficiary who does not consent will be adequately
10 protected or not significantly impaired.

11 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

12 (1) on the date the beneficiary's qualification is determined, is entitled or
13 eligible to receive a distribution of trust income or principal; or

14 (2) would be entitled to receive a distribution of trust income or principal
15 if the event causing the trust's termination occurs.
16

17 It is well settled that a trust may only be modified in accordance with its specific terms.⁴

18 Where a trust instrument requires the consent of specific parties in order for an amendment to be
19 valid, the lack of consent will invalidate a purported amendment.⁵ This required consent
20 demonstrates the importance of having Alaska USA Trust Company ("Alaska USA") or their
21 successor-in-interest (and predecessor trustee) Alaska Trust Company demonstrate authority and
22 consent to change the situs of the FHT from Alaska to Nevada, because unless this evidence of
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26 ⁴ *Dallinger v. Abel*, 199 Ill. App. 3d 1057, 1059-1060 (Ill. App. Ct. 1990) citing *Parish v. Parish* (1963), 29 Ill. 2d
27 141, 149, 193 N.E.2d 761, 766. (It is elementary that if the method of exercising a power of modification is
described in the trust instrument, the power can be asserted only in that manner.)

28 ⁵ *Williams v. Springfield Marine Bank*, 131 Ill. App. 3d 417, 475 N.E.2d 1122 (1985) (This rule was applied where
the trust instrument permitted amendment by the settlors, the appellate court holding that an attempted amendment
by only one settlor, after the other had died, was invalid.); See also Restatement (Second) of Trusts § 331,
Explanatory Notes, comment e, at 144 (1959) ("If the settlor reserves a power to modify the trust only with the

1 consent is provided, the FHT situs cannot be changed. The consents of some of the beneficiaries
2 and the FHT Trust Protector was not enough to meet the strict requirements of the condition
3 precedent (i.e. change of situs) for the purported First Amendment.
4

5 Caroline has provided no evidence of any written or even oral consent of any trustee
6 authorizing the FHT's change in situs prior to Alaska USA's resignation on December 5, 2013.
7 She has not provided any evidence of Tarja having consented to the change of situs. She has not
8 provided any evidence of the unanimous agreement of Beatrice Davis's children to appoint a
9 successor trustee in the event the Trust Protector fails to appoint a Successor Trustee within
10 thirty (30) days after Alaska USA resigned,⁶ and even if they had, the successor trustee and
11 Tarja would have had to consent to the change of situs. Therefore, the change of situs under the
12 purported First Amendment must be presumed invalid until such evidence of an acting Trustee's
13 consent can be produced and evidence of the Trustee's and all beneficiaries' consent of the
14 change in situs can be obtained. Further and most importantly, such a dispute, which includes
15 the validity of the First Amendment, must be brought in Alaska, as the original situs of the FHT
16 before the purported First Amendment and the attempted change of situs.
17

18 Christopher asserts that the change of situs is invalid because of the lack of consent of all
19 beneficiaries and the absence of action by an Alaska Trustee. The determination of the validity
20 of the purported First Amendment and the change of situs (as well as its other provisions) is a
21 condition precedent to the Nevada court taking jurisdiction over the FHT. That determination
22 must be made under Alaska law before the Nevada court can assert jurisdiction over the FHT.
23 Caroline alleges that the FHT Trust Protector validly appointed Dunham as successor Trustee on
24
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26

27 consent of one or more of the beneficiaries, or of the trustee, or of a third person, he cannot modify the trust without
28 such consent.").

⁶ See Trust, Article Eleven, Section 3(c), Page 11-3, attached as Exhibit I to Caroline Davis's Original Petition.

1 February 24, 2014, citing the second paragraph of Article 14, Section 6 as his authority to do so,
2 however as noted herein, she omitted the preceding paragraph relating to the change of situs
3 which is the condition precedent before an amendment can be authorized. Although the FHT
4 authorizes the Trust Protector and/or the beneficiaries to appoint a successor trustee in certain
5 circumstances, the change of situs could only be authorized upon consent by all beneficiaries,
6 and approval by a trustee in the original situs of Alaska
7

8 When the terms of a trust are not followed, the resulting actions based upon such
9 deviation may be invalidated.⁷ Under the terms of the FHT, discussed above, it was not
10 Dunham's consent that was required to change the situs. The timing of the purported First
11 Amendment and Dunham's consent put the cart before the horse. In order to move the situs of
12 the FHT from Alaska to Nevada or any other jurisdiction, all the beneficiaries had to consent,
13 the "then acting Trust Protector" had to consent, and the Alaska trustee had to consent only after
14 obtaining the requisite legal advice. Only then could a change in situs occur. (This is a
15 different and more demanding standard than merely changing the trustee to another Alaska
16 trustee.) Another Alaska Trustee could have been appointed, and the consent of all the
17 beneficiaries could have been obtained; then upon agreement by the Trustee, all beneficiaries,
18 and the Trust Protector, the situs could have been validly changed. However, the FHT's
19 purported First Amendment attempts to change the FHT's situs while concurrently appointing
20 Dunham as a "directed trustee". Again, Dunham's valid appointment as a Trustee, and its
21 consent to serve, could have been achieved only after the situs of the FHT was changed from
22 Alaska to Nevada. Had all of the beneficiaries consented, the decision to change the situs may
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28 ⁷ *Northwestern University v. McLoraine*, 108 Ill. App. 3d 310, 438 N.E.2d 1369 (1982) (This rule was applied
where the settlor had neglected to follow the terms of the trust which required for an amendment only that the
settlor put the amendment in writing, sign it, and deliver it to the trustees during the settlor's lifetime.)

1 have found a more stable legal basis had Dunham been doing business in Alaska. But as a
2 Nevada trustee, Dunham would have had to already be in tenure as trustee, procured advice
3 from legal counsel about the tax and other consequences of moving the FHT situs, and then
4 authorized the actual change in FHT's situs from Alaska. The requisite consent of an authorized
5 Alaska trustee and all the beneficiaries does not appear in the purported First Amendment or in
6 any other document, and Caroline Davis does not provide any other evidence of a Trustee's
7 consent between December 2013 and February 2014. The condition precedent of all the
8 beneficiaries' consents and the Alaska trustee's consent was not met in order to provide
9 authority to then acting Trust Protector, Stephen Lenhardt, to change the situs of the FHT
10 without the consent of an Alaska Trustee as required by the terms of the FHT. The FHT's
11 purported First Amendment's change of situs is, therefore, invalid.

14 Establishing the validity of the FHT's purported First Amendment under NRS 164.010
15 without invoking Alaska jurisdiction is Caroline's "attempted foothold" in her urging for this
16 Court to take improper *in rem* jurisdiction over the FHT, FHT Holdings, and personal
17 jurisdiction over Dunham, but more importantly it is the defective basis upon which she urges
18 this Court to assume jurisdiction over Christopher in all his capacities within any family entity,
19 foreign or domestic, including the Revocable Trust and the Davis Family Office which are
20 residents of Missouri. Even assuming *arguendo* that jurisdiction is proper through the untenable
21 theory that the the First Amendment is valid, this court could only obtain jurisdiction over the
22 FHT. Thus, Caroline is more than willing to overlook the FHT's requirements for change of
23 situs and the jurisdictional prerequisites, and arrive at the erroneous conclusion that somehow
24 Christopher and Mr. Lenhardt "consented to the jurisdiction of this Court by operation of law."
25 Noticeably, Caroline cites NRS 163.5555 as authority for this statement but ignores the
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27
28

1 requirement that the FHT be subject to the laws of Alaska, which, is clearly in dispute precisely
2 because of the invalidity of the purported First Amendment's change of the FHT's situs to
3 Nevada.

4
5 It is clear that even during the life of Beatrice B. Davis, the situs of the FHT could not be
6 changed unless her Alaska trustee had obtained an opinion of legal counsel to the effect that the
7 change in situs would not impact adversely on the spendthrift provisions of the FHT.⁸ The
8 express purpose of the FHT was to support and protect Beatrice's family for generations to
9 come, through the protection for the shares allocated to each beneficiary, so that no situation
10 would be created that could expose any of the beneficiary's shares to the claims of creditors
11 including amongst any beneficiary acting as a creditor to another.⁹ The attempted appointment
12 as Dunham as a directed trustee shedding all its liability onto Christopher clearly contravened
13 her intent.
14

15
16 Beatrice Davis, the trustmaker, was very clear that even if a power was granted to her
17 Trustee by applicable state and federal statutes, it would be strictly limited to any express
18 limitations or contrary directions in the FHT.¹⁰ Any amendment to change the situs of the FHT
19 would require the opinion of legal counsel as to its effect and be curtailed, if applicable, by the
20 terms of the FHT. This protection is implicit in the requirement that the advice of legal counsel
21 be sought by the Trustee prior to a change in situs of the FHT.¹¹ There is simply no evidence to
22 suggest that such an opinion was obtained by the Alaska Trustee prior to the purported change
23 in FHT situs.
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27 ⁸ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

28 ⁹ See Trust, Article 8, Section 3 (b), Page 8-3.

¹⁰ See Trust, Article Thirteen, Section 3.z, Page 13-19.

¹¹ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

1 Because of the lack of evidence of the required consent by the Alaska trustee and all the
2 beneficiaries, and because the Alaska trustees initiated and completed all the transactions for
3 which Caroline is demanding an account, the presence of the predecessor Alaska trustees acting
4 prior to February 24, 2014 (the date of the purported First Amendment) is indispensable to this
5 matter, in order to determine the validity and consent issues discussed herein. Without the
6 indispensable party(ies) being joined, including Alaska Trust, the predecessor trustee and
7 successor in interest of Alaska USA, and/or another Alaskan successor after December 5, 2013,
8 the matter cannot properly adjudicated.
9

10
11 **B. Indispensible Parties to this Action and Caroline's Failure to Provide Notice or**
12 **Service**

13 Caroline alleges that "During their tenure as Trustee, both Alaska¹² and Alaska USA
14 distributed approximately \$2,164,744.68, from loans taken against the Ashley Cooper Life
15 Insurance Policy, to Chrstioher individually, and as a co-trustee with Caroline of the Beatrice B.
16 Davis Revocable Living Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as
17 Manager of the Davis Family Office, a Missouri limited liability company (the "Davis Office").
18 Caroline apparently believes that the Alaska trustees which allegedly procured more than two
19 million dollars in policy loans from Ashley Cooper Life Insurance Policy for various FHT
20 purposes, including making loans to Beatrice and paying their own fees, are not indispensable
21 parties, simply because she alleges that, Mr. Davis, in his individual capacity, and in capacity as
22 Trustee of the Revocable Trust, and as Manager of the Davis Office, was the only individual to
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¹² Alaska Trust Company was the predecessor trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 prior to Alaska USA Trust Company.

1 receive distributions as a result of such loans and the only one privy to the information sought
2 by Ms. Davis,...¹³ Her allegation is misplaced.

3 Caroline apparently believes that neither Beatrice, nor the Alaska trustees, nor any other
4 entity, were the recipients of any of the FHT funds borrowed, distributed, or otherwise disbursed
5 from the Ashley Cooper Life Insurance Policy, which based upon the administration expenses
6 by Alaska and/or Alaska USA or the Trust Protector is improbable at best. Under Alaska law
7 and almost every other jurisdiction in the United States, a trustee is entitled to fees, and the
8 mandate of an accounting for trust assets is directed to the trustee that actually administered the
9 trust funds or assets, not to a beneficiary or other creditor or debtor of the trust.¹⁴ In this case,
10 those trustees required to account would be Alaska Trust and Alaska USA (now merged into
11 Alaska USA) and they are the only ones who could account for these transactions, and whether
12 or not they received any of those funds including but not limited to their administration costs or
13 other investment expenses, as well as for what purposes the loans, distributions, or
14 disbursements were made. Because only they would have such information, they are a
15 necessary and indispensable party. Caroline's request would greatly prejudice and unduly
16 burden Christopher to attempt secure information from and in the possession of the prior
17 trustees in Alaska for documentation that Caroline desires through a proceeding in Nevada,
18 during the time that she had co-equal status with him as a beneficiary. Alaska and/or Alaska
19 USA would be the proper parties from whom to request her desired information.

20 Notably, Caroline alleges that Dunham Trust Company is an indispensable party, having
21 allegedly received a mere \$25,000 of the total amount of policy loans (presumably for its fees
22 and expenses) while Alaska and Alaska USA are not indispensable parties after having
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¹³ See Opposition at 7:20-22.

1 allegedly received and distributed \$2,164,744.68 as well as allegedly transferring all the assets
2 of the FHT to Dunham. Interestingly, the information Caroline Davis is requesting would be in
3 the possession of the two Alaska trustees that she claims are not indispensable, which is an
4 unreasonable argument. It is unclear if Caroline even bothered to request an accounting from
5 either Alaska Trust or Alaska USA concerning their alleged receipt and distribution of
6 \$2,164,744.68, or from Dunham regarding the \$25,000 that was allegedly loaned during
7 Dunham Trust Company's alleged trusteeship before rushing to this court for a remedy. As a
8 beneficiary, she could have easily requested this information from these trustees without filing
9 the present court action.
10

11
12 Because of her rush to court without apparently requesting these documents from the
13 trustees, Caroline now attempts twice to indicate that she is "not now objecting to the loans and
14 distributions being made or claiming any breach of fiduciary duty..." or she "is not now
15 claiming any willful misconduct or gross negligence by Alaska or Alaska USA."¹⁵ However,
16 she has asked this court to assume jurisdiction over the Nevada trustee, the FHT, the Trust
17 Protector and trust adviser, and if she succeeds, she will file any future action in this same
18 Nevada case. Therefore, her allegation that "Alaska and Alaska USA have no interest in the
19 outcome of the relief being sought by Ms. Davis in her Petition" is incorrect. Alaska and Alaska
20 USA would have every interest in the outcome of this action because they were trustees of the
21 Trust who made the trust loans which are the subject of Caroline's concerns, and over which she
22 has asked this Court to exercise *in rem* jurisdiction. Furthermore, they were trustees for the time
23 periods in which Caroline seeks all information and, therefore, logically any information and/or
24 claims arising from the information in Alaska and Alaska USA's possession is relevant to them.
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¹⁴ See Alaska Statute 13.36.080; See also NRS 164.015 and NRS 153.031(1)(h).

1 Relying on the purported validity of the First Amendment to the FHT, Caroline comes to
2 the misleading conclusion that, "[because] Dunham Trust lacked the authority to act, the transfer
3 of the Ashley Cooper Life Insurance Policy must have been done at the direction of Mr. Davis,
4 as Investment Trust Advisor." Noticeably, Caroline removes any reference to the Alaska or
5 Alaska USA Trustees who would have the information or approved any alleged transfers and
6 have the information pertaining thereto. Caroline freely omits information to wrongfully obtain
7 the information she seeks. She further ignores that the manager of an LLC wholly owned by
8 the Trustee who is a beneficiary of the trust would not have the authority to transfer the policy
9 to itself. Caroline leaps to her finger-pointing apparently without bothering to request the
10 transfer documents either from Dunham or the Puerto Rico custodian.
11

13 Caroline is simply attempting to gain access to records that she could request from the
14 parties that she claims are not indispensable, and to delve into Christopher's personal affairs.
15 She has asked for an accounting from him as to the use of all the loan proceeds, disbursements
16 or distributions from the FHT, without regard to the entity or person who in fact was the
17 borrower or recipient. It is a question for the Alaska trustee as to whether the loans or
18 distributions were made in accordance with the provisions of the FHT. With 20/20 hindsight,
19 Caroline may regret that she did not borrow funds, request distributions, or demand an
20 accounting from the Alaska trustees while she was able to do so. Now she is asking this Court
21 to turn a blind eye and "look beyond"¹⁵ her failure to even make any appropriate request on the
22 proper parties or serve the proper parties that would have the information that she is seeking.
23 Christopher respectfully requests that this Court grant his motion to dismiss and deny Caroline's
24 claims in their entirety.
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¹⁵ See Page 7, lines 24-25 and Page 8, lines 17-18 of Caroline Davis's Objection.

1 C. Individual Parties or Entities Were Not Properly Served for the Court to Exercise
2 Jurisdiction, and FHT Holdings' Corporate Form May Not Be Disregarded
3

4 In an effort to buttress her argument regarding their lack of proper service upon FHT
5 Holdings, LLC, Caroline cites to inapplicable case law from Surrogate's Court of New York,
6 New York County, which does not address the necessity of providing proper service to a
7 corporation. In similar fashion to her omission of the language of the FHT as it related to the
8 condition precedent to any future amendment, she even withheld the pertinent language for the
9 cited case which actually held that, "It is sometimes said that where an estate or trust owns all or
10 substantially all of the shares of a corporation, the corporate form may be disregarded and the
11 situation viewed just as if the fiduciaries held title to the corporate assets. This would appear to
12 be an oversimplification of the matter. It is not so much a matter of disregarding the corporate
13 form, but rather of giving paramount consideration to the testamentary plan and scheme, and
14 effectuating it in the manner prescribed by the testator. (citation omitted) Sometimes, due
15 consideration of the testamentary plan demands that the corporate form be respected. This is
16 particularly true where the testator directed the formation of a corporation or the continuance of
17 one formed during his lifetime. (citation omitted).¹⁷

18 Under the facts of this case, Beatrice, as Trustmaker, did not form FHT Holdings, LLC,
19 and did not specify that FHT Holdings be given consideration as part of her testamentary plan
20 and scheme. Based upon the definition of the case cited by Caroline, she is attempting to
21 oversimplify this matter, which cannot be done with regard to the facts presented in this matter.
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28 ¹⁶ Petition at 7:5-6.

¹⁷ In the Matter of Schnur, 39 Misc. 2d 880, 887, 242 N.Y.S.2d, at 132 (1963).

1 Furthermore, in *Swensen v. Sheppard*, our Nevada Supreme Court recognized that NRS
2 164.010(1) and NRS 164.015(6) do not give the court jurisdiction to impose personal
3 judgments.¹⁸ Likewise, it found that it could not impose personal liability on individuals or
4 entities which "required the court to acquire 'personal jurisdiction over [them as] part[ies],
5 normally through appropriate process based on contacts with the jurisdiction or through [their]
6 general appearance therein to defend on the merits."¹⁹

8 In her Opposition, however, Caroline attempts to request this court take exception to the
9 requirements for proper service and notice, which is entirely improper. Caroline is attempting
10 to use the relaxed standards of statutory *in rem* jurisdiction for the more stringent requirements
11 necessary to obtain the necessary personal jurisdiction over Christopher Davis, individually or
12 upon FHT Holdings, LLC. Again, this is improper and contrary to due process requirements.
13 Proper notice and service are required for personal jurisdiction over a party especially when
14 requesting the court to exercise power and authority over an individual party or upon a business
15 entity.
16

18 Furthermore, when assets are transferred with proper authority to a business entity, then
19 the property becomes part of the business entity and not the trust.²⁰ Thus, a district court's *in*
20 *rem* jurisdiction under NRS 164.010(1) and NRS 164.015(6) over the trust assets do not extend
21 to assets transferred from the trust to a business entity or to a third party from that business
22 entity.²¹ Therefore, even if the Court were to obtain jurisdiction over the insurance policy
23 administered by a Puerto Rico insurer with the advice of the Canadian broker-dealer investment
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26 ¹⁸ *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 946 (Nev. 2013)

27 ¹⁹ *Id.*, citing Restatement (Second) of Judgments § 30(2) cmt. c; see *Young v. Nev. Title Co.*, 103 Nev. 436, 442,
744 P.2d 902, 905 (1987) ("A court does not have jurisdiction to enter judgment for or against one who is not a
28 party to the action.")

²⁰ *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 945-946 (Nev. 2013)

²¹ *Id.*

1 advisor, Caroline would also have to seek personal jurisdiction over Christopher, individually,
2 or FHT Holdings, LLC to obtain any relief she seeks. She did not do so.

3 Therefore, the due process rights of the entities must be respected, and service properly
4 administered in order to obtain jurisdiction over Christopher, individually, and FHT Holdings,
5 LLC. Therefore, Caroline's Original Petition should be dismissed.
6

7 **D. Additional Indispensable Parties Named in Opposition Were Not Served; therefore,**
8 **Jurisdiction is Improper over Them.**

9 Caroline admittedly did not include additional parties in her Original Petition that she
10 now alleges were recipients of FHT funds and loans from the insurance policy. Caroline alleges
11 that, "During their tenure as Trustee, both Alaska and Alaska USA distributed approximately
12 \$2,164,744.68, from loans taken against the Ashley Cooper Life Insurance Policy, to Mr. Davis
13 individually, as co-Trustee (with her) of the Beatrice B. Davis Revocable Living Trust, dated
14 April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the Davis Family Office,
15 a Missouri limited liability company (the "Davis Office"). In order to allegedly distribute loans,
16 Alaska and Alaska USA must have been recipients of FHT funds. In order to make a loan of
17 FHT funds to Alaska and Alaska, the custodian of the Ashley Cooper Life Insurance Policy
18 must have been in receipt of FHT funds. If, as alleged, FHT funds were received by
19 Christopher, the Revocable Trust, and the Davis Family Office from Alaska and Alaska USA,
20 all three would have been recipients of those funds. Of the prior six alleged recipients, none of
21 them was afforded proper notice or service in this matter. Therefore, this court lacks
22 jurisdiction over these parties. Particularly, Nevada law does not allow for this Court to take
23 jurisdiction over the Revocable Trust and the Davis Family Office, which are Missouri entities,
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1. without examining the requirements necessary for jurisdiction over foreign entities holding only
2. personal property.

