

1 an order directing the Eighth Judicial District Court (“DC”) to enter a properly
2 amended order, and an order to extend the time to file the supplemental opening
3 brief in response thereto. This motion is being requested on an emergency basis
4 because the supplemental opening brief is due on February 5, 2016.
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7 **NRAP 27(E) CERTIFICATE**

8 Petitioners certify that this is an emergency motion requiring relief in less
9 than fourteen days to avoid irreparable harm. Immediate relief is needed, because
10 Christopher is required to respond to an “amended order” by February 5, 2016.
11 He was not required to respond to a “new” order granting post-stay relief raising
12 new issues, causes of action, findings of fact and conclusions of law filed by the
13 DC. The new order was filed on December 31, 2015 in the DC and filed on
14 January 5, 2016 in this Court (“January 5th Order”) and is an improper divergence
15 from the Certification of Intent to Amend Order filed on October 23, 2015 in the
16 DC (“Certification”), because it far exceeds correcting the erroneous assumption
17 of jurisdiction under a theory of constructive trust. In fact, the January 5th Order
18 grants relief to Caroline on her motion to amend based on alleged fraud. It also
19 makes erroneous findings of fact and conclusions of law in violation of the stay
20 imposed by this Court. Furthermore, because it does not identify itself as an
21 “Amended Order”, Caroline Davis (“Caroline”) seeks to take advantage of the
22 new trust statutes that became effective October 1, 2015 (which were not
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1 applicable at the time the court took jurisdiction). It is highly prejudicial to
2 Christopher for the grant new issues (i.e. fraud) into this matter that were not
3 applicable when the Appeal and Writ were originally filed.
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5 In light of the post-stay relief granted by the DC, Christopher is without a
6 remedy to file a Motion for Reconsideration of the January 5th Order because of
7 this Court's stay.¹ This Court held that Christopher must respond to an "amended
8 order," by February 5, 2016, not a "new" order granting post-stay relief to
9 Caroline. Therefore, Christopher seeks to have this Court strike, vacate or set
10 aside the new order, require the DC to "enter its amended order pursuant to its
11 certification" as ordered on December 9, 2015,² and extend the time in which he is
12 required to file his Supplemental Opening Brief thereto.
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17 A. NRAP 27(e)(3)(a) Telephone Numbers and Office Addresses of The
18 Attorneys for the Parties.

19 Harriet H. Roland, Esq. 20 Nevada Bar No. 5471 21 ROLAND LAW FIRM, INC. 22 2470 E. St. Rose Pkwy, Ste. 105 23 Henderson, NV 89074 24 Telephone: (702) 452-1500 25 Facsimile: (702) 920-8903 hroland@rolandlawfirm.com <i>Attorney for Christopher D. Davis</i>	Anthony L. Barney, Esq. Nevada Bar No. 8366 ANTHONY L. BARNEY, LTD. 3317 W. Charleston Blvd., Suite B Las Vegas, NV 89102 Telephone: (702) 438-7878 Facsimile: (702) 259-1116 office@anthonybarney.com <i>Attorney for Christopher D. Davis</i>
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27 ¹ Christopher is likewise also unable to file a Motion for Reconsideration of the
28 October 13, 2015 order for the September 2, 2015 hearing also addressed by the
January 5th Order because of the stay. Both orders contain multiple errors.

² See Page 4 of December 9, 2015 Order.

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8 B. Notification of Parties pursuant to NRAP 27(e)(3)(c)

9 Christopher notified the DC and parties of his intention to file this
10 emergency motion by e-mail and facsimile.³ Service of this motion was
11 effectuated as noted below.

