

In the Supreme Court of the State of Nevada

IN THE MATTER OF THE CHRISTIAN)
FAMILY TRUST u.a.d. 10/11/16)
~~~~~ )  
SUSAN CHRISTIAN-PAYNE, )  
ROSEMARY KEACH AND )  
RAYMOND CHRISTIAN, JR. )

Appellants, )

-vs- )

ANTHONY L. BARNEY, LTD. and )  
JACQUELINE UTKIN, )  
Respondents. )  
~~~~~ )

ANTHONY L. BARNEY, LTD.,)
Cross-Appellant,)

-vs-)

SUSAN CHRISTIAN-PAYNE,)
ROSEMARY KEACH AND)
RAYMOND CHRISTIAN, JR.)
Cross-Respondents,)

and)
JACQUELINE UTKIN,)
Respondent.)
~~~~~ )

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Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 16**

*Filed by:*

*/s/ Cary Colt Payne, Esq.*

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| <i><b>DATE</b></i>               | <i><b>DOCUMENT</b></i>                                                                                                                                                          | <i><b>NUMBERED</b></i> |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <i><b>APPENDIX VOLUME 1:</b></i> |                                                                                                                                                                                 |                        |
| 7/13/17                          | Petition to Assume Jurisdiction of Trust;<br>Confirm Trustees; Instructions, etc.                                                                                               | APP-ROA--001-72        |
| 8/17/17                          | Notice of Motion and Motion to Dismiss<br>Pursuant to NRCP 12(b)(1) and NRCP 12 (b)(5)                                                                                          | APP-ROA—73-97          |
| 8/22/17                          | Errata to Notice of Motion and Motion to<br>Dismiss Pursuant to NRCP 12(b)(1) and<br>NRCP 12(b)(5)                                                                              | APP-ROA—98-101         |
| 9/15/17                          | Supplement and Addendum to Petition to Assume<br>Jurisdiction of Trust; confirm Trustees'<br>Instructions, etc. Alternatively to Reform<br>Trust Agreement                      | APP-ROA--102-105       |
| 9/15/17                          | Petitioner's Opposition to Motion to Dismiss                                                                                                                                    | APP-ROA--106-115       |
| <i><b>APPENDIX VOLUME 2:</b></i> |                                                                                                                                                                                 |                        |
| 10/4/17                          | Reply to Petitioner's Opposition to Motion<br>to Dismiss                                                                                                                        | APP-ROA--116-156       |
| 10/13/17                         | Response to Petition to Assume Jurisdiction<br>of Trust; Confirm Trustees; Instrutions, Etc.<br>and Joinder in Motion to Dismiss Pursuant<br>to NRCP 12(b)(1) and NRCP 12(b)(5) | APP-ROA--157-165       |
| 10/25/17                         | Accounting                                                                                                                                                                      | APP-ROA--166-173       |
| 10/25/17                         | Inventory and Record of Value                                                                                                                                                   | APP-ROA--174-184       |
| 10/31/17                         | Notice of Entry of Order                                                                                                                                                        | APP-ROA--185-193       |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                                           | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 3:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/3/17                           | Joint Petition for Review of Former Trustees<br>Refusal to Provide a Proper Accounting<br>Pursuant to NRS 165.143                                                                                                                                                                                                                                | APP-ROA--194-222       |
| <i><b>APPENDIX VOLUME 4a:</b></i> |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/13/17                          | Joint Objection to Petition Jurisdiction Etc.<br>Part 1                                                                                                                                                                                                                                                                                          | APP-ROA--223-298       |
| <i><b>APPENDIX VOLUME 4b:</b></i> |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/13/17                          | Joint Objection to Petition Jurisdiction Etc.<br>Part 2                                                                                                                                                                                                                                                                                          | APP-ROA--299-373       |
| <i><b>APPENDIX VOLUME 5:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 12/4/17                           | Petitioner's Opposition to Motion for<br>Review/Proper Accounting                                                                                                                                                                                                                                                                                | APP-ROA--374-413       |
| 12/14/17                          | Petitioner's Opposition to Joint Counterpetition<br>to Confirm/Breach of Fiduciary Duty, Etc.<br>Request for Discovery                                                                                                                                                                                                                           | APP-ROA--414-428       |
| <i><b>APPENDIX VOLUME 6:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 12/12/17                          | Motion for Compliance with and Enforcement<br>of Court Order, and for Sanctions Relating<br>Thereto, for Order to show cause why Former<br>Trustees should not be held in Contempt,<br>for Order Compelling Former Trustees to<br>Account, and for Access to and Investment<br>Control of Trust Funds Belonging to the<br>Christian Family Trust | APP-ROA--429-452       |

| <b><i>DATE</i></b> | <b><i>DOCUMENT</i></b>                                                                                                                                                      | <b><i>NUMBERED</i></b> |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 1/4/18             | Notice of Suggestion of Death                                                                                                                                               | APP-ROA--453-454       |
| 1/11/18            | Opposition to Motion for Compliance, Enforcement Sanctions, Contempt, Etc.; Counterpetition for Distribution and Vacating all Pending Matters and Dismiss Trust Proceedings | APP-ROA--455-508       |

***APPENDIX VOLUME 7a:***

|         |                                                 |                  |
|---------|-------------------------------------------------|------------------|
| 1/26/18 | Petition to Confirm Successor Trustee<br>Part 1 | APP-ROA--509-539 |
|---------|-------------------------------------------------|------------------|