3. Caroline, in effect, argues 1) the entity authorized to make the policy loan is not an
4. indispensable party, 2) that the party making the loans or distributions does not even need to be
5. noticed or served concerning the policy loans, 3) the only individual alleged as a recipient does
6. not need to be served pursuant to NRCP 4; and 4) that notice or service either under NRCP 4 or
7. NRS 155.010 does not need to be provided to the remaining alleged distributees and recipients
8. of FHT funds. These four arguments violate all constitutionally protected due process rights
9. and related laws existent in Nevada, and likely every other jurisdiction in the United States.
10. Proper parties should be included in lawsuits affecting their rights or responsibilities and proper
11. personal and subject matter jurisdiction should be obtained over all parties in such lawsuits.

12. Caroline admittedly understands the importance of obtaining *in rem* jurisdiction over a
13. trustee of a trust pursuant to NRS 164.010, because she asks this Court to assume jurisdiction of
14. the FHT pursuant to this statutory authority. Notwithstanding this admission, she seeks
15. jurisdiction over Christopher Davis, individually, as trustee of the Revocable Trust, and as
16. manager of FHT Holdings without even bothering to serve notice under NRS 155.010 or
17. pursuant to NRCP 4. Furthermore, Caroline failed to serve the custodian of the Ashley Cooper
18. Life Insurance Policy of which she claims provided the loans to the FHT.

19. Admittedly, all of these parties were admittedly never even served by Caroline, and
20. therefore her Petition must be dismissed for lack of proper jurisdiction over these parties.

21. Notice and service of process were never given to these parties, and the Court is without
22. jurisdiction over them. Therefore, Caroline's claims in her Original Petition must be dismissed.

1 E. The Alaska Trustees are Indispensible Parties and Meet NRCP 19 Requirements;

2 therefore, without a Joinder of these Parties, this Matter Must be Dismissed.

3 In Reply to the NRCP 19 factors discussed by Caroline in her Opposition, it is evident
4 that Caroline belies her own statements. Caroline indicates on the one hand that Alaska and
5 Alaska USA would not be "placed in a position in which they would need to protect any
6 interest"²² while on the other indicating that Caroline is "not now claiming any willful
7 misconduct or gross negligence by Alaska or Alaska USA" suggesting that when she obtains
8 any of Alaska or Alaska USA documents that possible claims are likely to follow.²³ Alaska or
9 Alaska USA must be allowed to defend themselves if necessary or protect themselves from
10 liability in the accuracy of information that may be provided during their tenure as Trustees of
11 the FHT to avoid claims of willful misconduct or gross negligence by Caroline.

12 Furthermore, Christopher will be subjected to double or multiple or otherwise
13 inconsistent obligations in possibly many jurisdictions as a result of Caroline's claims without
14 the necessary parties, Alaska and Alaska USA, joined to the present matter. Caroline seems to
15 ignore the fact that she has now named multiple Defendants in this matter whose interests must
16 all be considered, especially in light of the fact that proper service has not been effectuated on
17 them for an order or judgment to be rendered against them in this matter.

18 Curiously, Caroline then requests the Court to seek relief from Christopher individually
19 if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully
20 asks the court to order Christopher to provide the documents that are in Alaska and Alaska
21 USA's possession without gaining proper jurisdiction over him individually. She wrongfully
22 alleges that such a request would allegedly not be prejudicial to Christopher and allegedly
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²² See Caroline's Opposition, Page 8, lines 21-22.

1 would be an adequate remedy, although the requested documents would be in the Trustee's
2 possession.

3 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over
4 Christopher, erroneously citing NRCP 19(b) for this proposition.²⁴ With proper service to
5 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has
6 jurisdiction over the FHT.²⁵

7 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in
8 Christopher's Original Motion to Dismiss and herein. If their joinder is not feasible, then this
9 matter must be dismissed, because they are necessary and indispensable parties to this matter.
10

11 III. CONCLUSION

12 For the foregoing reasons, Christopher respectfully requests the Court do the following,
13

- 14 1. Deny Caroline's Original Petition in its entirety;
- 15 2. Deny Caroline's Opposition in its entirety; and
- 16 3. Grant the relief requested in Christopher's Original Motion to Dismiss and all further
17 requests made in his Reply to Caroline's Opposition to his Original Motion to Dismiss;
- 18 4. Deny jurisdiction over the FHT Trust as a proceeding *in rem* until an Alaska court
19 determines the validity of the change in situs, and/or the First Amendment;
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23 ²³ See Caroline's Opposition, Page 8, lines 17-18 (emphasis added).

24 ²⁴ See Caroline's Opposition, Page 9, lines 14-15 and fn 24.

25 ²⁵ See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as
26 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the
27 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and
28 management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary
when acting as an advisor to the trust.; See also AS 13.36.035 (a) The court has exclusive jurisdiction of
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section
are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of
other matters involving trustees and beneficiaries of trusts.

- 1 5. Deny jurisdiction over the Revocable Trust and the Davis Family office;
2 6. Deny jurisdiction over Christopher Davis personally;

3 DATED this 17th day of April, 2015.

4 Respectfully Submitted,
5 ROLAND LAW FIRM

6 
7 Harriet H. Roland, Esq.
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14 Attorney for Christopher D. Davis
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action.
3 I further certify that except as otherwise noted on April 20, 2015, I served the foregoing
4 CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS
5 MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19 by first class US
6 mail, postage prepaid, upon the following persons or entities:

7 Tarja Davis
8 514 West 26th Street, #3E
9 Kansas City, Missouri 64108

10 Ace Davis
11 c/o Winfield B. Davis
12 366-6 Habu Aridagawa Arida
13 Wakayama 643-0025
14 JAPAN

15 Christopher D. Davis
16 514 West 26th Street, #3E
17 Kansas City, Missouri 64108

18 Registered Agent Solutions, Inc.
19 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company
20 4625 West Nevso Drive, Suite 2
21 Las Vegas, Nevada 89103

22 Stephen Lehnardt
23 20 Westwoods Drive
24 Liberty, Missouri 64068
25 Stephen@lehnardt.com

26 Winfield B. Davis
27 366-6 Habu Aridagawa Arida
28 Wakayama 643-0025
JAPAN

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9060 W. Cheyenne Ave.
Las Vegas, NV 89129
Attorney for Petitioner Caroline Davis

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Charlene Renwick, Esq.
Lee, Hernandez, Landrum & Garofalo
7575 Vegas Drive, #150
Las Vegas, Nevada 89128
Attorney for Dunham Trust Company



Employee of Anthony L. Barney, Ltd.

EXHIBIT 2

EXHIBIT 2

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument
11 that, you know, they specified the grounds for invalidity
12 in this motion and then reinforced them in the Reply. They
13 didn't. All they said is: We have the burden to prove the
14 validity of the first amendment before we could move
15 forward and our response was: Well, take a look at NRS
16 47.250 subsection 18(c). There's a rebuttal for resumption
17 that it's valid. And then we said: Nobody has suggested
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only
20 person challenging it, expressly consented to it. Not
21 once, but twice in two different documents you just looked
22 at. So how can he raise it? I don't think he can even
23 raise this issue he's now trying to raise with respect to
24 some other party, especially when he consented to it and
25 then he took repeated actions.

Exhibit 14

Anthony L. Barney, M.S., J.D., LL.M.
Attorney at Law
Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.
Attorney at Law
Licensed in Nevada

Mary L. Martell, J.D.
Law Clerk

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October 20, 2015

Honorable Judge Gloria J. Sturman
Department 26
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Joshua M. Hood, Esq.
Mark A. Solomon, Esq.
Solomon Dwiggin Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");
Case No. P-15-083867-T
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND HAND DELIVERY

Dear Judge Sturman and Mr. Hood and Mr. Solomon:

We are in receipt of the Motion for Remand to the Eighth Judicial District Court ("Motion") filed with the Nevada Supreme Court on October 19, 2015 whereupon attached as Exhibit 3 to the documents is a Certification of Intent to Amend Order ("Certification"). The Motion and Exhibits are enclosed herewith as Attachment 1. Caroline's September 14, 2015 correspondence is enclosed as Attachment 2. During the hearing on September 30, 2015, the following exchange occurred:

Dana Dwiggin: "...You have already indicated your intent to certify full jurisdiction.... (Page 9:5-6)

Mr. Barney: "...I've not seen a certification of the order...." (Page 40:12-13)

Ms. Dwiggin: "My understanding is you had indicated your intent to do so if one is requested." (Page 41:4-5)

The Court: "If requested to do a Honeycutt order, we would certainly do a Honeycutt order."

Mr. Barney: "I just don't know the—I don't know the extent of what Honeycutt order that would be, I guess." (Page 41:12-13).

The Court: "Yeah. And that's why I said we—...It's only if it's requested, if the court says, you know, we need to know if the Supreme Court would take up such and such issue, then certainly

October 20, 2015

Page 2 of 2

we'll respond to that..." (Page 41:14,16-19). These transcript pages are enclosed herein as Attachment 3.

The proposed certification that was submitted on September 14, 2015 with a letter to this Court and copied upon Christopher's counsel was six pages in length. The certification submitted to Supreme Court had been revised to two pages by Caroline's counsel and signed by this Court on October 14, 2015. Based upon the previous concerns that we expressed regarding the order dated July 1, 2015,¹ and the corresponding ex-parte correspondence to this Court from Caroline's counsel, we again express our concerns to this Court.

This Court indicated that it would only do a certification (Honeycutt order) if it was requested [by the Supreme Court]. (See Transcript, Page 41:14, 16-19). None of the attorneys besides Caroline's counsel made such a request, and the previous request by Caroline's attorney on September 14, 2015 provided a substantially different proposed certification than the one that was signed by the Court on October 14, 2015. Even if Caroline later alleges there was no ex-parte communications that accompanied the revised certification that was signed by this Court on October 14, 2015 [and not provided to Christopher's counsel until it was served with the Motion, how would Caroline's counsel have known to submit a revised certification from the one previously submitted to the Court with their correspondence dated September 14, 2015?

We are respectfully requesting that we be provided with a copy of Caroline's request or a letter detailing verbal discussions that accompanied the revised certification [later signed by this Court on October 14, 2015] which was submitted to the Court. Thank you for your anticipated response in this regard.

Sincerely,



ANTHONY L. BARNEY

Attorney at Law

anthony@anthonybarney.com



HARRIET ROLAND

Attorney at Law

ROLAND LAW FIRM

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

¹ See Order dated May 19, 2015 and filed June 24, 2015 enclosed as Exhibit 1 to Attachment 1.

ATTACHMENT 1

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Electronically Filed
Oct 19 2015 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorneys for Caroline Davis, Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of:

Sup. Ct. Case No.: 68542

Dist. Ct. Case No.: P-15-083867-T

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

**MOTION FOR REMAND TO THE
EIGHTH JUDICIAL DISTRICT COURT**

Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014, by and through her counsel, the law firm of Solomon Dwiggins & Freer, Ltd., moves this Court, pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev. Adv. Op. 5 (Nev. 2010), for an Order remanding this matter back to the Eighth Judicial District Court because the District Court has certified its intent to amend the Order from which this appeal lies in a manner that would affect the issues on appeal. This Motion is based upon the Memorandum Of Points And Authorities, all attached exhibits, and any oral argument that this honorable Court may entertain at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural Background.

On February 10, 2015, Caroline D. Davis ("Ms. Davis") filed her *Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition To Assume Jurisdiction"). Christopher D.

1 Davis ("Christopher") then filed his *Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19*
2 on March 4, 2015 (the "Motion To Dismiss") contending, inter alia, that Ms. Davis: (1) failed to
3 join necessary parties; (2) failed to provide requisite notice to proper parties; and (3) further
4 claimed that the Court lacked subject matter jurisdiction.

5 In response, Ms. Davis filed her *Opposition To Christopher D. Davis' Motion To Dismiss*
6 *Pursuant to NRCP (12)(b) And NRCP 16* on April 13, 2015 (the "Opposition To Motion To
7 Dismiss"), contending that the Court may properly assume jurisdiction over the Trust and
8 respective parties and grant the relief requested in the Petition To Assume Jurisdiction.
9 Additionally, Ms. Davis set forth arguments as to why the prior trustees, Alaska Trust Company
10 and Alaska USA Trust Company ("Alaska USA"), are not necessary or indispensable parties, and
11 that Ms. Davis properly served all interested parties. On April 20, 2015, just two (2) days before
12 the hearing on Ms. Davis' Petition To Assume Jurisdiction and Christopher's Motion To Dismiss,
13 Christopher filed the *Christopher D. Davis' Reply To Caroline D. Davis' Opposition To His*
14 *Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19* (the "Reply").

15 In his Reply, Christopher raised for the first time the following issues: (1) Tarja Davis,
16 Christopher's wife, was a beneficiary of the Trust and did not consent to the execution of the First
17 Amendment or to the transfer of the Trust's situs from Alaska to Nevada; (2) Alaska USA
18 resigned prior to the execution of the First Amendment and there was no acting trustee to provide
19 the requisite consent to the transfer of situs; and (3) that no advice of counsel was obtained for
20 Alaska USA prior to the transfer of situs.

21 On April 22, 2015, the District Court heard oral arguments on Ms. Davis' Petition To
22 Assume Jurisdiction and Christopher's Motion To Dismiss. As the District Court did not have
23 sufficient evidence to grant Christopher's Motion To Dismiss and the Court was not aware of
24 Christopher's Reply,¹ the District Court, based upon the fact that all parties before the Court had
25 been relying on the validity of the First Amendment and the proper transfer of the Trust's situs,
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28 ¹ See, Transcript of April 22, 2015 Hearing, at p. 24:9, a true and correct copy of which is attached hereto as
Exhibit 1, wherein the Court stated "I have no Reply from Mr. Baney (sic)."

1 assumed jurisdiction over the Trust under the theory of "constructive trust", more accurately
2 called a "de facto trust" for the following reasons:

- 3 (a) Stephen K. Lehnardt, the Trust Protector; Dunham Trust Company, located in
4 Reno, Nevada ("Dunham"); and the Trust's beneficiaries, namely, (i) Christopher
5 D. Davis; (ii) Caroline D. Davis; (iii) and Winfield B. Davis, all consented to the
6 execution of the First Amendment and to the transfer of the Trust's situs from
7 Alaska to Nevada;
- 8 (b) Based upon a good faith reliance of the validity of the First Amendment, Dunham
9 accepted tenure as Directed Trustee of the Trust and Alaska USA resigned as
10 Trustee;
- 11 (c) Based upon such good faith reliance of the validity of the First Amendment,
12 Dunham had been administering the Trust in Nevada for more than one (1) year;
- 13 (d) Based upon a good faith reliance of the validity of the First Amendment,
14 Christopher accepted his appointment as Investment Trust Advisor pursuant to
15 NRS 163.5543;
- 16 (e) Based upon a good faith reliance of the validity of the First Amendment, Stephen
17 K. Lehnardt accepted his appointment as Distribution Trust Advisor pursuant to
18 NRS 163.5537;
- 19 (f) Subsequent to acceptance as Directed Trustee, Dunham created FHT Holdings,
20 LLC, a Nevada limited liability company wholly owned by the Trust, and
21 appointed Christopher D. Davis as the sole Manager thereof;
- 22 (g) Christopher has been acting as Investment Trust Advisor since his acceptance of
23 such position;
- 24 (h) Christopher has been acting as sole Manager of FHT Holdings, LLC since his
25 appointment of such position;
- 26 (i) There is no trustee in Alaska now serving, but rather, Dunham is currently serving
27 as Directed Trustee in Nevada; and
28

(j) The Court had no evidence before it, namely an affidavit of any other purported beneficiary, that any other beneficiary was entitled to take under the Trust, and, therefore entitled to notice or that such beneficiary's consent was required to Transfer of the Trust's situs from Alaska to Nevada.

Thereafter, an Order, dated May 19, 2015, was filed on June 24, 2015, and subsequently entered on July 1, 2015 (the "May 19, 2015 Order"). A true and correct copy of the May 19, 2015 Order is attached hereto as **Exhibit 2**. The May 19, 2015 Order assumed jurisdiction over the Trust as a "constructive trust" to ensure that the Trust was properly within a competent jurisdiction, and to further ensure that the Trust was not adrift in that it would be left without a trustee.

On July 14, 2015, Christopher filed his *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: The Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust. Dated July 28, 2000, As Amended On February 24, 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"). The Petition For Reconsideration sets forth the same arguments as provided in his Motion To Dismiss and his Reply.

Shortly thereafter, Christopher filed his Notice Of Appeal and Case Appeal Statement on July 30, 2015. Upon filing his Notice Of Appeal and Case Appeal Statement, Christopher divested the District Court of jurisdiction to modify the May 19, 2015 Order unless remanded pursuant to Foster v. Dingwall, 228 P.3d 453, 126 Nev.Adv.Op. (Nev. 2010) (also known as a "Huneycutt Motion"). As such, Ms. Davis filed her *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* on August 10, 2015 (the "Motion To Amend") wherein she requested that the District Court Amend or Modify the May 19, 2015 Order and assume jurisdiction over the Trust as a proceeding *in rem*, and further requested that, if the District Court is inclined to grant such relief, that the District Court certify to the Nevada Supreme Court its intent to do so.

On September 2, 2015, the District Court, after having reviewed Ms. Davis' Motion To Amend and Christopher's Petition For Reconsideration and papers and exhibits before the Court, held oral arguments on said pleadings. During such hearing, the District Court was presented with a Declaration Of Tarja Davis, which indicated that Tarja Davis was married to Christopher on February 22, 2012, that they were married on the date the First Amendment was executed, and further alleging that Tarja Davis is a beneficiary of the Trust. In response to Christopher's contentions raised in his Petition For Reconsideration, and in light of the Declaration Of Tarja Davis, Ms. Davis submitted the following evidence to the District Court:

- (a) Article 14, Section 1(j) of the Trust, which specifically defines the term "spouse", and requires the marital union of a beneficiary and his or her spouse, if entered into after the signing date of the Trust, to exist continuously for a period of ten (10) years before such beneficiary's spouse can qualify as a "spouse" under the Trust, and the Declaration Of Tarja Davis indicating that Tarja Davis and Christopher were married after the signing date of the Trust, and have not been married for ten (10) continuous years;
- (b) A Resignation, Release, Acknowledgement, Consent And Indemnification, dated February 24, 2014, with "RECITALS" providing that Alaska USA Trust Company was the currently serving Trustee on the date the First Amendment was executed and that Alaska USA Trust Company, as the Trustee, expressly consented to the transfer of situs from Alaska to Nevada and that such RECITAL is presumed conclusive under NRS 47.240(2);
- (c) An Email from Dennis Brislawn, Esq. to; (i) Ms. Davis' counsel, Joshua M. Hood, Esq.; (ii) Shanna Corressel, Trust Office for Dunham; (iii) Stephen K. Lehnardt, Trust Protector and Distribution Trust Advisor; and (iv) Ms. Davis, beneficiary of the Trust, indicating that he had communicated with both Alaska USA Trust Company and Dunham and provided an opinion of counsel; and
- (d) An opinion of counsel drafted by Dennis Brislawn, Esq. pursuant Article 14, Section 6 of the Trust, indicating that Nevada met the requirements of an

1 appropriate jurisdiction for the Trust, and that Nevada was, in fact, the superior
2 state for jurisdiction at the time.

3 Based upon the evidence presented by Ms. Davis, the District Court found that sufficient
4 evidence had now been submitted to the District Court's satisfaction that the Trust's situs was
5 properly transferred from Alaska to Nevada pursuant to the terms of the trust, and Christopher
6 failed to meet the burden to prove the invalidity of the First Amendment and the transfer of situs
7 to Nevada was improper. Although the District Court is currently without jurisdiction to modify
8 the May 19, 2015 Order, the Honorable Judge Gloria J. Sturman stated her intention to amend the
9 May 19, 2015 Order and "enter an order to assume jurisdiction over the [Trust] de jure as a
10 proceeding *in rem* pursuant to NRS 164.010, as well as grant any additional relief the District
11 Court deems proper" if the case is remanded back to the District Court. *See*, Certification Of
12 Intent To Amend Order (the "Certification Of Intent"). A true and correct copy of the
13 Certification of Intent is attached hereto was **Exhibit 3**.