12 C. Relief requested cannot be sought in the DC because there is a stay in place.

13 Pursuant to NRAP 27(e)4, the relief requested cannot be granted in the DC
14 due to the stay entered on October 22, 2015. This Court’s December 9, 2015
15 Order authorized only the filing of an amended order in the DC; therefore, relief
16 can only be sought through this Court.
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19 D. Facts and Argument Showing the Existence and Nature of the Claimed
20 Emergency (NRAP 27(e)(3)(b))

21 Caroline’s initial petition filed in the DC did not allege any claims
22 (hereinafter “Original Petition”) but requested the court take jurisdiction over the
23 following alleged parties: the Beatrice B. Davis Family Heritage Trust dated July
24 28, 2000 (“FHT”), its trustee, trust protector, and investment trust advisor, and all
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1 other parties seemingly related to the FHT in an effort to obtain documents from
2 various parties related to the FHT.⁴ Notably, the only acts alleged against
3 Christopher were his actions in an individual capacity, as the beneficiary of
4 another trust sitused and litigated in Missouri, or as the sole manager of a Missouri
5 limited liability company.⁵ All other references to Christopher in the Original
6 Petition were to allege his purported capacities in relation to the FHT.⁶ The
7 Original Petition did not allege any acts done by any party in Nevada, and neither
8 Christopher nor Caroline are Nevada residents.⁷

12 The Original Petition was mailed to various parties, but, notably, personal
13 service was not effectuated on any party.⁸ After Christopher received the Original
14 Petition by mail, Christopher filed a motion to dismiss based upon the lack of
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19 ³ See Letter dated January 5, 2016 attached hereto and incorporated herein as
20 Exhibit 1.

21 ⁴ See Original Petition attached hereto and incorporated herein as Exhibit 2.

22 ⁵ Exhibit 2, Page 7-8; Paragraphs 23, 24. The District Court was also made aware
23 that there is a lawsuit in Missouri and it noted that Christopher at least had contact
24 with those states. See September 2, 2015 Transcript attached hereto and
25 incorporated herein as Exhibit 3, Page 17:6-20.

26 ⁶ Exhibit 1, Page 3, 8; Paragraphs 12, 26 respectively.

27 ⁷ See Declaration of Christopher Davis attached hereto and incorporated herein as
28 Exhibit 4 and Court Minutes with Caroline's address attached hereto and
incorporated herein as Exhibit 5.

⁸ See Second Amended Notice of Hearing, filed March 5, 2015, Pages 3-4,
attached hereto and incorporated herein as Exhibit 6. This Court can also take
judicial notice under NRS 47.130 that a summons and/or citation has never been
issued or served in this matter.

1 jurisdiction over FHT⁹ and because personal service was not effectuated (e.g. there
2 was insufficiency of service of process) on parties that were requested to provide
3 documents unrelated to the FHT.¹⁰

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5 At the hearing on the motion to dismiss, despite the fact that FHT's trust
6 protector and drafter of the FHT conceded that the first trust amendment was
7 deficient (which allegedly created the change of situs to Nevada),¹¹ the DC took
8 jurisdiction over the FHT pursuant to the first amendment and purportedly over
9 Christopher pursuant to a theory of constructive trust, which was suggested and
10 argued for the first time during the hearing by Caroline's counsel.¹² Christopher
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16 ⁹ Christopher argued that the Alaskan Trustees were indispensable parties because
17 no trustees have a duty to account to another trustee pursuant to the FHT and the
18 change in situs had not been properly effectuated under the terms of the FHT
19 because a beneficiary had not consented and the resigned trustee had not received
20 the advice of its own counsel.

21 ¹⁰ See Motion to Dismiss and Reply attached hereto and incorporated herein as
22 Exhibit 7 and 8, respectively.

23 ¹¹ See Page 31:17-20 of April 22, 2015 Hearing attached hereto and incorporated
24 herein as Exhibit 9.

25 ¹² See Exhibit 9, Page 30:6; and June 24, 2015 Order attached hereto and
26 incorporated herein as Exhibit 10. The District Court simply assumed that certain
27 acts had taken place in Nevada by Christopher but did not make any findings of
28 any acts that had actually been performed in this jurisdiction- See Exhibit 9, Page
49:23-25, Page 50:1. The District Court did not make findings of personal service
pursuant to NRS § 14.065 or established constitutional principles regarding
jurisdiction in any of Christopher's alleged roles. It also included hand-written
interlineations into the June 24, 2015 Order, derived from ex-parte
communications with Caroline's counsel, which asserted jurisdiction over parties
admittedly outside this Court's jurisdiction. See Exhibit 3, Page 79:9-14, 21-23,
Page 81:12-25.