14 **II. Legal Argument.**

15 Christopher's filing of the notice of appeal "divest[ed] the district court of jurisdiction to
16 act and vests jurisdiction in [the Nevada Supreme Court]." Foster v. Dingwall, 228 P.3d 453, 445-
17 445, 126 Nev. Adv. Op. __ (citing Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529
18 (2006) (quoting Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382
19 (1987)). The District Court, however, retains limited jurisdiction to entertain a party's motion to
20 "alter, vacate or otherwise change or modify an order" if such party, prior to filing a motion for
21 remand, "file[s] a motion for relief from the order or judgment in the district court." Foster, 228
22 P.3d, at 455 (citing Mack-Manley, 122 Nev. at 855-56, 138 P.3d at 529-30; Huneycutt v.
23 Huneycutt, 94 Nev. 97, 80-81, 575 P.2d 585, 585-86 (Nev. 1978).

24 The limited jurisdiction retained by the District Court permits such court to "direct
25 briefing on the motion, hold a hearing regarding the motion, and enter an order denying the
26 motion, but [the District Court] lacks jurisdiction to enter an order granting such motion." Foster,
27 228 P.3d, at 455 (citing Huneycutt, 94 Nev., at 80-81, 575 P.2d, at 585-86). When the District
28 Court exercises this limited jurisdiction, "if the district court is inclined to grant the requested

1 relief, then it may certify its intent to do so.” Foster, 228 P.3d, at 455 (citing Mack–Manley, 122
2 Nev., at 855, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d, at 586.). Once the District
3 Court has certified its intent to grant the requested relief to alter, vacate or otherwise change or
4 modify an order, it is “appropriate for the moving party to file a motion (to which the district
5 court’s certification of its intent to grant relief is attached) with this court seeking a remand to the
6 district court for an entry of an order granting the requested relief.” Foster, 228 P.3d, at 455
7 (citing Mack–Manley, 122 Nev., at 855-56, 138 P.3d, at 530; Huneycutt, 94 Nev., at 81, 575 P.2d,
8 at 586.).

9 Christopher appealed the May 19, 2015 Order. Thereafter, Ms. Davis sought the District
10 Court’s certification of intent to amend the May 19, 2015 Order to assume jurisdiction over the
11 Trust as a proceeding *in rem*, as well as grant any further relief the District Court deemed proper.
12 The District Court certified its intent to grant the relief requested by Ms. Davis. *See*, Ex. 3.

13 Based upon the foregoing, Ms. Davis respectfully requests that this Court exercise its
14 discretion and remand this matter back to the Eight Judicial District Court so that the District
15 Court may amend the May 19, 2015 Order.

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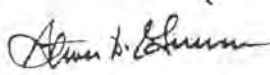
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Exhibit 1

Exhibit 1

1 TRAN

DISTRICT COURT


CLERK OF THE COURT

2
3 CLARK COUNTY, NEVADA

4 * * * * *

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7
8 IN THE MATTER OF THE TRUST OF:) CASE NO. P-15-082867
9 THE BEATRICE DAVIS HERITAGE) DEPT. NO. XXVI
10 TRUST.)
11) Transcript of Proceedings

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

12
13 MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO
14 DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO
15 ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
16 TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID AS
17 INVESTMENT TRUST ADVISOR AND STEPHEN K. LEHNARDT AS
DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY
AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF
DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS

18 WEDNESDAY, APRIL 22, 2015

19 APPEARANCES:

20 For Caroline Davis: MARK ALAN SOLOMON, ESQ.
JOSHUA M. HOOD, ESQ.
21 For Christopher Davis: ANTHONY L. BARNEY, ESQ.
22 For Stephen Lehnardt: JONATHAN W. BARLOW, ESQ.
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

23 RECORDED BY: KERRY ESPARZA, DISTRICT COURT
24 TRANSCRIBED BY: KRISTEN LUNKWITZ

25 Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument
11 that, you know, they specified the grounds for invalidity
12 in this motion and then reinforced them in the Reply. They
13 didn't. All they said is: We have the burden to prove the
14 validity of the first amendment before we could move
15 forward and our response was: Well, take a look at NRS
16 47.250 subsection 18(c). There's a rebuttal for resumption
17 that it's valid. And then we said: Nobody has suggested
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only
20 person challenging it, expressly consented to it. Not
21 once, but twice in two different documents you just looked
22 at. So how can he raise it? I don't think he can even
23 raise this issue he's now trying to raise with respect to
24 some other party, especially when he consented to it and
25 then he took repeated actions.

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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

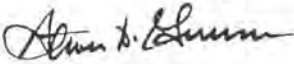


KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

Exhibit 2

Exhibit

Exhibit 2



CLERK OF THE COURT

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18 *Attorneys for Christopher D. Davis*

19 **EIGHTH JUDICIAL DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 In the matter of:

22 The BEATRICE B. DAVIS FAMILY HERITAGE
23 TRUST, dated July 28, 2000, as amended on
24 February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

25 **ORDER**

26 This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00
27 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP
28 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family
Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction
over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

11
12 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
13 Nevada, and that everyone involved relied on this amendment as being proper.

14
15 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
16 at the time the first amendment was signed.

17
18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20
21 IT IS SO FOUND.

22
23 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
24 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
25 granted without prejudice.

26
27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
28 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
more definite statement is filed.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{custody or control} in his role as Investment Trust Advisor, ^{and in his}
6 ^{role as manager of FHR Holdings}

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.
11

12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13 DATED this 15th day of May, 2015.

14
15
16 
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by the Following:

Approved as to Form and Content:

19
20 
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Exhibit 3

Exhibit 3

CERT

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Attorneys for Caroline Davis, Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

Case No.: P-15-083867-T
Dept. No.: XXVI

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014

CERTIFICATION OF INTENT TO AMEND ORDER

Having reviewed Caroline D. Davis' *Motion To Amend Or Modify Order Pursuant To NRCP 60(b)(3)* (the "Motion To Amend") and Christopher D. Davis' *Petition For Reconsideration Of The Order Dated May 19, 2015 Re: Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended on February 24, 2014; To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis* (the "Petition For Reconsideration"), examined the evidence, and heard oral arguments of counsel on September 2, 2015, the Court, pursuant to NRCP 60 and its inherent power to manage litigation, finds as follows:

THIS COURT FINDS that the Order dated May 19, 2015, Re: Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust is currently on appeal, so this Court lacks

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1 jurisdiction to amend the Order at this time. However, pursuant to Huneycutt v. Huneycutt, 94
2 Nev. 79, 575 P.2d 585, (1978):

3 **THIS COURT CERTIFIES** that if this case is remanded back to the District Court, the
4 District Court would amend its May 19, 2015 Order assuming jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014, under the
6 theory of "constructive trust", more accurately called a "de facto trust", and enter an order to
7 assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as
8 Amended on February 24, 2014, de jure as a proceeding *in rem* pursuant to NRS 164.010, as well
9 as grant any and all additional relief as the District Court deems proper.

10 DATED this 14th day of October 2015.

11
12 
13 DISTRICT COURT JUDGE

ATTACHMENT 2



SOLOMON | DWIGGINS | FREER LTD
TRUST AND ESTATE ATTORNEYS

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Alan D. Freer
Brian K. Steadman
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*Christopher J. Fowler

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Direct Dial (702) 589-3500
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September 14, 2015

Via Hand Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, Nevada 89155 00

**RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: September 2, 2015**

Dear Judge Sturman:

This office is in receipt of the correspondence sent to you on September 10, 2015 (the "September 10 Letter") from Anthony L. Barney, Esq. and Harriet H. Roland, Esq., counsel for Christopher D. Davis (hereinafter "Opposing Counsel"). Having reviewed Opposing Counsel's September 10 Letter, we feel that the terms and provisions contained within the "Certification Of Intent" and the proposed "Amended Order", provided to you via hand delivery on September 9, 2015, are consistent with your express and implied findings.

As a point of clarification, Opposing Counsel, in footnote "1" of their September 10 Letter, incorrectly states that "[t]he parties that appear to have not been provided with a copy of the September 9th Letter and attached pleadings include, Tarja Davis, Ace Davis Winfield Davis, Registered Agent Solutions, Inc. (FIIT Holdings, LLC)." Indeed, Caroline D. Davis' ("Ms. Davis") counsel provided the aforementioned parties with a copy of the correspondence with accompanying enclosures. See, Certificate Of Service Of Copy Of Correspondence To Judge Sturman With Enclosures Dated September 9, 2015, a true and correct copy is enclosed herewith for your review.

As an additional point of clarification, Ms. Davis' counsel did **not** request that Your Honor execute the proposed Amended Order. Ms. Davis' counsel is well aware that the District Court is divested of jurisdiction to execute and/or enter such order at this time. Opposing

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Case No.: 68542

Electronically Filed
Eighth Judicial District, 2016-04-28 p.m.
Case No.: 13-00036-1 (In re
the Beatrice B. Davis Family
Heritage Trust, dated July 28,
2000)

Case No. 68948

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2	Original Petition	7-287
3	September 2, 2015 Transcript	288-373
4	Declaration of Christopher Davis	374-376
5	September 2, 2015 Court Minutes	377-379
6	Second Amended Notice of Hearing	380-384
7	Motion to Dismiss	385-410
8	Reply to Opposition to Motion to Dismiss	411-436
9	Transcript of April 22, 2015 Hearing	437-495
10	June 24, 2015 Order	496-505
11	Petition for Reconsideration	506-537
12	Motion to Amend Pursuant to NRCP 60(b)(3)	538-579
13	Addendum to and Withdrawal of Certain Statements	580-615
14	Letter dated October 20, 2015 to Judge Sturman	616-687
15	Certification of Intent to Amend Order	688-690
16	Letter dated December 15, 2015 to Judge Sturman and Counsel	691-746

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1 Ace Davis
2 c/o Winfield B. Davis
3 Skyline Terrace Apts.
4 930 Figueroa Terr. Apt. 529
5 Los Angeles, California 90012-3072

6 Christopher D. Davis
7 3005 North Beverly Glen Circle
8 Los Angeles, California 90077
9 And
10 514 West 26th Street, #3E
11 Kansas City, Missouri 64108

12 Registered Agent Solutions, Inc.
13 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability
14 Company
15 4625 West Nevso Drive, Suite 2
16 Las Vegas, Nevada 89103

17 JONATHAN W. BARLOW, ESQ. Via Hand Delivery
18 CLEAR COUNSEL LAW GROUP
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21 Jonathan@clearcounsel.com
22 Attorneys for Stephen K. Lenhardt

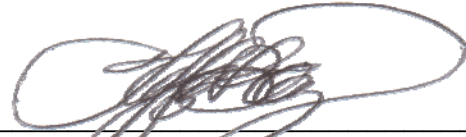
23 Mark Solomon, Esq. Via Hand Delivery
24 Joshua Hood, Esq.
25 **SOLOMON DWIGGINS & FREER, LTD.**
26 9060 W. Cheyenne Ave.
27 Las Vegas, NV 89129
28 *Attorney for Petitioner Caroline Davis*

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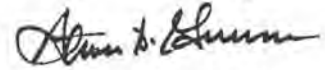
DUNHAM TRUST COMPANY
SHANNA CORESSAL, CTFA
c/o Charlene Renwick, Esq.
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Via Hand Delivery



Employee of Anthony L. Barney, Ltd.

Exhibit 9


CLERK OF THE COURT

1 TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

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8 IN THE MATTER OF THE TRUST OF:) CASE NO. P-15-082867

9 THE BEATRICE DAVIS HERITAGE) DEPT. NO. XXVI
10 TRUST.)

) Transcript of Proceedings

11 BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

12
13 MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO
14 DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO
15 ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
16 TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID AS
17 INVESTMENT TRUST ADVISOR AND STEPHEN K. LEHNARDT AS
DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY
AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF
DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS

18 WEDNESDAY, APRIL 22, 2015

19 APPEARANCES:

20 For Caroline Davis: MARK ALAN SOLOMON, ESQ.
JOSHUA M. HOOD, ESQ.
21 For Christopher Davis: ANTHONY L. BARNEY, ESQ.
22 For Stephen Lehnardt: JONATHAN W. BARLOW, ESQ.
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

23 RECORDED BY: KERRY ESPARZA, DISTRICT COURT
24 TRANSCRIBED BY: KRISTEN LUNKWITZ

25 Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 WEDNESDAY, APRIL 22, 2015 AT 10:09 A.M.

2

3 THE COURT: Okay. Will everybody state
4 appearances and we're ready to go?

5 MR. BARLOW: Jonathan Barlow for Stephen Lehnardt,
6 the Trust Protector.

7 THE COURT: Okay.

8 MS. RENWICK: Charlene Renwick on behalf of
9 Dunham Trust Company.

10 MR. BARNEY: Anthony Barney on behalf of
11 Christopher Davis.

12 THE COURT: All right.

13 MR. SOLOMON: And Mark Solomon and Joshua Hood on
14 behalf of Caroline Davis.

15 THE COURT: Okay. So, this is, again, my day to
16 deal with these family issues. So, anyway, let's discuss.
17 This is -- Mr. Solomon, your Petition to Assume
18 Jurisdiction over the Trust. I didn't really see that that
19 issue, the assuming that jurisdiction over the trust, was
20 really opposed. So to that specific relief requested, is
21 anybody really opposing that?

22 MR. BARNEY: Yes. I filed a Motion to Dismiss --

23 THE COURT: Okay.

24 MR. BARNEY: -- his Petition in that regard.

25 THE COURT: Okay. All right. But I thought that

1 was -- just to dismiss the petition or just to dismiss your
2 client or to dismiss the petition?

3 MR. BARNEY: Dismiss the --

4 THE COURT: Okay. It was Mr. Barlow who was just
5 looking -- who did his Joinder the right way. Nobody ever
6 does Joinders the right way. He --

7 MR. BARLOW: Well, thank you.

8 THE COURT: He made it really clear: I'm only
9 joining -- people always just file joinders and I'm like:
10 What are you joining? He made it real clear what he's
11 joining. He is joining only to the extent that --

12 MR. BARLOW: Right. We turned in Mr. Barney's
13 arguments --

14 THE COURT: Right.

15 MR. BARLOW: -- related to the jurisdiction and --

16 THE COURT: Jurisdiction only.

17 MR. BARLOW: -- the -- limited to the --

18 THE COURT: Okay.

19 MR. BARLOW: -- joinder parties. There was a
20 concern that we had that we didn't join and subsequent
21 conversations after review of the Reply that we may have
22 changed our position on that.

23 THE COURT: Okay.

24 MR. BARLOW: So, essentially, we're all
25 essentially in full joinder with the --

1 THE COURT: Okay. So you're --
2 MR. BARLOW: -- Motion now after reviewing --
3 THE COURT: All right. So then --
4 MR. BARLOW: -- the Reply.
5 THE COURT: -- what's your client's position on --
6 any other --
7 MR. SOLOMON: Yeah, we did file a Reply, Your
8 Honor.
9 THE COURT: Okay.
10 MR. SOLOMON: You mean to Mr. Barlow?
11 THE COURT: Yeah. Okay.
12 MR. SOLOMON: Yeah, our position is that we
13 properly, under our statute, asked the Court to confirm him
14 as Trust Protector and Distribution Advisor because that's
15 what our law requires.
16 THE COURT: Okay. So, --
17 MR. SOLOMON: How do you want to tackle this, Your
18 Honor?
19 THE COURT: I think -- that's why -- I think,
20 first of all, can we just make it clear who is on first?
21 So, --
22 MR. SOLOMON: It's my petition but they never
23 really responded to my petition --
24 THE COURT: Right. So, --
25 MR. SOLOMON: -- substantively.

1 THE COURT: -- the interests --
2 MR. SOLOMON: What they did was just took this
3 jurisdictional --
4 THE COURT: Right.
5 MR. SOLOMON: -- Motion to Dismiss --
6 THE COURT: That was why I was wondering because -
7 -
8 MR. SOLOMON: -- which I don't -- I opposed
9 specifically --
10 THE COURT: I know. It seemed like nobody was
11 really -- it didn't -- it had gotten to this jurisdictional
12 issue, we didn't really get to the issue of, you know, does
13 this Court have -- can this Court, you know, assume
14 jurisdiction?
15 MR. BARNEY: And, Your Honor, therein lies the
16 Motion to Dismiss. If the Motion to Dismiss is determined
17 on its merits, --
18 THE COURT: So --
19 MR. BARNEY: -- this Court does not have
20 jurisdiction to --
21 THE COURT: -- I guess that's my question is --
22 MR. SOLOMON: We only accept jurisdiction to
23 determine jurisdiction, obviously. So, --
24 THE COURT: Right.
25 MR. SOLOMON: -- that's where I think we are, Your

1 Honor.

2 THE COURT: So, yeah. And -- okay. So I guess
3 that's the question then is: Does it make more sense to
4 start with the Petition to Dismiss --

5 MR. SOLOMON: I think so, yes.

6 THE COURT: -- and make the decision with respect
7 to jurisdiction --

8 MR. SOLOMON: And I can cover both in my response
9 --

10 THE COURT: Okay.

11 MR. SOLOMON: -- because --

12 THE COURT: Perfect.

13 MR. SOLOMON: -- they're relevant.

14 THE COURT: Then excellent. And I don't know, Mr.
15 Barney, who is arguing -- okay. Good. Thanks.

16 MR. BARNEY: Thank you, Your Honor.

17 Your Honor, as you are aware, the issue of
18 jurisdiction arises or fails under the issue of whether or
19 not there is a valid amendment to the trust. The terms of
20 the trust specifically indicate that in order to create an
21 amendment there must be a change in situs that is
22 effectively ratified as a condition precedent to any
23 amendment amending the trust to the laws of the state of
24 Nevada.

25 Under the terms of the trust, the change in situs

1 is required only after the consent of all of the
2 beneficiaries. The then acting Protector and the consent
3 of the Trustee after it has received its counsel during the
4 life of the testator a written opinion and thereafter an
5 opinion by counsel that a change in situs is proper.

6 In this case, in order for there to be a first
7 amendment, to even give the Court jurisdiction on the basis
8 upon which to take jurisdiction under 164.010, there had to
9 be a proper change in situs and there didn't occur a proper
10 of situs in this case. There are certain beneficiaries of
11 this trust. We have Christopher Davis, we have Caroline
12 Davis, we have their son, and we also have Taria [phonetic]
13 Davis. Okay. The amendment would have required all of
14 their consents to --

15 THE COURT: But it said it was unanimous.

16 MR. BARNEY: It was unanimous.

17 THE COURT: Oh.

18 MR. BARNEY: And the trust, Your Honor, doesn't
19 require unanimous consent, it requires all beneficiaries.
20 That's the pertinent part of the trust and that's set forth
21 under Article 14. All beneficiaries must consent to this.

22 As far as we know --

23 MR. SOLOMON: Who didn't consent?

24 MR. BARNEY: Taria [phonetic].

25 MR. SOLOMON: Who is that?

1 MR. BARNEY: Taria [phonetic] is the wife of
2 Christopher Davis.

3 THE COURT: Okay.

4 MR. SOLOMON: Not at the time of this.

5 THE COURT: Okay. All right.

6 MR. BARNEY: Yes. And, in fact, it's clear that
7 they understood she was a beneficiary because in their
8 Opposition to our Motion to Dismiss, they actually notice -
9 - they took to notice her, okay, but they hadn't previously
10 done so. Okay. It's clear that she did not consent to
11 this.

12 There also wasn't an acting Alaska Trustee at that
13 point to consent to the transfer. Mr. Solomon presented
14 evidence that was very clear that on December 5th that
15 Alaska Trust USA tendered their resignation and was no
16 longer the Trustee at that point. Then, allegedly, in
17 February, the first amendment was produced wherein the
18 change in situs occurred, allegedly, and a new Trustee was
19 appointed in that same document.

20 Now, Your Honor, that begs the question: How
21 could a Nevada Trustee based in Nevada who could only
22 operate within that situs be the Trustee that referred to
23 in the trust but had to receive counsel before they made
24 the change in situs that would also make the amendment
25 operative as a condition precedent and then go ahead and

1 sign on an amendment where they were only appointed in that
2 same amendment? It's impossibly, Your Honor.

3 Clearly, the trust envisioned that it was the
4 Alaska Trustee that would obtain advice and understanding
5 from counsel before they agreed to transfer the situs.
6 Dunham Trust couldn't even agree to have it transferred and
7 administered under a situs other than Nevada because
8 they're only licensed in Nevada to administer this trust
9 and clearly it wasn't them.

10 So we know in this matter that neither the Trustee
11 nor the beneficiary under the trust consented. So we
12 didn't have all of the beneficiaries as required. We
13 didn't have the Trustee, therefore no condition precedent
14 of the situs actually being changed and thereby allowing
15 any amendment to the trust. And that was originally what I
16 raised in the first -- in my first pleading in the Motion
17 to Dismiss. I expanded upon that in our Reply where I set
18 forth the very parameters of what the Court needed in order
19 to justify jurisdiction.

20 In effect, Your Honor, what we have is the -- it's
21 the first time I've seen it in my career where someone is
22 actually asking for information obviously in the context of
23 an accounting not from the Trustee, Your Honor, but from
24 the beneficiaries, the purported beneficiaries, of that
25 distribution. Therein lies the concern. We've got several

1 entities that have been named as supposedly distributees of
2 this money under the tenure of the Alaska Trustee to the
3 tune of \$2.2 million at a time when Christopher Davis was
4 not a fiduciary in any capacity. And yet, now under this
5 purported amendment that's clearly defective, for the
6 amount of \$25,000 apparently that Dunham Trust received
7 most likely for their administration costs, that there is a
8 backend run to try to use this \$25,000 out of the \$2.2
9 million to obtain jurisdiction to find documents that are
10 in the possession of the prior Trustee who would have had
11 to account for that under Alaska law and yet the recipients
12 of that money are the ones that are being asked, under our
13 statute, to account -- under a trustee statute, under
14 164.015.

15 And therein lies the indispensable party dilemma
16 that we have. We've got a situation now where, A, the
17 whole basis of their jurisdiction is based upon a faulty
18 amendment that never should have occurred and to which Mr.
19 Lehnardt, it's my understanding, has agreed is a faulty
20 amendment based upon the fact that all of the parties were
21 not brought to the table and the Trustee did not properly
22 consent.

23 And then we have the issue, Your Honor, that is
24 also concerning in that under NRCP 19(b), we're asking that
25 the case be dismissed because the parties that are asked to

1 provide the documents apparently are all indispensable
2 parties or not indispensable parties, according to
3 Caroline, but apparently are indispensable for purposes of
4 providing the documents that they need. None of the
5 service in this matter was provided properly under 164.010.

6 And, in fact, let's look at the recipients that
7 they want to receive the funds from or get an accounting of
8 those funds. They want to get it from a distributee, the
9 Davis Family Office, which is a Missouri Corporation.

10 Now, Your Honor, I don't see anything on the
11 service record that would indicate that that Davis Family
12 Office partnership was properly served. There's no Rule 4
13 service. I don't see anything that indicates that any of
14 the companies that are considered persons under our law
15 were properly served under Rule 4. They're using the
16 relaxed standard of 155.010, essentially, to serve everyone
17 and then those people that they want documents from that
18 they think essentially they can dispense with, they don't
19 notice it even at all.

20 And, so, we have a real dilemma here. One of the
21 important things about the 164.010 jurisdiction is that it
22 was given to courts essentially to reach out and to take
23 jurisdiction over property, not persons. Even in the fact
24 of trust proceedings, if we want to go against a Trustee,
25 we've got to serve personal service and get a citation on

1 the Trustee because this Court has limited jurisdiction,
2 and rightly so under the relaxed standards that are set
3 forth under 155.010, which is simply a mailing. There's no
4 clear understanding of whether or not any of these
5 individuals would even receive it under the relaxed
6 standard, but, in this case, we know that they didn't
7 receive it at all because they weren't even noticed up.
8 And the ones that were noticed up, in hindsight, when they
9 realized, oops we forgot, we didn't get that other
10 beneficiary's consent and therefore we have the invalidity
11 now of the first amendment, we're going to try to serve her
12 under 155.010 and send her notice through the mail at --
13 not upon the original motion but upon their Opposition to
14 the Motion to Dismiss.

15 And, therefore, Your Honor, I would respectfully
16 request that this matter be dismissed entirely for lack of
17 jurisdiction.

18 THE COURT: Okay. I'm still trying to understand
19 where they have an error in this amendment.

20 MR. BARNEY: Okay.

21 THE COURT: I'm looking at Article 11.

22 MR. BARLOW: It's Article 14, Section 6 is where
23 the change of situs provision.

24 THE COURT: Okay.

25 MR. BARNEY: It's on page 14-7.

1 THE COURT: So the issue is not changing the
2 Trustee? That's not what you're arguing about?

3 MR. BARNEY: The --

4 THE COURT: Your argument changing the situs?

5 MR. BARNEY: The change in Trustee could
6 potentially be --

7 THE COURT: Because that doesn't require it --

8 MR. BARNEY: No. That could be potentially
9 changed by Mr. Lehnardt but it -- but the fact is it could
10 not be changed under an amendment unless the change in
11 situs had occurred in that regard.

12 So, his ability to appoint a Trustee in Nevada to
13 work over an Alaska trust where they're not licensed to do
14 so would obviously most likely be invalidated even under
15 that theory of whether or not he could appoint a Trustee.
16 Apparently, they're appointing a Nevada Trustee based upon
17 a defection -- or a defective change in situs which was --
18 never occurred.

19 THE COURT: Yeah.

20 MR. BARNEY: And they did it --

21 THE COURT: So --

22 MR. BARNEY: -- in the same amendment.

23 THE COURT: So: Except as expressly provided in
24 here in the situs of this agreement or any sub trust
25 established hereunder, may be changed by the unanimous

1 consent of all of the beneficiaries then eligible to
2 receive mandatory or discretionary distributions.

3 MR. BARNEY: Okay.

4 THE COURT: So isn't that just the children?

5 MR. BARNEY: What's that?

6 THE COURT: That's the children and who else?

7 MR. BARNEY: Well the --

8 THE COURT: In other words, Christopher -- the two
9 -- who -- to the children. Who else is entitled to
10 mandatory or discretionary --

11 MR. BARLOW: No. So the children are the
12 mandatory dis --

13 THE COURT: Right.

14 MR. BARLOW: Beneficiaries.

15 THE COURT: Right.

16 MR. BARLOW: But the trust also provides that
17 their spouses and their decedents are discretionary
18 beneficiaries of the --

19 THE COURT: Okay.

20 MR. BARLOW: -- trust. So that would be the
21 discretionary -- the spouses and decedents.

22 THE COURT: Okay. So --

23 MR. BARLOW: Those -- that would be encompassed in
24 the all.

25 THE COURT: Okay.

1 MR. BARLOW: And --

2 THE COURT: Okay.

3 MR. BARLOW: If I just -- really briefly. I'd
4 just add also on that point then -- so the position of the
5 Protector who took this and, of course, he's very hesitant
6 to come and say, yeah it looks like I made a mistake, but
7 upon review, it does look like we're missing some of the
8 beneficiaries.

9 And then the second clause of that sentence that
10 you just started says with all the -- consent of all the
11 beneficiaries, then, comma, and then it also says:

12 With the consent of the then acting Protector --
13 obviously, he consented, and the Trustee that are involved.
14 We had an absence of Trustee actually at that point because
15 the previous Trustee had resigned about three months
16 earlier.

17 THE COURT: Okay.

18 MR. BARLOW: So technically what should have
19 happened, it appears now in retrospect, is a new Alaska-
20 based Trustee should have been appointed in the interim for
21 the purpose of consenting to the change of situs to Nevada
22 so that that Trustee could get the advice of counsel that
23 was called for in that paragraph to make sure that there
24 were no adverse consequences. So that appears to be the
25 step that was missing and Mr. Lehnardt's going to have to

1 go back to the drawing board to determine whether he needs
2 to go now go appoint an Alaska Trustee and whether it's
3 then advisable to then move it down here to Nevada if all
4 beneficiaries consent to do so.

5 THE COURT: Okay.

6 MR. BARLOW: So that's position on that.

7 THE COURT: Great.

8 MR. SOLOMON: Your Honor, I'd like to spell the
9 word sandbag because this is the first time I've heard the
10 issue that's been raised. It's not in their brief, despite
11 what Mr. Barney just said. They've never taken the
12 position that Taria [phonetic] was a beneficiary. We
13 understood she was divorced and first time I've ever heard
14 it.

15 THE COURT: And she was the wife of --

16 MR. SOLOMON: Supposedly.

17 THE COURT: -- the grandson?

18 MR. BARNEY: No. She was the wife of Chris Davis.

19 THE COURT: But she's not the one with the life
20 insurance policy?

21 MR. BARNEY: No.

22 MR. BARLOW: No.

23 MR. BARNEY: She is the wife of Chris Davis and
24 was during this period.

25 MR. SOLOMON: Where is the evidence of that, Your

1 Honor? There is none. They didn't file an affidavit.
2 They didn't file -- they didn't even raise this issue in
3 any of their pleadings. Total sandbag to wait until you
4 get here and say: Hold on. We all made a mistake that
5 we've been acting on for over a year.

6 I guess their whole theory now is that since she
7 didn't consent to this amendment and jurisdiction here that
8 the whole first amendment is invalid. Chris is --
9 Christopher is not the --

10 MR. HOOD: Trust Advisor.

11 MR. SOLOMON: Trust Advisor, no --

12 MR. HOOD: Investment Advisor.

13 MR. SOLOMON: Investment Advisor. He's been
14 wrongfully investing and holding and making all of the
15 decisions for this trust for the last year.

16 THE COURT: There's apparently no Trustee.

17 MR. SOLOMON: This -- apparently there's no
18 Trustee. Dunham has been administering this for the last
19 year without -- it's all a big mistake because Taria
20 [phonetic] didn't join in this thing, there's not even a
21 line for her signature in the agreement. Mr. Lehnardt
22 prepared it, contrary to counsel's statement, he did have
23 an opinion of counsel in Missouri, Mr. Bresolan [phonetic],
24 say that it was valid and parties went off and proceeded on
25 that basis. That is a -- as I said, a complete sandbag

1 without any support from the record other than counsel
2 standing up here and making this argument at this late date
3 without any ability to check the facts or determine what
4 the heck happened here.

5 THE COURT: Yeah, because the change in situs it's
6 done by Christopher Davis, Caroline Davis, and the copy I
7 have -- I don't see the signature of Winfield [phonetic]
8 but --

9 MR. SOLOMON: It is there. There's a signature
10 page in there that --

11 THE COURT: Was there a signature page because I
12 didn't it?

13 MR. SOLOMON: I think it's the last page.

14 MR. HOOD: it's one more page over.

15 MR. SOLOMON: One more page over. It just sort of
16 does a little w. That's the way he signs on everything.
17 Actually there are two agreements. I can point to both
18 exhibits that are signed the same way that accomplish the
19 same thing.

20 Let me put this in context though. We had a
21 petition to assume jurisdiction over this trust to confirm
22 Dunham as the Directed Trustee, to confirm Christopher
23 individually and as manager of FHT Holdings, LLC, as the
24 Investment Trust Advisor, which I guess they're going to
25 contend that's not valid either because we'll hear that was

1 created in this last year, we also wanted to confirm
2 Stephen Lehnardt as the Distribution Trustee -- I'm sorry.
3 Distribution Trust Advisor and the Trust Protector. And we
4 wanted an order for immediate disclosure of the books,
5 records, and information from Chris -- Christopher
6 regarding over \$2,000,000 of loans that were taken against
7 a \$35,000,000 policy that's owned by the trust and
8 apparently now signed by Dunham, who they're claiming isn't
9 the Trustee, to a wholly owned LLC called FHT Holdings
10 which is managed by Chris.

11 These funds were paid out or leant to Christopher
12 individually, to Christopher as the Trustee of the Beatrice
13 B. Davis Family Revocable Trust, which is another trust in
14 Missouri, Your Honor, which my client is a 50 percent
15 beneficiary and a co-Trustee of but can't get any
16 information from her brother, calling for an outright
17 distribution. And we have now filed a proceeding in
18 Missouri with respect to that one because he won't give us
19 any information with respect to that trust or why
20 distributions haven't been sent to us because mom died over
21 three years ago. And then, finally, monies were leant to
22 Chris again as manager of the Davis Family Office, LLC.
23 They won't give us information with respect to that entity.

24 The Family Heritage Trust's main asset is this
25 Ashley Cooper [phonetic] life insurance policy for

1 \$35,000,000 according to notice that it was on the life of
2 Cheryl Davis [phonetic], a former wife of Chris's and
3 there's a \$4,000,000 line of credit on it.

4 Article 8, Section 1 of this Trust says: Upon
5 these death, the trust is to split into two equal shares,
6 one for Caroline and one for Chris and his issue and his
7 spouse. So that's interesting all by itself. That was
8 supposed to have already happened. I don't know if that's
9 happened or not because we can't get information as to
10 whether that trust is even split into two separate shares
11 and Christopher, his wife, if he had one, and wouldn't even
12 be beneficiaries of our share.

13 Now, under Section 8 -- Article 8, Section 4,
14 Caroline is entitled to distributions of income and
15 principal in the discretion of the Trustee but has never
16 received a dime and this is extremely significant, Your
17 Honor. Article 12, Section 4 says:

18 The trust's books and records along with all trust
19 documentation shall be available and open at all
20 reasonable times to the inspection of the trust
21 beneficiaries and their representatives.

22 Despite the fact that those books and records are
23 supposed to be open to beneficiaries, including one who is
24 the -- currently the sole beneficiary of her share, we
25 spent over three months the last quarter of 2012 trying to

1 get information and documents from Christopher and his
2 counsel, Harriet Rowland [phonetic], regarding who got the
3 loan proceeds or the benefit of those, what was the purpose
4 of those loans, how were those loan proceeds being used,
5 what's the repayment terms of the loans, has any repayment
6 been made, was there any collateral given, is there a
7 collateral agreement, is there a promissory note, is there
8 a loan agreement? We were virtually stonewalled. Just
9 stonewalled. We're not getting anything with respect to
10 this even though Caroline is entitled to half of this and
11 half of everything to the entities that these were leant to
12 with Chris's control.

13 Now the Alaska Trust Company was the original
14 Trustee. Stephen Lehnardt was the original Trust
15 Protector. On August 2nd, 2011, Mr. Lehnardt, in his
16 capacity pursuant to the provisions of the trust, removed
17 Alaska Trust Company and appointed Alaska USA Trust
18 Company. And then two years later -- a little over two
19 years later, on December 5th, 2013, Alaska USA Trust Company
20 resigned and Mr. Lehnardt appointed Dunham Trust Company in
21 Reno and I think he has the right to do that, period.

22 On February 24th, 2014, which is Exhibit 7 to the
23 Motion to Dismiss, Alaska USA -- that may be a different
24 document than Your Honor was looking at.

25 THE COURT: Okay.

1 MR. SOLOMON: Oh Exhibit 7 is a Motion to Dismiss.
2 I'm sorry.

3 [Colloquy between Mr. Solomon and Mr. Hood]

4 MR. SOLOMON: It's Exhibit 5, Your Honor, I
5 misspoke.

6 THE COURT: Okay.

7 MR. SOLOMON: And actually it's Exhibit 1 to the
8 Motion -- Christopher D. Davis' Motion to Dismiss Exhibit
9 1. It's called Release -- Resignation, Release,
10 Acknowledgement, Consent, and Indemnification Agreement.

11 THE COURT: Right.

12 MR. SOLOMON: And the parties to that, contrary to
13 what counsel said, include Alaska USA, which is the present
14 Trustee, Dunham Trust, Mr. Lehnardt, Chris, Caroline,
15 Winfield [phonetic], and they all executed this changing
16 the situs -- [indiscernible] to change the situs of the
17 trust from Alaska to Nevada, purports to be signed by all
18 of the beneficiaries and it consented to Mr. Lehnardt
19 amending the trust to change the situs, applicable law,
20 provisions required by Dunham, and other amendments.

21 And then after this document was signed, then Mr.
22 Lehnardt went out and got his advice of counsel, got a
23 written opinion, and prepared the first amendment. And
24 that was dated on February 24th, 2014 and that, again, was
25 executed by Mr. Lehnardt, Dunham Trust, and specifically

1 proved by Chris, Caroline, and Winfield [phonetic] and
2 that's the document that names Chris as the Investment
3 Trust Advisor under NRS 163.5543, as a fiduciary under
4 163.554, that names Mr. Lehnardt as the Distribution Trust
5 Advisor under 164.5537, a fiduciary under 163.554, and then
6 it -- so basically it's Chris individually or as manager of
7 an LLC to be owned by the trust full power to manage
8 investments and reinvestments of the trust and to direct
9 Dunham with respect to the same.

10 And then, finally, on March 28th, 2014, Dunham,
11 presumably at the direction of Chris, because that's what
12 he was up -- empowered to do, created a -- the FHT Holdings
13 Company, naming Chris as manager and thereafter assigning
14 the policy to the LLC which Chris is now managing.

15 So, you know, we start off with the resumption of
16 where we were that the first amendment to the trust is
17 presumed valid and there was contrary to this new claim
18 that there was another beneficiary out there that didn't
19 sign, it was never challenged until this moment, other than
20 to say likely that we have a burden to prove validity.
21 That's all they said in their moving papers, Your Honor.
22 We have the power -- we have the obligation to prove
23 validity. They didn't specify one reason in that or in his
24 Reply that -- did we see a Reply?

25 MR. HOOD: No. He just did a Joinder in

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I

5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by

8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument

11 that, you know, they specified the grounds for invalidity

12 in this motion and then reinforced them in the Reply. They

13 didn't. All they said is: We have the burden to prove the

14 validity of the first amendment before we could move

15 forward and our response was: Well, take a look at NRS

16 47.250 subsection 18(c). There's a rebuttal for resumption

17 that it's valid. And then we said: Nobody has suggested

18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only

20 person challenging it, expressly consented to it. Not

21 once, but twice in two different documents you just looked

22 at. So how can he raise it? I don't think he can even

23 raise this issue he's now trying to raise with respect to

24 some other party, especially when he consented to it and

25 then he took repeated actions.

1 THE COURT: Well the only person who I'm going to
2 have standing would be Taria [phonetic]?

3 MR. SOLOMON: I believe she would, assuming she is
4 a beneficiary. I don't even know that, Your Honor. I was
5 advised that he wasn't married at that time, at the time
6 the thing was done. He may be married now, so I gave her
7 notice now, but, at this time, I don't know that they were
8 and none of their documents suggest that she was a
9 beneficiary. I'm hearing it for the first time and that's
10 why I stood up and said sandbag because that's what's
11 happening here.

12 Now, I think the Court had jurisdiction at least
13 over Dunham, irrespective of this issue, but based upon the
14 record that you have now, anything in front of you, all of
15 the beneficiaries can sign -- consented to it. This isn't
16 evidence standing up here and saying this.

17 Nevada situs, our Court can clearly give Nevada
18 jurisdiction over this. It's Nevada situs under the first
19 amendment, Nevada law applies, you have a Nevada Trustee.
20 That's sufficient all by itself under 164.010 because it's
21 doing business here. We know books and records are kept
22 here because contrary to counsel's argument, the first
23 thing we did, Your Honor, is go to Dunham Trust to try to
24 get this information. We're not stupid and they said: We
25 don't have it. We have to get it from Chris. They

1 supplied us what they have. They gave us a few indications
2 of what's going on, but they don't have the information.
3 They do have books and records of the trust though,
4 including they have possession of the policy and recently
5 transferred, as I said, to FHT Holdings Company, a Nevada
6 LLC.

7 164.010 is met. There's in personam jurisdiction
8 over these people that are in front of you. 163.5555 says
9 that Chris and Stephen Lehnardt submitted to this
10 jurisdiction by accepting their appointments as Investment
11 and Distribution Advisors. Again, FHT Holdings, LLC, is a
12 Nevada entity doing business here. There's no question we
13 have in personam jurisdiction.

14 And then this argument that Alaska Trust and
15 Alaska USA are somehow necessary or indispensable parties,
16 it's ridiculous. When is a former Trustee a necessary or
17 indispensable party in any proceeding that you are not
18 asking for any relief from them? And the answer -- are you
19 telling me every time I have to do something that some
20 event occurred even though they're not being asked to be
21 held responsible for it, I have to name them because they
22 have some input? Well of course not. It's ridiculous.

23 Caroline is not objecting in her petition to any
24 act or admission of Alaska or Alaska USA. She seeks no
25 relief against them. Chris, in one capacity or another,

1 received all of the money that we're talking about here.
2 He has all of the information we seek about the use and the
3 status of those loans to him. The former Trustees are not
4 being placed in the position by our petition where they
5 need to protect their interest and no one's being exposed
6 to multiple liability or prejudice, except for us, if the
7 Court doesn't take jurisdiction and require him to produce
8 this information because Alaska Trustees are not subject to
9 jurisdiction here and I don't think Alaska has jurisdiction
10 over Chris. There's no reason to believe he does. This is
11 the jurisdiction.

12 And [indiscernible] process our statute, 164,
13 specifically tells you you serve it under 155.010 and we
14 complied in that regard.