1 filed a petition for reconsideration of the DC's June 24, 2015 Order knowing that
2 there was an improper assertion of jurisdiction.¹³ Caroline filed a motion to
3 amend the June 24, 2015 Order because she also recognized the defect in the
4 Court's reasoning, however she based her arguments upon alleged fraud pursuant
5 to NRCPC 60(b)(3).¹⁴ Notably, Caroline had to withdraw her misrepresentations on
6 the record based upon notice that NRCPC 11 sanctions would be sought.¹⁵ Even at
7 the September 2, 2015 hearing on these pleadings, the DC openly conceded that it
8 was "wrong" to accept Caroline's counsel's theory of constructive trust as "the
9 FHT is not a constructive trust"¹⁶ and acknowledged that FHT Holdings, LLC,
10 was not a party.¹⁷

11 After the Writ was filed and the Emergency Motion for Stay was requested
12 from this Court in the Appeal, the DC signed the Certification, submitted ex-parte
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21 ¹³ See Petition for Reconsideration attached hereto and incorporated herein as
22 Exhibit 11.

23 ¹⁴ See Motion to Amend attached hereto and incorporated herein as Exhibit 12.

24 ¹⁵ Exhibit 12, Page 17 of 18, lines 12-15. Caroline wrongfully accused
25 Christopher of a allegedly causing the Court to "mistakenly assume jurisdiction
26 over the Trust under the theory of 'constructive trust' and that 'but for'
27 Christopher's [alleged] intentional misrepresentations, this Court would have
28 properly assumed jurisdiction over the Trust in its entirety as a proceeding in
rem." See also Addendum to and Withdrawal of Certain Statements attached
hereto and incorporated herein as Exhibit 13.

¹⁶ Exhibit 3, Page 59:23-25 and Page 60:11.

¹⁷ Exhibit 3, Page 79:9-14, 21-23, Page 81:12-25

1 to the DC by Caroline’s counsel.¹⁸ This Court granted Caroline’s Motion to
2 Remand based on its review of the Certification and ordered the DC to enter “its
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4 amended order pursuant to its certification.”¹⁹

5 In December 2015, Christopher received a proposed order from Caroline’s
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7 counsel to be filed pursuant to this Court’s December 9, 2015 Order.
8 Christopher’s counsel wrote a letter to the DC and Caroline’s counsel regarding
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10 his request against signing Caroline’s Order, because the order had new and
11 erroneous findings of fact and conclusions of law and incorrectly granted
12 Caroline’s Motion to Amend pursuant to NRCp 60(b)(3) based on alleged fraud –
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14 a finding which was clearly not made by the DC.²⁰ Despite Christopher’s letter,
15 the DC signed this new and erroneous order and it was filed with this Court on
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17 January 5, 2016.

18 Upon review, it was immediately apparent that the caption of the January
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20 5th Order does not identify itself as an “Amended Order” to relate back to the
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22 June 24, 2015 Order and contains only a cursory reference to the June 24th Order.
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25 ¹⁸ See Letter dated October 20, 2015 to Judge Sturman, attached hereto and
26 incorporated herein as Exhibit 14 and Certification of Intent to Amend Order
27 attached hereto and incorporated herein as Exhibit 15. The Certification stated the
28 District Court’s intent to “enter an order to assume jurisdiction over the Beatrice
B. Davis Family Heritage Trust, dated July 28, 2000...de jure as a proceeding in
rem pursuant to NRS 164.010...”

¹⁹ See Page 4 of December 9, 2015 Order.