15 THE COURT: Now Mr. Barlow didn't address this
16 separate issue, but his issue with respect to the petition
17 was that it doesn't specifically state a claim against Mr.
18 Lehnardt. It doesn't --

19 MR. SOLOMON: I'll over that, Your Honor.

20 THE COURT: -- allege -- okay. Mr. Barlow, you'll
21 get a chance to --

22 MR. SOLOMON: As Your Honor knows, there wasn't an
23 action until recently that we amended Chapter 164 in 1999
24 [indiscernible]. Prior to that date, you used to file a
25 petition to ask the Court to assume jurisdiction and you

1 weren't allowed to do anything more and all the Court could
2 do at the initial point was to determine whether sufficient
3 connections nexus to Nevada were sufficient to assume
4 jurisdiction and confirm the Trustees. Then you had to
5 file separate petitions for any type of relief.

6 So in 1999, we amended the statute and added
7 subsection 2 that says that at the same time that you file
8 the petition to assume jurisdiction under subsection 1, you
9 may file additional petitions for relief. So the law
10 hasn't changed. In order to get jurisdiction over a trust,
11 you have to assume jurisdiction over the trust and confirm
12 the Trustees or the fiduciaries. That's what we're doing.
13 I think it may have been defective if we didn't try and
14 confirm. That's all we're doing is confirming the Trustees
15 or the Trust Protectors and the fiduciaries at this point.

16 One other additional petition request for relief
17 which is to ask for an order that Chris, who is in
18 possession of all of this information that belongs to the
19 trust, produce it to the beneficiary to whom the trust says
20 is entitled to it explicitly.

21 So, it is true that we're not seeking any
22 additional relief against Stephen Lehnardt at this time but
23 it's appropriate to confirm him in the role that's done.
24 That gives the Court interim jurisdiction over this and if
25 we can't get the information that we need from Chris for

1 any reason, we certainly intend to seek it from Mr.
2 Lehnardt and if we have to use another petition to do that
3 or discovery to do that, we will and that's appropriate to
4 do and we don't have to re-file a petition to confirm him
5 as Trust Protector, which is a step that we are
6 accomplishing now.

7 We know that Mr. Lehnardt was intimately involved
8 in these loan transactions and we put that in our Reply,
9 Your Honor. There's designation after designation in his
10 time sheet showing that he was involved in these
11 transactions. So he is presumable a repository of some
12 information. We just wanted to get it from the horse's
13 mouth, the person who actually got the use -- apparent use
14 and benefit of these proceeds first, which is Chris, and
15 hopefully that will satisfy our inquiry. But if we have
16 additional issues and have additional claims of Mr.
17 Lehnardt, then we if are, based upon a Court order,
18 confirming him as the fiduciary, we can proceed.

19 THE COURT: Okay.

20 MR. SOLOMON: So that's where I think we are, Your
21 Honor.

22 There is nothing before this Court at this point
23 that in any way, shape, or form shows the petition that we
24 didn't [sic] file is not proper in every respect. They had
25 the burden to come in here to show that anything was

1 invalid and they haven't done that. There's no evidence
2 before this Court at this point and I -- you know, if this
3 were, in fact, invalid, what if -- there would be a, you
4 know, I haven't had a lot of time to ruminate about this
5 because I'm just hearing it for the first time, but there
6 would be a constructive trust here anyway. This has been
7 operated -- this trust has been in Nevada for over a year
8 and huge transactions, including the assignment of a
9 \$35,000,000 policy all taken place. There's a whole slew
10 of actions that have taken place by the very people who are
11 now coming here and saying: Oh, well, it's all invalid.
12 Without presenting any evidence whatsoever of why it's not
13 true or is in fact true and I think our petition should be
14 granted, Your Honor.

15 THE COURT: Okay. Thank you. Mr. Barlow.

16 MS. RENWICK: Your Honor, if I may?

17 THE COURT: Yes.

18 MS. RENWICK: Charlene Renwick on behalf of Dunham
19 Trust.

20 THE COURT: Yes.

21 MS. RENWICK: I do have to agree with Mr. Solomon
22 with respect to the issue, the invalidity of Dunham Trust
23 being appointed as the successor Trustee. I don't believe
24 that issue was clearly addressed in the moving papers, to
25 which extent, I did not respond to it as I didn't

1 understand that was that argument that was going --

2 THE COURT: Okay.

3 MS. RENWICK: -- to be raised before the Court
4 today.

5 To the extent that the Court is being asked to
6 determine whether the assignment to Nevada was valid, I
7 request that the hearing be continued and that a briefing
8 schedule be provided to the parties so that we can properly
9 address that --

10 THE COURT: Okay.

11 MS. RENWICK: -- address that issue.

12 THE COURT: Good point. Thank you. All right.
13 Mr. Barlow.

14 MR. BARLOW: Your Honor, just briefly because I
15 think our role in this is really [indiscernible] here, but,
16 again, the issues about the validity of the first amendment
17 were raised to us just yesterday for the first time and I
18 went through the analysis of the trust and it appears that
19 there are problems with the first amendment as far as the
20 consents that were necessary to do that. That's where that
21 came from.

22 Our concern, if the Court is tending toward taking
23 jurisdiction of this in some manner, 164.010 only requires
24 the Court to assume jurisdiction -- or excuse me, to
25 confirm the appointment of the Trustee. If the Court wants

1 to confirm the appointment of Dunham Trust Company, then
2 you have a Trustee that you confirmed the appointment of in
3 this matter.

4 There -- in his capacity as the Trust Protector
5 and Trust Advisor, he may be a fiduciary under the statute,
6 not necessarily the Trustee in that situation. And Mr.
7 Solomon himself just said, in response to the question, I
8 don't need to bring in these two Alaskan Trustees because
9 I'm not bringing any claims against the Alaska Trustees.
10 Well why is he trying to bring Mr. Lehnardt into this as
11 well if he's not bringing any claims -- admittedly not
12 bringing any claims against Mr. Lehnardt?

13 THE COURT: Oh but he might be amending this if
14 the issue is that Mr. Lehnardt screwed up moving it.

15 MR. BARLOW: Maybe. But that's the point. If he
16 has a claim, bring the claim and bring us in.

17 Court Right.

18 MR. BARLOW: But he -- don't bring us in and make
19 us sit here and wait --

20 THE COURT: Doesn't he have a point that when you
21 move a trust, even if ineffectually you move a trust,
22 Dunham takes it over, they start operating, they assumed
23 they are responsible as a Trustee. There's all this
24 activity that goes on. Doesn't this Court in this
25 jurisdiction, doesn't that give me jurisdiction? I mean, I

1 -- you know, you're kind of somewhat changing your position
2 on this, but originally it seemed -- it was my
3 understanding that it was conceded that even though your
4 client had come to this jurisdiction, you weren't -- didn't
5 think that they necessarily needed to be in the case, but
6 that the case was -- it was properly in this jurisdiction.

7 MR. BARLOW: If the first amendment is valid --

8 THE COURT: Okay.

9 MR. BARLOW: -- and were going to be treated as
10 valid, then we're operating under 163, which sets out what
11 happens in these [indiscernible] jurisdiction, things of
12 that nature. It does say that a --

13 THE COURT: Well doesn't this Court have to assume
14 it's valid absent some evidence? I don't know who Taraja
15 [phonetic] is or however her name is pronounced.

16 MR. BARLOW: Taria [phonetic].

17 THE COURT: Taria [phonetic]? Okay.

18 MR. BARLOW: Right. And --

19 THE COURT: She's not mentioned anywhere.

20 MR. BARLOW: And, at this point, we --

21 THE COURT: Doesn't seem to be a big life
22 insurance policy on her life. Who is she?

23 MR. BARLOW: By the representations of counsel,
24 that's -- as Ms. Renwick just suggested, maybe there may be
25 further briefing required to get that information in front

1 of the Court and sort that particular issue out.

2 If we're going to assume that's it valid and go
3 back to the original argument we had originally made in our
4 Opposition, when Mr. Lehnardt accepted the employment as
5 Distribution Trust Advisor under NRS 163, yes that -- the
6 statute does say he submits to the jurisdiction of Nevada.
7 I've submitted to the jurisdiction of Nevada. Your Clerk
8 has submitted to the jurisdiction of Nevada. It doesn't
9 mean that we are -- that you have to observe that
10 jurisdiction over them in this case just to make us sit
11 around with no claims being brought against us.

12 THE COURT: Okay.

13 MR. BARLOW: And that's the point. Just because
14 there is jurisdiction in Nevada, doesn't mean you should
15 exercise it over Mr. Lehnardt where there are no current
16 claims against him or they're not --

17 THE COURT: Because, I mean, it did --

18 MR. BARLOW: -- asking for any information from
19 him.

20 THE COURT: -- occur to me that -- well, nothing
21 is mentioned but just out of -- is that a grounds to
22 dismiss it or does it just require more definite statement?

23 MR. BARLOW: I'm just saying in this situation
24 that Mr. Lehnardt doesn't need to be a party to this case.

25 THE COURT: Okay.

1 MR. BARLOW: Okay. Until an order or something --
2 THE COURT: At this point?
3 MR. BARLOW: That's --
4 THE COURT: If I said -- if there is this issue
5 that this was somehow missed, --
6 MR. BARLOW: Right.
7 THE COURT: -- that there's a central person --
8 MR. BARLOW: If there --
9 THE COURT: -- missed --
10 MR. BARLOW: -- are claims brought against him, if
11 -- some other basis to bring something that would make him
12 be necessary to this action, then revisit that when that
13 arises, but as it stands right now, there's no point in
14 making him just come here and hang out and --
15 THE COURT: Okay.
16 MR. BARLOW: -- sit around and wait to be -- to
17 have a claim brought against him.
18 THE COURT: Understood. Okay. Mr. Barney.
19 Interesting.
20 MR. BARNEY: Thank you, Your Honor.
21 You didn't really give me a chance to answer the
22 question that you had asked previously about the trust and
23 changing the trust situs. You began to read it. It says:
24 Expressly as under Article 14, Section 6, changing
25 the trust situs, such as expressly provided herein, the

1 situs of this agreement or any sub trust established
2 hereunder may be changed by the unanimous consent of
3 all of the beneficiaries.

4 It didn't say the majority consent. It said the
5 unanimous consent, okay, of all of the beneficiaries.

6 Then eligible to receive mandatory and
7 discretionary distributions of net income.

8 Now, there have been allegations of sandbagging
9 and yet my Motion to Dismiss hit on this very issue right
10 out of the gate. I said: In order for this Court to take
11 proper jurisdiction over this case, there was a condition
12 precedent that had to have been met and it wasn't met. And
13 therefore, the Trust Protector could not amend this
14 instrument by written action to change the references to
15 [indiscernible] references to such new situs or the law of
16 such new situs and take such action as may be required to
17 conform the terms of the agreement of this trust.

18 That's exactly what happened in this amendment.
19 It was changed purportedly without the consent of
20 Christopher Davis' wife who was a discretionary distributee
21 and included as part of the all requirement.

22 Now, the person that drafted that amendment, the
23 purported first amendment, has already indicated that it
24 was defective. He stands here today and says: It was
25 defective. Okay. He didn't get all of the necessary

1 requirements of all of the beneficiaries.

2 THE COURT: But your client acted on it.

3 MR. BARNEY: The --

4 THE COURT: Your client did things based on the
5 assumption that he had this new role and this amendment.
6 He accepted the role.

7 MR. BARNEY: And under what legal theory would --
8 with him without independent counsel would he be able to
9 effectuate a document that by the terms of the trust
10 couldn't be effectuated? He clearly isn't res judicata
11 because there was no prior proceeding. Okay. And our
12 courts have been very clear about the res judicata
13 requirements.

14 Under this situation, Chris was clearly under a
15 mistake that this could have been done and it wasn't -- the
16 irony of this whole situation is for an argument of res
17 judicata even to have grounds, they would have had to
18 follow the statute in Alaska that was succinctly set forth
19 in my moving papers. They could have gone to the Court.
20 They could have ratified the amendment in Alaska. They
21 didn't. And, in fact, when it became defective, what Mr.
22 Solomon offered was a document dated February 2014, after
23 his admitted document that he put in before where the
24 Trustee resigned on December 5th. Okay?

25 So on December 5th, 2013, Mr. Solomon alleges in

1 his moving papers, in his petition, and also in his
2 documentary evidence that he provided to the Court that
3 this Trustee had in fact resigned two months earlier. And
4 so, what I did in my Motion to Dismiss, was I put the Court
5 on notice of that very fact. Not to hide the document, but
6 to actually put the Court on notice that this document was
7 invalid. It couldn't have been signed by a Trustee who had
8 already advocated and had no authority to sign on that
9 amendment.

10 And with that, --

11 THE COURT: But Mr. Solomon's constructive trust
12 point is that if that has to be litigated, whether this was
13 a valid amendment or not, doesn't the Court still have to
14 take jurisdiction so that we can litigate that? Because
15 your clients acted on it. They've moved -- they turned
16 this over to Dunham. They're acting as the Trustee.
17 There's all this activity taking place based on the
18 assumption that it was valid. You client's now coming in
19 and saying all that activity I took was based on a void
20 document. So everything I have done is wrong. Mr.
21 Lehnardt screwed up because he did this wrong.

22 MR. BARNEY: Your Honor, I'm --

23 THE COURT: Everything we've done is wrong. We
24 shouldn't have taken any of the action that we took. It's
25 all wrong, but you can't sue us for it because it's all

1 wrong.

2 MR. BARNEY: Your Honor, on numerous occasions --

3 THE COURT: It doesn't make any sense.

4 MR. BARNEY: On numerous occasions we've had the
5 Court look at situations that were admittedly all wrong and
6 we've had to go back and we've had to fix it. And, in this
7 case, it needs to go back to Alaska so that they can fix
8 it.

9 I've got no objection. If the Alaska Trustee
10 that's appointed with power and authority that hasn't
11 already resigned wants to change the situs and they have an
12 opinion from their counsel, you know, in Alaska that moving
13 it down to Nevada is a great idea and that we get all of
14 the signatures on that paper that are requisite under the
15 terms of the trust, I've got no objection to this Court in
16 a situation like that taking jurisdiction but that didn't
17 occur in this situation and the idea that --

18 THE COURT: But we've already got a Nevada --

19 MR. BARNEY: -- things have happened --

20 THE COURT: -- Trustee acting as Nevada Trustee on
21 the assumption they were acting under a valid amendment and
22 change of situs. They're acting on that. They're taking
23 instruction apparently from your client.

24 MR. BARNEY: Your Honor, they were an independent
25 professional fiduciary that has the right to counsel before

1 they sign any document. I'm not going to propose that --

2 THE COURT: Right, but --

3 MR. BARNEY: -- my client had any duty --

4 THE COURT: -- the fact is there --

5 MR. BARNEY: -- or Mr. Lehnardt, for that matter,
6 had any duty to Dunham Trust --

7 THE COURT: I'm not saying they did.

8 MR. BARNEY: -- for their --

9 THE COURT: I'm saying that doesn't this Court
10 have jurisdiction because Dunham is operating under the
11 assumption hat these guys gave me a document that they
12 reported -- they purported to me and hold out to me as
13 being valid because -- how -- they were told. That's your
14 point is shouldn't I have a chance to argue this and brief
15 this because nobody told me there is a wife out there
16 somewhere?

17 MR. BARNEY: So, if I'm understanding you
18 correctly, you're saying that Dunham should be appointed as
19 a Trustee to respond to the 25,000 out of the \$2.2 million
20 that occurred up in Alaska? Because that's really what
21 they're asking. They're saying that, in essence, there was
22 \$25,000 supposedly in a loan and they're asking for the
23 information regarding that \$25,000 loan supposedly that
24 Dunham received and the irony of the whole situation of --
25 and that was argued, and which is completely false, is

1 supposedly it was received by FHT Holdings that supposedly
2 was established by -- actually it was established by
3 Dunham. Okay? Dunham is the sole member of that.

4 Now, the idea of -- you said earlier -- you said:
5 Well I don't know Taria [phonetic]. Your Honor, with all
6 respect, I don't think that matters that you know whether,
7 you know, the identity of Taria [phonetic]. The fact is
8 that they knew who Taria [phonetic] was. They put her on
9 the notice for their Opposition and ironically that didn't
10 even -- that wasn't even proper under 155.010 because she
11 wasn't given the requisite period. So they knew about her
12 because they were the ones that noticed her. Not us,
13 originally, because the fact is she was -- she wasn't made
14 a party to this but she was a beneficiary that required her
15 consent in order for this Court to take jurisdiction.

16 And the idea that things have happened, Your
17 Honor, things happen all of the time. That's what courts
18 are about and that's what litigation is all about. It's
19 attempting to right the wrongs that have happened, but, in
20 this case, by assuming jurisdiction over a trust amendment
21 that is clearly defective by the drafter's own words -- by
22 the drafter's own counsel they've admitted is defective in
23 order to transfer jurisdiction, I think this Court would be
24 stepping outside of what authority it's been given under
25 164.010 to take jurisdiction.

1 And if the Court is inclined to want us to brief
2 this, I'd be more than happy to brief this, Your Honor. In
3 fact, when you were newly called, I actually prepared a
4 brief for you on this very issue with regard to interim
5 jurisdiction on an in personam matter and I'd be happy to
6 reply to this and indicate, but clearly this matter must be
7 dismissed under the facts that we have. Even the evidence
8 that's been presented actually lends credence to the fact
9 that this amendment was improper.

10 THE COURT: Okay. Well my problem here is that
11 everybody relied on it as being proper and Dunham has been
12 acting in good faith on the assumption that they're the
13 properly appointed Trustee, that situs has been changed and
14 they're the proper Trustee. And now you're coming in here
15 and saying: Oh, I, as Trust Protector, or whatever -- or
16 Trust Investment Protector, whatever your client's role is,
17 whatever Mr. Lehnardt's role is, we were all wrong. We did
18 this wrong because we forgot Chris was married.

19 MR. BARNEY: Your Honor, you're --

20 THE COURT: Ah, what?

21 MR. BARNEY: -- assuming that my client even had
22 counsel to know what was going on in this and the fact is
23 he --

24 THE COURT: I'm not saying he did have counsel or
25 didn't have counsel.

1 MR. BARNEY: He was not. He was --

2 THE COURT: He knows whether he's married or not.

3 MR. BARNEY: He does know whether he's married or
4 not, but the fact is he is not --

5 THE COURT: I have no affidavit in front of me
6 telling me that he is married, that the marriage was valid
7 at the time, that she was therefore entitled to take under
8 -- I mean, I don't have anything. All I have is the
9 Trustee that's acting apparently based on instructions from
10 you and Mr. Lehnardt dealing with this trust having been
11 told we have a valid change of situs. They're acting in
12 reliance on it. They assume they've got proper authority
13 and now you're coming in here and saying: All of those
14 things I've told you to do in the last year, I was wrong.
15 I never should have told you to do those things because I
16 don't have a valid authority. Ooops. My bad. Let's go
17 back to Alaska and fix it.

18 Well okay. Go back to Alaska and fix it, but, in
19 the meantime, I think I have jurisdiction of -- at least as
20 put by Mr. Solomon, at least we have the constructive trust
21 because it's here. There is --

22 MR. BARNEY: Your Honor, --

23 THE COURT: -- action you've taken here.

24 MR. BARNEY: Your Honor, I would respectfully
25 disagree in the fact that we have demonstrated the actual

1 drafter of the amendment has admitted that it is incorrect.

2 Now, if somebody wants to bring an action for
3 unjust reliance or they want to bring a claim of that sort,
4 let them do it in the proper fashion and serve them
5 pursuant to Rule 4 to get proper jurisdiction over these
6 parties.

7 However, we have the truth and the fact that they
8 noticed up the wife. They clearly knew who the wife was.
9 They're the first ones who noticed the wife in this
10 proceeding. She was the wife. She was the wife during the
11 period of the reported first amendment. The drafter of
12 that amendment has admitted that neither an acting Trustee
13 nor all of the beneficiaries that were required did sign
14 and that it was invalid.

15 Any presumption that would be there has been
16 clearly rebutted. We have the person that drafted it. We
17 have the notice that was given by Caroline to Taria
18 [phonetic] on -- and it wasn't timely notice, which would
19 invalidate, you know, the proceeding in that regard, but
20 they did know who she was and the idea that we sandbagged
21 when they came up with the notice first, really shocks the
22 conscience, Your Honor, because --

23 THE COURT: Okay. Mr. Solomon, do you have
24 anything further to say on your Petition to -- for
25 Jurisdiction?

1 MR. SOLOMON: Just one. I'll give you another
2 basis to get where we need to go.

3 They just admitted their own downfall. Taria
4 [phonetic] was given notice of this proceeding timely and
5 she's had the full time to do it and she has never
6 objected. She has never raised that she didn't know about
7 this, didn't consent to it, was even married at the time.
8 Now she --

9 THE COURT: Isn't she in Japan? Is she in Japan?

10 MR. SOLOMON: No. I think that's --

11 THE COURT: Somebody's in Japan.

12 MR. SOLOMON: Windield [phonetic].

13 THE COURT: Windield [phonetic] is in Japan.

14 MR. SOLOMON: Yeah, but -- and I don't know where
15 --

16 MR. HOOD: California or Missouri.

17 THE COURT: Oh. It's the person with the two
18 houses.

19 MS. HOOD: Taria [phonetic].

20 MR. SOLOMON: Yeah. This --

21 THE COURT: Okay.

22 MR. SOLOMON: -- is Christopher's -- step up, the
23 father, who is apparently --

24 THE COURT: okay.

25 MR. SOLOMON: -- now married. I don't know how

1 long he's been married. I've never -- this is the first
2 time.

3 But the point is she has full notice, never
4 objected. She's waived her objection by not appearing and
5 not making that. The only person here objecting is the
6 person who acted upon it and never, ever raised this issue
7 until you got in front of this Court on this hearing.

8 THE COURT: Okay. Well, I guess my concern is --
9 and this is -- where I think counsel has indicated that
10 they would like a chance to be heard on this and brief
11 this. I think I have to take jurisdiction over this at
12 least under a theory of constructive trust because they've
13 been relying on this in good faith thinking they're
14 operating properly and all of a sudden they're being told,
15 by the very people who made that representation to them,
16 oops, my bad, even though my sister knew I was married, she
17 who -- I don't know if she had legal counsel telling her
18 anything, but I didn't have legal counsel -- or at least
19 his attorney says he didn't have legal counsel, so I didn't
20 know -- needed it. So she went and hired and is now saying
21 maybe I messed up here. I mean, but everybody's been
22 relying on that.

23 MR. SOLOMON: And you don't have the evidence.
24 All you have --

25 THE COURT: And acting on it.

1 MR. SOLOMON: -- is a statement.
2 THE COURT: And so I just --
3 MR. SOLOMON: There is no evidence at this point
4 other than --
5 THE COURT: It's -- I just have a real problem
6 with this --
7 MR. SOLOMON: -- that.
8 THE COURT: -- in saying that there's no
9 jurisdiction because there's no Trustee in Alaska. The
10 only Trustee is here.
11 MR. SOLOMON: It's true.
12 THE COURT: And that's my problem with this -- you
13 have a trust with no Trustee.
14 MR. BARNEY: Your Honor, --
15 THE COURT: If I follow your theory, Mr. Barney,
16 you have a trust with no Trustee and --
17 MR. BARNEY: And the Court --
18 THE COURT: -- and your client has been acting
19 without any authority and this is -- I mean, do you
20 seriously want us to go down that road?
21 MR. BARNEY: I do, Your Honor, and under the terms
22 of the trust --
23 THE COURT: Okay.
24 MR. BARNEY: -- if the Protect --
25 THE COURT: I think that -- doesn't that expose

1 your client to huge liability?

2 MR. BARNEY: If the Protector does not appoint a
3 Trustee, they can come together unanimously and they can
4 appoint a Trustee.

5 The whole idea is -- what you're saying, Your
6 Honor, is: Okay, well, there would be no Trustee. Do you
7 know how many trusts come before us where there is no
8 Trustee and the courts appoint a Trustee? Numerous times.

9 THE COURT: Okay.

10 MR. BARNEY: A Trustee dies. There is no Trustee
11 for a certain period.

12 THE COURT: Yeah, but there's no Trustee in
13 Alaska. We have a Trustee.

14 MR. BARNEY: The Trustee could be appointed in
15 Alaska by the very terms of the --

16 THE COURT: Okay. Okay.

17 MR. BARNEY: -- trust.

18 THE COURT: I'm done, Mr. Barney. I'm done.

19 MR. BARNEY: Okay.

20 THE COURT: I'm going to take jurisdiction over
21 this trust and I'm going to confirm Dunham as Trustee.

22 But we have this issue, which they've asked for
23 the opportunity because this is not well developed. I
24 think it raises some issues. I have a real concern about
25 Mr. Lehnardt because I didn't really see anything

1 specifically alleged about him in this pleading. But Mr.
2 Barlow's got a point. However -- we now know what the
3 issue is so I think we need a more definite statement.

4 So I'm granting Mr. Barlow alternative relief in
5 the form of I think he's entitled to -- his client is
6 entitled to a more definite statement as to what it is
7 allegedly Mr. Lehnardt already did. I think we all know
8 it, but he's entitled to have it in a pleading. So, Mr.
9 Lehnardt's Motion is granted with alternative relief. We
10 need a more definite statement as to what it is Mr.
11 Lehnardt allegedly did.

12 MR. BARLOW: If anything.

13 THE COURT: If anything. He's entitled to that.
14 So it's -- we need a more definite statement because right
15 now we don't have anything about him. He's right. We
16 need something about him.

17 So, the issue is Chris. My problem here, even if
18 it's just constructive trust because Dunham's acting -- as
19 I've indicated, I believe in a good faith reliance on what
20 everybody told them that here's a valid change of situs and
21 trust amendment, I think that -- I appreciate this argument
22 that it's all invalid and so Mr. Davis can't be sued, but
23 my problem with that is he's been acting here, I have to
24 assume because stuff has been going on, apparently giving
25 instruction to Dunham and I just think that means he's

1 consented to the jurisdiction of this Court.

2 MR. SOLOMON: Yeah, I mean, he's de facto at a
3 minimum.

4 THE COURT: Yeah.

5 MR. BARNEY: Your Honor, did you say that Mr.
6 Davis could be sued?

7 THE COURT: Yeah. I think he's consented to the
8 jurisdiction of this Court.

9 MR. BARNEY: And in what capacity are you making -
10 - I just want to be clear for the record?

11 THE COURT: He has been acting in -- under the
12 assumption, and I understand your argument that it may all
13 be void. If so, it all gets unwound some other way but I
14 think I have to -- I have to take jurisdiction at this
15 point and we have to have some form in which this can be
16 litigated. I respectfully don't think it's Alaska. I
17 think it's here because you've got a Trustee appointed
18 here. Everybody is acting on this assumption and your
19 client, perhaps in as good of faith as Dunham, has been
20 acting under the assumption that he had a role and he had
21 authority to take certain actions. He considered the
22 jurisdiction of this Court by acting on it. So I think
23 he's -- I think he can be sued here. He's consented to it
24 by acting --

25 MR. BARNEY: And when you say he can be sued, are

1 you saying in his individual capacity or are you saying --

2 THE COURT: That's -- what -- I keep forgetting.

3 It was Investor?

4 MR. BARNEY: Investment Trust Advisor.

5 THE COURT: Investment Trust Advisor, yes.

6 MR. BARNEY: Because they're not asking to sue
7 him. At least the pleadings I read, they're not asking to
8 sue him. They're asking for information, Your Honor, and
9 your -- you jumped to the he can be sued --

10 THE COURT: No. I'm saying I've got jurisdiction
11 over it. So in his capacity as this Investment Trust
12 Advisor, if they want to get records and stuff from him,
13 then fine. He's consented to act in that capacity in this
14 jurisdiction. Until it's shown that, in fact, he didn't
15 have that capacity, I think he's consented because he acted
16 on it.

17 MR. BARNEY: Okay. So, just to be clear, you're
18 assuming jurisdiction under 164.010 in what capacity? Over
19 Dunham Trust?

20 THE COURT: Dunham Trust because there's a trust -
21 - they -- the trust has been -- they took the role of
22 Trustee acting on an assumption that they were properly
23 appointed and they had a valid amendment and the change of
24 situs. They acted on that. Your client also acted on it
25 in his role of Investment Trust Advisor.

1 So, to the extent that that's a role that he was
2 acting in, then I think we've got like a jurisdiction over
3 him in that role because everybody was acting on that. If
4 it's proven that, in fact, that's all void because Taria
5 [phonetic] was entitled to be a signator, if we've got
6 evidence on that and it's proven, then we've got a whole
7 different problem, but we've got to litigate that somewhere
8 and I don't think it's Alaska because this trust isn't in
9 Alaska. Everybody is operating on the assumption that it
10 is here. If it shouldn't be here, that's a problem for
11 another day.

12 MR. BARNEY: And just as a point of clarification,
13 when you're indicating that you have jurisdiction, are you
14 -- is the extent of your ruling that you have jurisdiction
15 or that you're just taking jurisdiction over Dunham and --
16 because there's relief that's been requested and I'm --

17 MR. SOLOMON: And I'd like to get to that, Your
18 Honor.

19 THE COURT: I know.

20 MR. SOLOMON: You've already -- you indicated that
21 you're going to assume jurisdiction over Chris, --

22 THE COURT: Right.

23 MR. SOLOMON: -- and --

24 THE COURT: In his role of Investment Trust
25 Advisor.

1 MR. SOLOMON: I understand. Again, Article 12,
2 Section 4 of the trust, and nobody disputes this, says,
3 quote:

4 The trust books and records along with all trust
5 documents shall be available and open at all reasonable
6 times for the inspection of the trust beneficiaries and
7 the representatives.

8 He has not opposed that he has these type of
9 records in his possession. In fact, I know he does because
10 Harriet Rowland [phonetic] told me that she had them, that
11 he had produced them to her. She was prepared to turn them
12 over to me when he said: No, don't give them anything.

13 THE COURT: Okay. Okay. So you asked for
14 multiple types of relief. The petition is to assume
15 jurisdiction over this trust. I'm going to assume
16 jurisdiction over this trust, even though, as I said, it's
17 without prejudice to litigate whether it's actually validly
18 moved. If it's not, then, you know, we've got a problem,
19 but it appears that everybody is acting on the assumption
20 that it's here. So we have to take jurisdiction.

21 So, then I'm assuming jurisdiction over
22 Christopher Davis as Investment Trust Advisor, which is the
23 specific relief requested.

24 Stephen Lehnardt, I agree, I would also have
25 jurisdiction for the same analysis, but the problem is we

1 don't have a statement as to what it is he's allegedly
2 done. So, for the moment, I'm not taking jurisdiction over
3 him because we need a more definite statement in order to
4 say whether or not we can go forward against Mr. Lehnardt.

5 And then to confirm the Dunham Trust Company as
6 Directed Trustee, for now, it appears they're acting in
7 good faith on what was represented to them to be a valid
8 amendment and change of situs. They have been acting, as
9 far as I can tell, nobody's raised that that they would
10 have any notice. So, I think we have to confirm them.
11 They're the Trustee, until it's proven that maybe they
12 shouldn't be because unknown to them there was a wife out
13 there.

14 Okay. And then the final thing was immediate
15 disclosure of documents and information from the Investment
16 Trust Advisor.

17 MR. BARNEY: And what would that include with
18 regard to those records? Clearly Alaska Trust has the
19 records of their tenure as Trustee for the \$2.2 million.

20 THE COURT: Right.

21 MR. BARNEY: And they're not a party to this
22 action. So --

23 THE COURT: It's what Mr. -- it's what he has in
24 his role as Investment Trust Advisor. That's it.

25 MR. BARNEY: Because they've alleged \$25,000 was

1 handled between Dunham and Christopher Davis in Nevada.

2 THE COURT: If that's not -- you know, if that's
3 not in his possession, it's not in his possession. It's
4 only what's -- what he's got in his possession.

5 MR. SOLOMON: I'll prepare the --

6 THE COURT: So you'll prepare the order. Okay?

7 MR. SOLOMON: -- order, Your Honor.

8 THE COURT: Thank you.

9 MR. SOLOMON: And I'll submit it to counsel.

10 THE COURT: And we'll be -- like I said, this is
11 all without prejudice to actually litigate and give, you
12 know, Dunham a chance to --

13 MR. BARNEY: Did you --

14 THE COURT: -- lay out this whole issue.

15 MR. BARNEY: So to understand this correctly --
16 and I'd like to sign off on the order, Your Honor.

17 THE COURT: Sure. Absolutely. Mr. Solomon --

18 MR. BARNEY: If that's --

19 THE COURT: -- always very good about that.

20 MR. BARNEY: But you're giving jurisdiction
21 subject to a determination of whether or not --

22 THE COURT: Yeah. It's without prejudice to --
23 allergies. Without prejudice to raise the issue.

24 MR. SOLOMON: I understand.

25 MR. BARNEY: Of the validity --

1 THE COURT: Properly --
2 MR. BARNEY: -- of the first amendment. Is that
3 correct?
4 THE COURT: Properly with evidence and -- because
5 right now we don't even have an affidavit from Tarjia
6 [phonetic] and who knows? I don't have her -- Taria
7 [phonetic].
8 MR. BARNEY: Taria [phonetic].
9 THE COURT: Thank you.
10 And Dunham. You know, surely they'd like to be
11 heard. So, you know, it's without prejudice on that issue,
12 but right now, everybody is acting on it, so --
13 MR. SOLOMON: Thank you, Your Honor.
14 MS. RENWICK: Thank you, Your Honor.
15 THE COURT: -- we'll litigate it all later. Thank
16 you all for coming in.
17 THE CLERK: Is this [indiscernible]?
18 THE COURT: Yes. We're keeping it. Mr. Solomon,
19 specifically just for the record, Mr. Solomon specifically
20 requested that this be handled from its inception here and
21 nobody's objected to that part. So we're --
22 MR. BARNEY: Yeah. I'd prefer that, Your Honor.
23 THE COURT: You got it. Okay. We're good. We'll
24 see you guys back here.
25 MR. BARNEY: If the Court has jurisdiction.

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THE COURT: Exactly. Subject to your right to say
I don't have jurisdiction.

PROCEEDING CONCLUDED AT 11:15 A.M.

* * * * *

1 CERTIFICATION

2
3
4 I certify that the foregoing is a correct transcript from
5 the audio-visual recording of the proceedings in the
6 above-entitled matter.
7

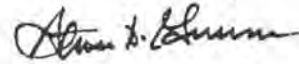
8 AFFIRMATION

9
10 I affirm that this transcript does not contain the social
11 security or tax identification number of any person or
12 entity.
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A handwritten signature in cursive script, reading "Kristen Lunkwitz", written over a horizontal line.

22 KRISTEN LUNKWITZ
23 INDEPENDENT TRANSCRIBER
24
25

Exhibit 10



CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of:

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

15 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
16 at the time the first amendment was signed.

18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20 IT IS SO FOUND.

21 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
22 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
23 granted without prejudice.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
26 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
27 more definite statement is filed.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to

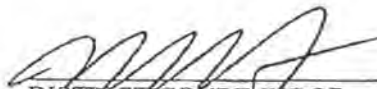
5 all information in his possession ^{custody or control} in his role as Investment Trust Advisor, and in his
6 role as manager of FHY Holdings

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 DATED this 19th day of May, 2015.

13
14
15
16 
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by the Following:

Approved as to Form and Content:

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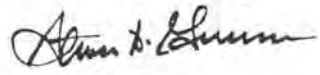
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CLERK OF THE COURT

NOTICE

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of
The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

Case No.: P-15-083867
Dept. No.: Probate (26)

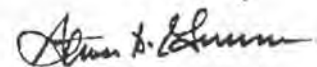
NOTICE OF ENTRY OF ORDER

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Order* was entered
by the Court on June 24, 2015 in the above-entitled matter, a copy of which is attached hereto.

DATED this 1st day of July, 2015.

ROLAND LAW FIRM


HARRIET H. ROLAND, ESQ.
Nevada Bar No. 5471
Attorney for Christopher D. Davis



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of:

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

11
12
13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

15
16 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
17 at the time the first amendment was signed.

18
19 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
20 action on behalf of the trust has been taken in Nevada.

21
22 IT IS SO FOUND.

23
24 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
25 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
26 granted without prejudice.

27
28 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
more definite statement is filed.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{custody or control} in his role as Investment Trust Advisor, ^{and in his}
6 ^{role as manager of FHR Holdings}

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

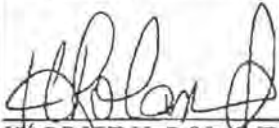
11 IT IS SO ORDERED, ADJUDGED AND DECREED.

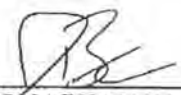
12 DATED this 15th day of May, 2015.

13
14
15
16 
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by the Following:

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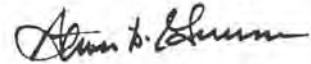
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Attorneys for Caroline D. Davis

Exhibit 11



CLERK OF THE COURT

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18 *Attorneys for Christopher D. Davis*

19 EIGHTH JUDICIAL DISTRICT COURT

20 CLARK COUNTY, NEVADA

21 In the matter of:

Case No.: P-15-083867-T

22 The BEATRICE B. DAVIS FAMILY HERITAGE
23 TRUST, dated July 28, 2000, as amended on
24 February 24, 2014.

Dept. No.: 26

25 NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE
26 ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION
27 OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY
28 28, 2000, AS AMENDED ON FEBRUARY 24, 2014, TO ASSUME
JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR,
TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE, AND
FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION
FROM CHRISTOPHER D. DAVIS;

1 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
2 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
3 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10)
4 DAYS OF YOUR RECEIPT OF THIS MOTION.

5 FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE
6 COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION
7 MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE
8 COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING
9 DATE.

10 TO: Caroline Davis, through her attorneys Mark Solon, Esq. and Joshua Hood Esq. of
11 Solomon Dwiggins & Freer, Ltd.

12 TO: Dunham Trust Company, through its attorney Charlene Renwick, Esq., of the law
13 firm of Lee, Hernandez, Landrum & Garofalo,

14 TO: Stephen Lehnardt, through his attorney Jonathan Barlow, of Clear Counsel Law
15 Group.

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for hearing
17 before the Honorable Judge Starman in Dept. 26 of the Eighth Judicial District Court, located at
18 200 Lewis Avenue, Las Vegas, NV 89155, on the 19 day of August, 2015, at
19 9:00am o'clock of said day, or as soon thereafter as counsel may be heard.

20 Christopher D. Davis, by and through his attorneys HARRIET H. ROLAND, Esq., of the
21 ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law office of ANTHONY L.
22 BARNEY, LTD hereby present their petition to reconsider this Court's order regarding
23 Caroline Davis' petition to assume jurisdiction over the Beatrice B. Davis Family Heritage
24 Trust, dated July 28, 2000, as amended on February 24, 2014, to assume jurisdiction over
25 Christopher D. Davis as Investment Trust Advisor, Stephen K. Lehnardt as Distribution Trust
26 Advisor, to confirm Dunham Trust Company as Directed Trustee, and for immediate disclosure
27 of documents and information from Christopher D. Davis. This pleading is based on the
28

1 Memorandum of Points and Authorities attached hereto, any exhibits attached hereto, and any
2 oral argument that will be heard in this matter.

3 DATED this 14th day of July, 2015

Respectfully Submitted:

ROLAND LAW FIRM


HARRIET H. ROLAND
Nevada Bar No.: 5471

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1 is not administered in Nevada. It is administered under a custodian domiciled in Puerto Rico,
2 and its investment advisor is a Canadian broker-dealer.

3 Dunham created FHT Holdings, LLC, ("FHT Holdings") on March 28, 2014, and
4 transferred the insurance policy to it. Dunham is the 100% owner/member of FHT Holdings.
5 Christopher is the manager, and Dunham purportedly acts as "directed trustee" pursuant to the
6 purported First Amendment to the FHT dated February 24, 2014. Upon information and belief,
7 the directed trustee and LLC structure was put into place by Dunham in an attempt to shield
8 itself from the fiduciary liability inherent in holding large assets without diversification.
9

10 Christopher Davis, as manager of FHT Holdings, has no power over the Ashley Cooper
11 policy, or over the Puerto Rico custodian, or over the Canadian broker-dealer investment
12 adviser. Upon information and belief, the sole purpose of his appointment and the formation of
13 FHT Holdings, LLC, was to shield Dunham from fiduciary liability for its action or inaction.
14 Christopher receives no compensation or benefit in his position as manager of FHT Holdings.
15 Because FHT Holdings is solely owned by Dunham, Christopher can be removed by Dunham at
16 any time.
17

18 In the Order filed June 24, 2015, this Court found that "the Court has jurisdiction as a
19 constructive trust because action on behalf of the trust has been taken in Nevada."¹ Based on
20 this finding that jurisdiction was proper this Court assumed jurisdiction over Christopher D.
21 Davis and granted immediate disclosure of "all information in his possession, custody and
22 control in his role as investment trust advisor and or his role as manager of FHT holdings."²
23

24 II. LEGAL AUTHORITY AND ARGUMENT

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27 ¹ See Order, filed June 24, 2015

28 ² *Id.*

1 **A. Inherent Authority to Reconsider the Court's Prior Order**

2 A court has inherent authority to reconsider its prior orders.³ Reconsideration is also proper
3 pursuant to E.D.C.R. 2.24 which states in pertinent part:

4 (a) No motions once heard and disposed of may be renewed in the same cause, nor may the
5 same matters therein embraced be reheard, unless by leave of the court granted upon motion
6 therefor, after notice of such motion to the adverse parties.