1 This Court has stated in the context of amending pleadings, that

2 [W]here an amendment states a new cause of action that describes a new
3 and entirely different source of damages, the amendment does not relate
4 back, as the opposing party has not been put on notice concerning the facts
5 in issue.²¹

6 By analogy, the January 5th Order grants Caroline’s Motion to Amend based on
7 alleged fraud against Christopher and his attorneys (a finding **not** made by the
8 DC) which is a new cause of action or source of damages that does not relate back
9 to the original June 24, 2015 order – as it was raised thereafter. Not only does the
10 January 5th Order violate the stay in this matter by entering erroneous argument,
11 factual findings and conclusions of law after the stay was imposed,²² the January
12 5th Order appears to grant relief based on Caroline’s NRCP 60(b)(3) fraud motion
13 in violation of *Honeycutt*²³ and *Foster*.²⁴ These cases allow a “party to alter,
14 vacate, or otherwise change or modify an order or judgment challenged on appeal”
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20 ²⁰ See Letter dated December 15, 2015 to Judge Sturman and Caroline’s counsel
21 attached hereto and incorporated herein as Exhibit 16.

22 ²¹ *Scott v. Department of Commerce*, 104 Nev. 1980 (1988), *Nelson v. Las Vegas*,
23 99 Nev. 548, 556, 665 P.2d 1141, 1146, 1983 Nev. LEXIS 491, *12-13 (Nev.
1983).

24 ²² For just one example, the January 5th Order makes a conclusion of law that *in*
25 *personam* jurisdiction over Christopher D. Davis as Manager of FHT Holdings,
26 LLC was proper under *Fulbright*, 342 P. 3d 997 (Nev. 2015) and *Viega GmbH*,
27 328 P.3d 1152 (Nev. 2014) because he is the current sole manager of FHT
Holdings, LLC, despite the fact that no minimum contacts were pled or found and
personal service of the Original Petition, summons or citation was not effectuated.

28 ²³ *Honeycutt v. Honeycutt*, 94 Nev. 79 (1978)

²⁴ *Foster v. Dingwall*, 228 P.3d 453 (Nev. 2010)

1 through the remand procedure²⁵ – but it does not allow a party to inject new causes
2 of action or issues into the appeal. This new order appears to be concerted effort
3 to expose Christopher to “new and an entirely different source of damages” and an
4 apparent attempt to apply the new trust statutes that became effective on October
5 1, 2015.²⁶
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8 The two-page Certification reviewed by this Court (and for which the
9 Motion for Remand was subsequently granted) intended to correct the
10 jurisdictional defect on Appeal (the assumption of jurisdiction under the theory of
11 a constructive trust). The Certification certainly did not put Christopher on notice
12 that he would be exposed to eight pages of new argument, findings of fact,
13 conclusions of law, a new cause of action, a new source of damages, or exposure
14 to two different sets of trust statutes. Because the January 5th Order violates the
15 stay and exposes Christopher to additional issues unanticipated in the Writ and
16 Appeal, the January 5, 2016 Order must be stricken, vacated or set aside, and this
17 Court is requested to order the DC to enter an “amended order pursuant to its
18 certification.” Christopher also respectfully requests this Court extend the time to
19 file his Supplemental Opening Brief after a proper amended order is entered.
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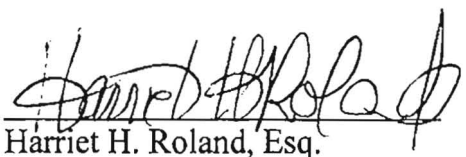
27 ²⁵ *Foster*, 228 P. 3d at 455.

28 ²⁶ This new order confirms Christopher as the alleged investment trust adviser and orders him to produce documents in this alleged role and as manager of FHT

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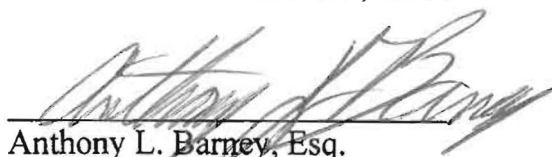
DATED this 6th day of January, 2016.

Respectfully Submitted,
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Holdings, raising additional jurisdictional and constitutional issues under the new trust statutes.

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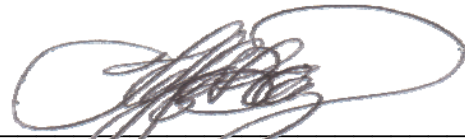
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A handwritten signature in dark ink, appearing to be 'A. Barney', written over a horizontal line.

Employee of Anthony L. Barney, Ltd.