7 (b) A party seeking reconsideration of a ruling of the court, other than any order which may
8 be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for
9 such relief within 10 days after service of written notice of the order or judgment unless the
10 time is shortened or enlarged by order....

11 (c) If a motion for rehearing is granted, the court may make a final disposition of the cause
12 without reargument or may reset it for reargument or resubmission or may make such other
13 orders as are deemed appropriate under the circumstances of the particular case.

14 A petition for reconsideration may be appropriate when there is clear error or to prevent
15 manifest injustice, and when a court overlooks controlling decisions.⁴

16 **B. Lack of Subject Matter Jurisdiction Invalidates Nevada's Jurisdiction Due To**
17 **Absence of Conditions Precedent to Change of Situs from Alaska to Nevada.**

18 The entirety of Caroline's petition and her opposition to the motion to dismiss, and her
19 request for the Nevada court to assert jurisdiction over Christopher and the Revocable Family
20 Trust, rests defectively upon the presumed validity of the change of situs of the Bearrice B.
21 Trust.

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26 ³ *Trask v. Faretto*, 91 Nev. 401, 536 P. 2d 1026 (1975); *Murphy v. Murphy*, 64 Nev. 445 (1947).

27 ⁴ *Nunes v. Ashcroft*, 375 F.3d 810, 812 (9th Cir. 2004); See also *Official Comm. Of Unsecured Creditors v. Coopers*
28 , 332 F.3d 147 (2nd Cir. 2003).

1 Davis Family Heritage Trust dated July 28, 2000 (the "FHT") from Alaska to Nevada,
2 purportedly accomplished by the February 24, 2014 First Amendment.

3 It is important to note that the question of the validity of the change of situs is different
4 than the question of the validity of the First Amendment. Although Caroline asserts that the
5 purported First Amendment is "presumed to be valid unless proven otherwise", all the facts and
6 evidence prove the change of situs (a condition precedent to any amendment) was invalid and
7 not permitted under the terms of the FHT. The validity of the FHT (and presumably its
8 amendments) must be determined under Alaska law, by the express mandate of Article 14,
9 Section 6 of the FHT.

12 Section 6, Paragraph 1, of the FHT provides the requirements for a change of situs as:

13 Except as expressly provided herein, the situs of this agreement or any subtrust
14 established hereunder may be changed by the unanimous consent of all of the
15 beneficiaries then eligible to receive mandatory or discretionary distributions of net
16 income under this agreement or such subtrust, with the consent of any then-acting
17 Protector and the Trustee thereof, which shall be given only after Trustee has obtained
18 advice from counsel as to the tax and other consequences of a change in situs.⁵

19 The conditions precedent to the change of situs require that all of the beneficiaries then
20 eligible to receive mandatory or discretionary distributions must consent to the change of the
21 situs. In addition, both the FHT Trust Protector and Trustee must consent to the change of situs
22 after the Trustee has been able to meet with an attorney to discuss the tax and other
23 consequences of a change in situs, and after all the current income beneficiaries of the FHT have
24 consented. These conditions did not occur. Therefore the situs of the FHT remains in Alaska,
25 and jurisdiction

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28 ⁵ See Article 14, Section 4, Page 14-7 attached as Exhibit I to Caroline Davis's Original Petition (emphasis added).

1 Caroline recognizes that Tarja Davis is a discretionary beneficiary of the FHT. This is
2 immediately clear by a simple review of its terms of the FHT⁶ and by a simple review of the
3 certificate of service.⁷ Furthermore, Caroline asserts and provides written proof that Alaska
4 USA Trust Company ("Alaska USA") resigned as Trustee on December 5, 2013. The
5 resignation of Alaska USA as Trustee occurred almost three months prior to the execution of
6 the purported first amendment on February 24, 2014 and the appointment of Dunham Trust
7 Company ("Dunham") as successor Trustee.

8
9 There is no evidence that anyone or any entity assumed the office of Trustee and was in
10 authority to act and provide consent of the Trustee during the period between the resignation of
11 Alaska USA in December 2013 and the purported first amendment appointing Dunham almost
12 three months later. In contravention of the terms of the FHT, there was a purported change in
13 situs made while there was no acting Trustee to provide informed consent to the change in situs.
14 Further, it appears everyone overlooked the necessity of obtaining the consent Christopher's
15 wife, Tarja, who was and is a beneficiary entitled to discretionary distributions. Tarja did not
16 consent to the change in situs, and her signature cannot be found on any of the documents
17 purporting to achieve the change in situs to Nevada and Dunham's appointment as successor
18 trustee. Tarja was not given proper and adequate notice of the proceedings upon which this
19 Court issued its order to protect her interests or file a responsive pleading.⁸

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25 ⁶ See Trust, Article Three, Section 1, Page 3-1; See also Article Eight, Section 3.d., Page 8-4, See also Article 8-
26 4.b.1-2, Pages 8-12 and 8-13 attached as Exhibit 1 to Caroline Davis' Original Petition.

27 ⁷ See Certification of Service for Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP (12)(b)
28 and NRCP 19 dated April 13, 2015 (This corrected mail service was belatedly and deficiently made by Caroline
Davis after Christopher Davis filed his Motion to Dismiss alerting the parties as to the defectiveness of both the
service of process and the defective nature of the purported first amendment).

⁸ *Id.*

1 The law of Alaska, as the situs and place of administration of the FHT before the
2 attempted change of situs, and the place of residence of Alaska USA Trust Company, the then
3 Trustee, governs the validity of the First Amendment's change of situs to Nevada, the
4 appointment of Dunham, and the other terms of the First Amendment, as well as the validity of
5 the First Amendment itself.

7 Article 12, Section 3 of the FHT requires "Any proceedings to seek judicial instructions
8 or a judicial determination shall be initiated by my Trustee in the appropriate state court having
9 original jurisdiction of those matters relating to the construction and administration of trusts.
10 Because under the terms of the FHT, questions of validity must be determined under Alaska
11 law, and Alaska was the original jurisdiction of the FHT until the attempted change of situs, an
12 Alaska court must determine whether the change of situs and the First Amendment were valid.
13 Only then should the Nevada court take jurisdiction over the FHT, and only if jurisdiction is
14 then appropriate.

17 Alaska law allows for modification of an irrevocable trust upon consent, but only by
18 court approval. AS 13.36.360. Modification or Termination of Irrevocable Trust By Consent,
19 reads:

20 (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or
21 beneficiary, a court may modify or terminate an irrevocable trust if all of the beneficiaries
22 consent and if continuation of the trust on the existing terms of the trust is not necessary to
23 further a material purpose of the trust. However, the court, in its discretion, may determine that
24 the reason for modifying or terminating the trust under the circumstances outweighs the interest
25 in accomplishing the material purposes of the trust. The inclusion of a restriction on the
26 voluntary or involuntary transfer of trust interests under AS 34.40.110 may constitute a material
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1 purpose of the trust under this subsection, but is not presumed to constitute a material purpose of
2 the trust under this subsection.

3 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may not be
4 modified or terminated under this section while a settlor is also a discretionary beneficiary of the
5 trust.
6

7 (c) If a beneficiary other than a qualified beneficiary does not consent to a modification
8 or termination of an irrevocable trust that is proposed by the trustee, settlor, or other
9 beneficiaries, a court may approve the proposed modification or termination if the court
10 determines
11

12 (1) if all the beneficiaries had consented, the trust could have been modified or
13 terminated under this section; and

14 (2) the rights of a beneficiary who does not consent will be adequately protected or not
15 significantly impaired.
16

17 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

18 (1) on the date the beneficiary's qualification is determined, is entitled or eligible to
19 receive a distribution of trust income or principal; or

20 (2) would be entitled to receive a distribution of trust income or principal if the event
21 causing the trust's termination occurs.
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23 It is well settled that a trust may only be modified in accordance with its specific terms.⁹
24 Where a trust instrument requires the consent of specific parties in order for an amendment to be
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28 ⁹ *Dallinger v. Abel*, 199 Ill. App. 3d 1057, 1059-1060 (Ill. App. Ct. 1990) citing *Parish v. Parish* (1963), 29 Ill. 2d 141, 149, 193 N.E.2d 761, 766.) (It is elementary that if the method of exercising a power of modification is described in the trust instrument, the power can be asserted only in that manner.)

1 valid, the lack of consent will invalidate a purported amendment.¹⁰ This required consent
2 demonstrates the importance of having Alaska USA Trust Company ("Alaska USA") or their
3 successor-in-interest (and predecessor trustee) Alaska Trust Company demonstrate authority and
4 consent to change the situs of the FHT from Alaska to Nevada, because unless this evidence of
5 consent is provided, the FHT situs cannot be changed. The consent of some of the beneficiaries
6 and the FHT Trust Protector was not enough to meet the strict requirements of the condition
7 precedent (i.e. change of situs) for the purported First Amendment.
8

9
10 Caroline has provided no evidence of any written or even oral consent of any trustee
11 authorizing the FHT's change in situs prior to Alaska USA's resignation on December 5, 2013.
12 She has not provided any evidence of Tarja having consented to the change of situs. In fact, she
13 never even provided proper statutory notice to Tarja to enable her to file even a simple affidavit
14 to protect her rights under the Trust. She has not provided any evidence of the unanimous
15 agreement of Beatrice Davis's children to appoint a successor trustee in the event the Trust
16 Protector fails to appoint a Successor Trustee within thirty (30) days after Alaska USA
17 resigned,¹¹ and even if they had, the successor trustee and Tarja would have had to consent to
18 the change of situs. Therefore, the change of situs under the purported First Amendment must be
19 presumed invalid until such evidence of an acting Trustee's consent can be produced and
20 evidence of the Trustee's and all beneficiaries' consent of the change in situs can be obtained.
21
22 Further and most importantly, such a dispute, which includes the validity of the First
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26 ¹⁰ *Williams v. Springfield Marine Bank*, 131 Ill. App. 3d 417, 475 N.E.2d 1122 (1985) (This rule was applied where
27 the trust instrument permitted amendment by the settlors, the appellate court holding that an attempted amendment
28 by only one settlor, after the other had died, was invalid.); See also Restatement (Second) of Trusts § 331,
Explanatory Notes, comment c, at 144 (1959) ("If the settlor reserves a power to modify the trust only with the
consent of one or more of the beneficiaries, or of the trustee, or of a third person, he cannot modify the trust without
such consent.").

¹¹ See Trust, Article Eleven, Section 3(c), Page 11-3, attached as Exhibit 1 to Caroline Davis's Original Petition.

1 Amendment, must be brought in Alaska, as the original situs of the FHT before the purported
2 First Amendment and the attempted change of situs.

3 Christopher asserts that the change of situs is invalid because of the lack of consent of all
4 beneficiaries and the absence of action by an Alaska Trustee. The determination of the validity
5 of the purported First Amendment and the change of situs (as well as its other provisions) is a
6 condition precedent to the Nevada court taking jurisdiction over the FHT. That determination
7 must be made under Alaska law before the Nevada court can assert jurisdiction over the FHT.
8 Caroline alleges that the FHT Trust Protector validly appointed Dunham as successor Trustee on
9 February 24, 2014, citing the second paragraph of Article 14, Section 6 as his authority to do so;
10 however as noted herein, she omitted the preceding paragraph relating to the change of situs
11 which is the condition precedent before an amendment can be authorized. Although the FHT
12 authorizes the Trust Protector and/or the beneficiaries to appoint a successor trustee in certain
13 circumstances, the change of situs could only be authorized upon consent by all beneficiaries,
14 and approval by a trustee in the original situs of Alaska

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16 When the terms of a trust are not followed, the resulting actions based upon such
17 deviation must be invalidated.¹² Under the terms of the FHT, discussed above, it was not
18 Dunham's consent that was required to change the situs. The timing of the purported First
19 Amendment and Dunham's consent put the cart before the horse. In order to move the situs of
20 the FHT from Alaska to Nevada or any other jurisdiction, all the beneficiaries had to consent,
21 the "then acting Trust Protector" had to consent, and the Alaska trustee had to consent only after
22 obtaining the requisite legal advice. Only then could a change in situs occur. (This is a
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28 ¹² *Northwestern University v. McLoraine*, 108 Ill. App. 3d 310, 438 N.E.2d 1369 (1982) (This rule was applied where the settlor had neglected to follow the terms of the trust which required for an amendment only that the settlor put the amendment in writing, sign it, and deliver it to the trustees during the settlor's lifetime.)

1 different and more demanding standard than merely changing the trustee to another Alaska
2 trustee. Another Alaska Trustee could have been appointed, and the consent of all the
3 beneficiaries could have been obtained; then upon agreement by the Trustee, all beneficiaries,
4 and the Trust Protector, the situs could have been validly changed. However, the FHT's
5 purported First Amendment attempts to change the FHT's situs while concurrently appointing
6 Dunham as a "directed trustee". Again, Dunham's valid appointment as a Trustee, and its
7 consent to serve, could have been achieved only after the situs of the FHT was changed from
8 Alaska to Nevada. Had all of the beneficiaries consented, the decision to change the situs may
9 have found a more stable legal basis had Dunham been doing business in Alaska. But as a
10 Nevada trustee, Dunham would have had to already be in tenure as trustee, procured advice
11 from legal counsel about the tax and other consequences of moving the FHT situs, and then
12 authorized the actual change in FHT's situs from Alaska. The requisite consent of an authorized
13 Alaska trustee and all the beneficiaries does not appear in the purported First Amendment or in
14 any other document, and Caroline Davis does not provide any other evidence of a Trustee's
15 consent between December 2013 and February 2014. The condition precedent of all the
16 beneficiaries' consents and the Alaska trustee's consent was not met in order to provide
17 authority to then acting Trust Protector, Stephen Lehnardt, to change the situs of the FHT
18 without the consent of an Alaska Trustee as required by the terms of the FHT. The FHT's
19 purported First Amendment's change of situs is, therefore, invalid.

24 Establishing the validity of the FHT's purported First Amendment under NRS 164.010
25 without invoking Alaska jurisdiction is Caroline's "attempted foothold" in her urging for this
26 Court to take improper *in rem* jurisdiction over the FHT, FHT Holdings, and personal
27 jurisdiction over Dunham, but more importantly is the defective basis upon which she urges this
28

1 Court to assume jurisdiction over Christopher in all his capacities within any family entity,
2 foreign or domestic, including the Revocable Trust and the Davis Family Office which are
3 residents of Missouri. Even assuming arguendo that jurisdiction is proper through the untenable
4 theory that the purported First Amendment is valid, this Court is only statutorily authorized to
5 obtain jurisdiction over the FHT if the prerequisites of NRS 164.010 are met. As such, Caroline
6 is more than willing to overlook the FHT's requirements for change of situs and the
7 jurisdictional prerequisites, and arrive at the erroneous conclusion that somehow Christopher
8 and Mr. Lenhardt "consented to the jurisdiction of this Court by operation of law." Noticeably,
9 Caroline cites NRS 163.5555 as authority for this statement but ignores the requirement that the
10 FHT be subject to the laws of Alaska, which, is clearly in dispute precisely because of the
11 invalidity of the purported First Amendment's change of the FHT's situs to Nevada.
12

14 It is clear that even during the life of Beatrice B. Davis, the situs of the FHT could not be
15 changed unless her Alaska trustee had obtained an opinion of legal counsel to the effect that the
16 change in situs would not impact adversely on the spendthrift provisions of the FHT.¹³ The
17 express purpose of the FHT was to support and protect Beatrice's family for generations to
18 come, through the protection for the shares allocated to each beneficiary, so that no situation
19 would be created that could expose any of the beneficiary's shares to the claims of creditors
20 including amongst any beneficiary acting as a creditor to another.¹⁴

23 Beatrice Davis, the trustmaker, was very clear that even if a power was granted to her
24 Trustee by applicable state and federal statutes, it would be strictly limited to any express
25 limitations or contrary directions in the FHT.¹⁵ Any amendment to change the situs of the FHT
26

28 ¹³ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

¹⁴ See Trust, Article 8, Section 3 (b), Page 8-3

¹⁵ See Trust, Article Thirteen, Section 3.2, Page 13-19.

1 would require the opinion of legal counsel as to its effect and be curtailed, if applicable, by the
2 terms of the FHT. This protection is implicit in the requirement that the advice of legal counsel
3 be sought by the Trustee prior to a change in situs of the FHT.¹⁶ There is simply no evidence to
4 suggest that such an opinion was obtained by the Alaska Trustee prior to the purported change
5 in FHT situs.
6

7 Because of the lack of evidence of the required consent by the Alaska trustee and all the
8 beneficiaries, and because the Alaska trustees initiated and completed all the transactions for
9 which Caroline is demanding an account, the presence of the predecessor Alaska trustees acting
10 prior to February 24, 2014 (the date of the purported First Amendment) is indispensable to this
11 matter, in order to determine the validity and consent issues discussed herein. Without the
12 indispensable party(ies) being joined, including Alaska Trust, the predecessor trustee and
13 successor in interest of Alaska USA, and/or another Alaskan successor after December 5, 2013,
14 the matter cannot properly adjudicated.
15

16
17 C. Indispensible Parties to this Action and Caroline's Failure to Provide Notice or
18 Service

19 Caroline alleges that, "During their tenure as Trustee, both Alaska¹⁷ and Alaska USA
20 distributed approximately \$2,164,744.68, from loans taken against the Ashley Cooper Life
21 Insurance Policy, to Christopher individually, as Trustee of the Beatrice B. Davis Revocable
22 Living Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the
23 Davis Family Office, a Missouri limited liability company (the "Davis Office"). Caroline
24 apparently believes that the Alaska trustees which allegedly procured more than two million
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28 ¹⁶ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

¹⁷ Alaska Trust Company was the predecessor trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 prior to Alaska USA Trust Company.

1 dollars in policy loans from Ashley Cooper Life Insurance Policy for various FHT purposes,
2 including making loans to Beatrice and paying their own fees, are not indispensable parties,
3 simply because she alleges that. Christopher, in his individual capacity, and in capacity as
4 Trustee of the Revocable Trust, and as Manager of the Davis Office, was the only individual to
5 receive distributions as a result of such loans and the only one privy to the information sought
6 by Ms. Davis...¹⁸ Her allegation is misplaced and unsupported by the evidence that was
7 tendered to the Court.
8

9
10 Caroline apparently believes that neither Beatrice, nor the Alaska trustees, nor any other
11 entity, were the recipients of any of the FHT funds borrowed from the Ashley Cooper Life
12 Insurance Policy, which based upon the administration expenses by Alaska and/or Alaska USA
13 or the Trust Protector is improbable at best. Under Alaska law and almost every other
14 jurisdiction in the United States, a trustee is entitled to fees, and the mandate of an accounting of
15 trust assets is directed to the trustee that actually administered the trust funds or assets, not to a
16 beneficiary or other creditor or debtor of the trust.¹⁹ In this case, those trustees required to
17 account would be Alaska Trust and Alaska USA (now merged into Alaska USA) and they are
18 the only ones who could account for these transactions and whether or not they received any of
19 those funds including but not limited to their administration costs or other investment expenses.
20 Because only they would have such information, they are a necessary and indispensable party.
21 Caroline's request would greatly prejudice and unduly burden Christopher to secure information
22 from the prior trustees in Alaska for documentation that Caroline desires through a proceeding
23 in Nevada, during the time that she had co-equal status with him as a beneficiary. Alaska and/or
24 Alaska USA would be the proper parties from whom to request her requested information.
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¹⁸ See Opposition at 7:20-22.

1 Notably, Caroline alleges that Dunham Trust Company is an indispensable party, having
2 allegedly received a mere \$25,000 of the total amount of policy loans (presumably for its fees
3 and expenses) while Alaska and Alaska USA are not indispensable parties after having
4 allegedly received and distributed \$2,164,744.68 as well as allegedly transferring all the assets
5 of the FHT to Dunham. Even the \$25,000 allegedly received by Dunham Trust Company was
6 never proven or the basis upon which to take jurisdiction. Interestingly, the information Caroline
7 Davis is requesting would be in the possession of the two Alaska trustees that she claims are not
8 indispensable, which is an unreasonable argument. It is unclear if Caroline even bothered to
9 request an accounting from either Alaska Trust or Alaska USA concerning their alleged receipt
10 and distribution of \$2,164,744.68, or from Dunham regarding the \$25,000 that was allegedly
11 loaned during Dunham Trust Company's alleged trusteeship before rushing to this court for a
12 remedy. As a beneficiary, she could have easily requested this information from these trustees
13 without filing the present court action.
14

15
16 Because of her rush to court without apparently requesting these documents from the
17 trustees, Caroline now attempts twice to indicate that she is "not now objecting to the loans and
18 distributions being made or claiming any breach of fiduciary duty..." or she "is not now
19 claiming any willful misconduct or gross negligence by Alaska or Alaska USA."²⁰ However,
20 whether or not she is now objecting to loans or making claims against Alaska or Alaska USA is
21 irrelevant to the fact that they are the parties holding the information she seeks. She has asked
22 this Court to assume jurisdiction over the Nevada trustee, the FHT, the Trust Protector and trust
23 adviser, and if she succeeds, she will likely file any future action in this same Nevada case.
24 Therefore, her allegation that "Alaska and Alaska USA have no interest in the outcome of the
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¹⁹ See Alaska Statute 13.36.080; See also NRS 164.015 and NRS 153.031(1)(b)

1 relief being sought by Ms. Davis in her Petition" is simply a pretext for allowing her to later
2 name them as party defendants. In addition to Christopher, Alaska and Alaska USA would have
3 every interest in the outcome of this action because they were trustees of the Trust who made
4 the Trust loans which are the subject of Caroline's concerns, and over which she has asked this
5 Court to exercise *in rem* jurisdiction. Furthermore, they were trustees for the time periods in
6 which Caroline seeks all information and, therefore, logically any information and/or claims
7 arising from the information in Alaska and Alaska USA's possession are relevant to them.
8

9
10 Relying on the purported validity of the First Amendment to the FHT, Caroline comes to
11 the misleading conclusion that according to her, "[because] Dunham Trust lacked the authority
12 to act, the transfer of the Ashley Cooper Life Insurance Policy must have been done at the
13 direction of Christopher, as Investment Trust Advisor." Noticeably, Caroline removes any
14 reference to the Alaska or Alaska USA Trustees who would have the information, and who
15 approved any alleged transfers and have the information pertaining thereto. Caroline freely
16 omits information to wrongfully obtain the information she seeks. She further ignores that
17 Christopher, as manager of an LLC wholly owned by the Trustee would not have the authority
18 to transfer the policy to the FHT Holdings, LLC. Caroline leaps to her finger-pointing
19 apparently without bothering to request the transfer documents either from Dunham, as owner
20 of the FHT Holding, LLC or the Puerto Rico custodian.
21
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23 Caroline is simply attempting to gain access to records that she could request from the
24 parties that she claims are not indispensable, and to delve into Christopher's personal affairs.
25 She has asked for an accounting from him as to the use of all the loan proceeds or distribution
26 from the FHT, without regard to the entity or person who in fact was the borrower! It is a
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²⁰ See Page 7, lines 24-25 and Page 8, lines 17-18 of Caroline Davis's Objection.

1 question for the Alaska trustee as to whether the loans or distributions were made in accordance
2 with the provisions of the FHT. With 20/20 hindsight, Caroline may regret that she did not
3 borrow funds, request distributions, or demand an accounting from the Alaska trustees while she
4 was able to do so. Now she is asking this Court to turn a blind eye and "look beyond"⁴¹ her
5 failure to even make any appropriate request on the proper parties or serve the proper parties
6 that would have the information that she is seeking. Christopher respectfully requests that this
7 Court reconsider its order and grant his motion to dismiss and further deny Caroline's claims in
8 their entirety.

10
11 **D. Individual Parties or Entities Were Not Properly Served for the Court to Exercise**
12 **Jurisdiction, and FHT Holdings' Corporate Form May Not Be Disregarded**

13 In an effort to buttress their argument regarding their lack of proper service upon FHT
14 Holdings, LLC, Caroline cited to inapplicable case law from Surrogate's Court of New York,
15 New York County, which does not address the necessity of providing proper service to a
16 corporation. In similar fashion to her omission of the language of the FHT as it related to the
17 condition precedent to any future amendment, she even withheld the pertinent language for the
18 cited case which actually held that, "it is sometimes said that where an estate or trust owns all or
19 substantially all of the shares of a corporation, the corporate form may be disregarded and the
20 situation viewed just as if the fiduciaries held title to the corporate assets. This would appear to
21 be an oversimplification of the matter. It is not so much a matter of disregarding the corporate
22 form, but rather of giving paramount consideration to the testamentary plan and scheme, and
23 effectuating it in the manner prescribed by the testator. (citation omitted) Sometimes, due
24 consideration of the testamentary plan demands that the corporate form be respected. This is
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⁴¹ Petition at 7.5-6.

1 particularly true where the testator directed the formation of a corporation or the continuance of
2 one formed during his lifetime. (citation omitted).²²

3 Under the facts of this case, Beatrice, as Trustmaker, did not form FHT Holdings, Inc.,
4 and did not specify that FHT Holdings, Inc. be given consideration as part of her testamentary
5 plan and scheme. Based upon the definition of the case cited by Caroline, she is attempting to
6 oversimplify this matter, which cannot be done with regard to the facts presented in this matter.
7

8 Furthermore, in *Swensen v. Sheppard*, our Nevada Supreme Court recognized that NRS
9 164.010(1) and NRS 164.015(6) do not give the court jurisdiction to impose personal
10 judgments.²³ Likewise, it found that it could not impose personal liability on individuals or
11 entities which "required the court to acquire "personal jurisdiction over [them as] part[ies],
12 normally through appropriate process based on contacts with the jurisdiction or through [their]
13 general appearance therein to defend on the merits."²⁴
14

15 In her Opposition, however, Caroline attempts to request this court take exception to the
16 requirements for proper service and notice, which is entirely improper. Caroline is attempting
17 to use the relaxed standards of statutory *in rem* jurisdiction for the more stringent requirements
18 necessary to obtain the necessary personal jurisdiction over Christopher Davis, individually or
19 upon FHT Holdings, LLC. Again, this is improper. Proper notice and service are required for
20 personal jurisdiction over a party especially when requesting the court to exercise power and
21 authority over an individual party or upon a business entity.
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26 ²² *In the Matter of Schnur*, 39 Misc.2d 880, 887, 242 N.Y.S.2d, at 132 (1963).

27 ²³ *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 946 (Nev. 2013).

28 ²⁴ *Id.*, citing Restatement (Second) of Judgments § 30(2) cmt. c; see *Young v. Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987) ("A court does not have jurisdiction to enter judgment for or against one who is not a party to the action.")

1 Therefore, even if the Court were to obtain jurisdiction over the insurance policy
2 administered by a Puerto Rico insurer with the advice of the Canadian broker-dealer investment
3 advisor, Caroline would also have to seek personal jurisdiction over Christopher, individually,
4 or FHT Holdings, LLC to obtain any relief she seeks. She did not do so.

5
6 Therefore, the due process rights of the corporation must be respected, and service
7 properly administered in order to obtain jurisdiction over Christopher, individually, and as
8 manager of FHT Holdings, LLC. Therefore, Caroline's Original Petition should be dismissed.

9
10 **E. Additional Indispensable Parties Named in Opposition Were Not Served; therefore,**
11 **Jurisdiction is Improper over Them.**

12 Caroline admittedly did not include additional parties in her Original Petition that she
13 now alleges were recipients of FHT funds and loans from the insurance policy. Caroline alleges
14 that, "During their tenure as Trustee, both Alaska and Alaska USA distributed approximately
15 \$2,164,744.68, from loans taken against the Ashley Cooper Life Insurance Policy, to
16 Christopher individually, as co-Trustee (with her) of the Beatrice B. Davis Revocable Living
17 Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the Davis
18 Family Office, a Missouri limited liability company (the "Davis Office"). In order to allegedly
19 distribute loans, Alaska and Alaska USA must have been recipients of FHT funds. In order to
20 make a loan of FHT funds to Alaska and Alaska, the custodian of the Ashley Cooper Life
21 Insurance Policy must have been in receipt of FHT funds. If, as alleged, FHT funds were
22 received by Christopher, the Revocable Trust, and the Davis Family Office from Alaska and
23 Alaska USA, all three would have been recipients of those funds as distributions. Of the prior
24 six alleged recipients, none of them was afforded proper notice or service in this matter.
25
26 Therefore, this court lacks jurisdiction over these parties. Particularly, Nevada law does not
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28

1 allow for this Court to take jurisdiction over the Revocable Trust and the Davis Family Office,
2 which are Missouri entities, without examining the requirements necessary for jurisdiction over
3 foreign entities holding only personal property.
4

5 Caroline, in effect, argues 1) the entity authorized to make the policy loan is not an
6 indispensable party, 2) that the party making the loans or distributions does not even need to be
7 noticed or served concerning the policy loans, 3) the only individual alleged as a recipient does
8 not need to be served pursuant to NRCP 4; and 4) that notice or service either under NRCP 4 or
9 NRS 155.010 does not need to be provided to the remaining alleged distributees and recipients
10 of FHT funds. These four arguments violate all constitutionally protected due process rights
11 and related laws existent in Nevada, and likely every other jurisdiction in the United States.
12 Proper parties should be included in lawsuits affecting their rights or responsibilities and proper
13 personal and subject matter jurisdiction should be obtained over all parties in such lawsuits.
14

15 Caroline admittedly understands the importance of obtaining *in rem* jurisdiction over a
16 trustee of a trust pursuant to NRS 164.010, because she asks this Court to assume jurisdiction of
17 the FHT pursuant to this statutory authority. Notwithstanding this admission, she sought
18 jurisdiction over Christopher Davis, individually, as trustee of the Revocable Trust, and as
19 manager for FHT Holdings without even bothering to properly serve them with personal service
20 pursuant to NRCP 4. Furthermore, Caroline failed to serve the custodian of the Ashley Cooper
21 Life Insurance Policy of which she claims provided the loans to the FHT. Caroline did not even
22 properly serve Tarja (a mandatory beneficiary for purposes of consent to the purported First
23 Amendment) properly under 155.010, which failure further renders a fatal blow to any finding
24 that Tarja subsequently acquiesced to purported First amendment which she never consented to
25 in the first place. The aforementioned parties were admittedly never even properly served by
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1 Caroline, and therefore her Petition must be dismissed for lack of proper jurisdiction over these
2 parties.

3 Notice and service of process were never properly given to these parties, and the Court is
4 without jurisdiction over them. Therefore, Caroline's claims in her Petition must be dismissed.
5

6 **F. The Alaska Trustees are Indispensible Parties and Meet NRCP 19 Requirements;**
7 **therefore, without a Joinder of these Parties, this Matter Must be Dismissed.**

8 In Reply to the NRCP 19 factors discussed by Caroline in her Opposition, it is evident
9 that Caroline belies her own statements. Caroline indicates on the one hand that Alaska and
10 Alaska USA would not be "placed in a position in which they would need to protect any
11 interest"²⁵ while on the same page indicating that Caroline is "not now claiming any willful
12 misconduct or gross negligence by Alaska or Alaska USA" suggesting that when she obtains
13 any of Alaska or Alaska USA documents that possible claims are likely to follow.²⁶ Alaska or
14 Alaska USA must be allowed to defend themselves if necessary or protect themselves from
15 liability in the accuracy of information that may be provided during their tenure as Trustees of
16 the FHT to avoid claims of willful misconduct or gross negligence by Caroline. More
17 importantly, they must be responsible for the information that Caroline seeks improperly from
18 Christopher.
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22 Christopher will be subjected to double or multiple or otherwise inconsistent obligations
23 in possibly many jurisdictions as a result of Caroline's claims without the necessary parties,
24 Alaska and Alaska USA, joined to the present matter. Caroline seems to ignore the fact that she
25 has now named multiple Defendants in this matter whose interests must all be considered.
26
27

28 ²⁵ See Caroline's Opposition, Page 8, lines 21-22.

²⁶ See Caroline's Opposition, Page 8, lines 17-18 (emphasis added).

1 especially in light of the fact that proper service has not been effectuated on them for an order or
2 judgment to be rendered against them in this matter.

3 Curiously, Caroline then requests the Court to seek relief from Christopher individually
4 if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully
5 asks the court to order Christopher to provide the documents that are in the possession of Alaska
6 and Alaska USA's without gaining proper jurisdiction over him individually. She wrongfully
7 alleges that such a request would allegedly not be prejudicial to Christopher and allegedly
8 would be an adequate remedy, although the requested documents would be in the Trustee's
9 possession.
10

11 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over
12 Christopher, erroneously citing NRCP 19(b) for this proposition.²⁷ With proper service to
13 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has
14 jurisdiction over the FHT.²⁸
15

16 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in
17 Christopher's Motion to Dismiss and herein. If their joinder is not feasible, then this matter
18 must be dismissed, because they are necessary and indispensable parties to this matter.
19

20 G. The Court Cannot Assume Jurisdiction based on the Remedy of Constructive Trust
21 as Jurisdiction is Subject to Statutory and Due Process Limitations
22

23
24 ²⁷ See Caroline's Opposition, Page 9, lines 14-15 and fn 24.

25 ²⁸ See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as
26 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the
27 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and
28 management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary
when acting as an advisor to the trust. See also AS 13.36.035 (a) The court has exclusive jurisdiction of
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section

1 The Nevada Supreme Court reviews jurisdictional issues de novo.²⁹ In rem jurisdiction only
2 allows the Court to enter judgment against specific property.³⁰ NRS § 164.010 provides that the
3 court may take in rem jurisdiction over a trust statutorily if requisite evidence is found by the
4 Court to exist. NRS 164.010 provides in pertinent part that:

5
6 1. Upon petition of any person appointed as trustee of an express trust by any written
7 instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district
8 court of the county in which the trustee resides or conducts business, or in which the trust has
9 been domiciled, shall consider the application to confirm the appointment of the trustee and
10 specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the
11 trust as a proceeding in rem.
12

13 2. If the court grants the petition, it may consider at the same time any petition for
14 instructions filed with the petition for confirmation.
15

16 3. At any time, the trustee may petition the court for removal of the trust from continuing
17 jurisdiction of the court.

18 4. As used in this section, "written instrument" includes, without limitation, an electronic
19 trust as defined in NRS 163.0015.

20 However, this Court took jurisdiction not based upon the statutory prerequisites set forth in
21 NRS § 164.010, but purportedly upon the theory of constructive trust.
22

23 Without even determining whether Christopher resides or conducts business here in the
24 capacity of a trustee, the Court reasoned that purportedly since action has been taken here, the
25

26 are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of
27 other matters involving trustees and beneficiaries of trusts.

28 ²⁹ *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, (2000).

³⁰ *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1193, 1196 (2013).

1 Court had the power to construct a trust and take jurisdiction. However, a constructive trust is a
2 remedy the court can pronounce after establishing jurisdiction, not a means to obtain it.

3 In order to create a constructive trust the court must first have jurisdiction over the property.
4 Here, the Court has no valid basis for jurisdiction over the Trust property. The change in situs is
5 facially deficient because it does not have unanimous consent of all beneficiaries nor does it
6 have the consent of an Alaska trustee provided after obtaining an opinion of counsel.
7 Additionally, the sole asset of the trust, the Ashley Cooper Life Insurance Policy, is not within
8 the state of Nevada. Finally, with an invalid change in situs the trust is still an Alaska trust, the
9 role of investment trust advisor does not exist, and there is no connection whatsoever to Nevada.
10 Alaska has jurisdiction over the trust and has the power to create a constructive trust over any
11 property in Nevada. This Court simply did not have jurisdiction to create a constructive trust
12 and therefore cannot exercise jurisdiction over the Trust or Christopher D. Davis based on the
13 theory of constructive trust.

14 Even improbably assuming *arguendo* that there is some basis for *in rem* jurisdiction, where a
15 state statute authorizes consent to jurisdiction based upon a finding of *in rem* jurisdiction, that
16 statute is still subject to the requirements of federal due process.³¹ Federal due process requires
17 that the defendant has purposely developed substantial minimum contacts with the forum state
18 and that the assumption of jurisdiction does not violate traditional notions of justice and fair
19 play.³² NRS §163.5555 provides that:

20 If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust
21 **subject to the laws of this State**, the person submits to the jurisdiction of the courts of this
22 State, regardless of any term to the contrary in an agreement or instrument. A trust protector

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27 ³¹ *Doe v. Unocal Corp.*, 248 F.3d 915, 922, (9th Cir. 2001)

28 ³² *Id.*

1 or a trust adviser may be made a party to an action or proceeding arising out of a
2 decision or action of the trust protector or trust adviser.³³ (emphasis added).

3 Assuming the untenable position that this Court had jurisdiction to create a constructive
4 trust, this fact standing alone does not provide a basis for jurisdiction over Christopher D. Davis.
5 NRS § 163.5555 provides jurisdiction over trust advisors, however the trust adviser may only be
6 made a party to an action or proceeding based upon a determinant decision or action.

7
8 In order to understand the extent of jurisdiction granted under NRS § 163.5555, several
9 factors must be considered. First, this statute must be read in conjunction with NRS § 164.010
10 which only provides the court limited *in rem* jurisdiction over trusts. Therefore, jurisdiction
11 under NRS 164.010 acts a condition precedent to a finding of jurisdiction under NRS
12 §163.5555, where the powers of an advisor are simply a subset of the overall fiduciary powers
13 granted to a trustee, who may be confirmed under NRS 164.010.
14

15 Second, in order for NRS § 163.5555 to provide for jurisdiction over the trust advisor, it
16 must comply with the requirements of federal due process. These requirements include a finding
17 that the defendant has sufficient minimum contacts with the forum state, that the defendant
18 purposefully availed himself of the laws of the forum state and that the assumption of
19 jurisdiction does not offend traditional notions of justice and fair play. This court made no
20 findings of minimal contacts, purposeful availment, or whether jurisdiction would offend
21 notions of justice and fair play. The statute itself highlights that fact that a "trust adviser may be
22 made a party to an action or proceeding arising out of a decision or action." Clearly, if the
23 decision or action causing sufficient minimum contacts with the Trust in the state of Nevada is
24 absent, there can be no jurisdiction over the trust adviser. This means, in effect, that liability is
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28 ³³ Nev. Rev. Stat. § 163.5555

1 tied to the decisions made by the advisor in the capacity of trust advisor. Therefore, this Court's
2 exercise of jurisdiction over Christopher in his purported role as investment adviser is improper,
3 as there is no evidence of any decision or action with the Trust in the state of Nevada.
4

5 This Court also lacks jurisdiction over Christopher as manager of FHT holdings. Assuming
6 the court finds that the change in situs was not deficient or that it can legitimately assume
7 jurisdiction over the Trust based on a theory of constructive trust and that NRS § 163.5555
8 allows the court to assume jurisdiction over Chris as investment trust adviser, the Court still did
9 not properly establish jurisdiction over Christopher in his role as manager of the FHT. There is
10 no statute that grants *in rem* jurisdiction individually over the manager of an LLC solely based
11 on his or her acceptance of an officer's position. Additionally, as discussed above, due process
12 requires a finding of minimum contacts, purposeful availment and that jurisdiction does not
13 offend the notions of justice and fair play. Again this court entered no such findings to justify
14 jurisdiction over Christopher as manager of the LLC. Christopher respectfully requests that this
15 Court reconsider its order and grant his requested relief.
16
17

18 III. CONCLUSION

19 For the foregoing reasons, Christopher respectfully requests the Court do the following.

- 20 1. Reconsider the Order filed June 24, 2015, and grant Christopher D. Davis's motion to
21 dismiss pursuant to NRCP 12(b) and NRCP 19;
22
- 23 2. Reconsider the Order filed June 24, 2015, and vacate its finding of jurisdiction over
24 Christopher D. Davis in his role as investment trust advisor and in his role as manager of
25 FHT Holdings, LLC;
26
- 27 3. Reconsider the Order filed June 24, 2015, and find that this Court lacks jurisdiction over
28 the Trust and over Christopher D. Davis based on the lack of condition precedent in the

1 form of a failure to procure unanimous consent by the Trust beneficiaries to change the
2 Trust situs purportedly effectuated by the First Amendment dated February 24, 2014,
3 and/or alternatively, based upon lack of statutory prerequisites as defined under NRS
4 §164.010 to form a basis for jurisdiction and/or lack of determinative action or decision
5 under NRS §163.5555 by the purported trust adviser.
6

7 DATED this 14 day of July, 2015.

8 Respectfully Submitted,
9 ROLAND LAW FIRM

10
11 
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Attorney for Christopher D. Davis

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action. I further certify that except as otherwise noted on July 14, 2015, I served the foregoing NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014, TO ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS, by first class US mail, postage prepaid, upon the following persons or entities:

Tarja Davis
3005 North Beverly Glen Circle
Los Angeles, California 90077

And
514 West 26th Street, #3E
Kansas City, Missouri 64108

Ace Davis
c/o Winfield B. Davis
366-6 Habu Aridagawa Arida
Wakayama 643-0025
JAPAN

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And
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