***APPENDIX VOLUME 7b:***

|         |                                                 |                  |
|---------|-------------------------------------------------|------------------|
| 1/26/18 | Petition to Confirm Successor Trustee<br>Part 2 | APP-ROA--540-569 |
|---------|-------------------------------------------------|------------------|

***APPENDIX VOLUME 8:***

|         |                                                                                                            |                  |
|---------|------------------------------------------------------------------------------------------------------------|------------------|
| 2/6/18  | Amended Notice of Entry-Omnibus Order                                                                      | APP-ROA--570-576 |
| 2/8/18  | Petition for Fees and Costs                                                                                | APP-ROA--577-659 |
| 2/23/18 | Notice of Non-Opposition and Limited Joinder to the Petition for Fees and Costs for Anthony L. Barney, LTD | APP-ROA--660-663 |
| 2/23/18 | Opposition to Petition to Confirm Successor Trustee; Counterpetition for Reinstatement of Petitioners      | APP-ROA--664-735 |
| 3/8/18  | Monte Reason's Application for Reimbursement of Administrative Expenses                                    | APP-ROA--736-741 |

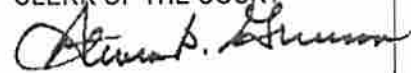
| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                    | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 9:</b></i>  |                                                                                                                                           |                        |
| 3/9/18                            | Petitioners Combined Opposition to (1) Barney Firm Petition For Fees, Etc. (2) Monte Reason's Application for Reimbursement               | APP-ROA--742-840       |
| <i><b>APPENDIX VOLUME 10:</b></i> |                                                                                                                                           |                        |
| 3/12/18                           | Reply to Opposition to Petition to Confirm Successor Trustee; and Opposition to Counter-Petition for Reinstatement of Petitioners         | APP-ROA--841-848       |
| 3/13/18                           | Response to Opposition to Monte Reason's Application for Reimbursement of Administrative Expenses                                         | APP-ROA--849-863       |
| 3/13/18                           | Reply to Petitioner's Combined Opposition to (1) Barney Firm Petition for Fees, Etc., (2) Monte Reason's Application for Reimbursement    | APP-ROA--864-894       |
| 3/15/18                           | Minutes of Hearing – 4/4/18                                                                                                               | APP-ROA--895-898       |
| 3/29/18                           | Motion (1) to Expunge Lis Pendens and/or Strike Pleading; and (2) for Preliminary Injunction                                              | APP-ROA--899-921       |
| <i><b>APPENDIX VOLUME 11:</b></i> |                                                                                                                                           |                        |
| 3/30/18                           | Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); Request for Evidentiary Hearing, Reopening Discovery | APP-ROA--922-960       |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                               | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 12:</b></i>  |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/2/18                             | Motion for Turnover of Assets and to Dissolve the Injunction Over Christian Family Trust Assets                                                                                                                                                                                                                      | APP-ROA--961-998       |
| 4/3/18                             | Countermotion 1) to Strike Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); request for Evidentiary Hearing, and Reopening Discovery; 2) To Find the Former Trustees to be Vexatious Litigants, and 3) For sanctions Against Cary Colt Payne Pursuant to NRS 7.085 and EDCR 7.60 | APP-ROA--999-1036      |
| <i><b>APPENDIX VOLUME 13a:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 1                                                                                                                                                                                                                                                                                            | APP-ROA-1037-1061      |
| <i><b>APPENDIX VOLUME 13b:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 2                                                                                                                                                                                                                                                                                            | APP-ROA-1062-1186      |
| <i><b>APPENDIX VOLUME 13c:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 3                                                                                                                                                                                                                                                                                            | APP-ROA-1087-1111      |
| <i><b>APPENDIX VOLUME 13d:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 4                                                                                                                                                                                                                                                                                            | APP-ROA-1112-1134      |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                   | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 14a:</b></i> |                                                                                                                                                                                                                                                                                                                          |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 1                                                                | APP-ROA-1135-1279      |
| <i><b>APPENDIX VOLUME 14b:</b></i> |                                                                                                                                                                                                                                                                                                                          |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 2                                                                | APP-ROA-1180-1224      |
| <i><b>APPENDIX VOLUME 15:</b></i>  |                                                                                                                                                                                                                                                                                                                          |                        |
| 4/12/18                            | Notice of Entry of Order (Barney Petition Fees)                                                                                                                                                                                                                                                                          | APP-ROA-1225-1232      |
| 4/19/18                            | Petitioner's Combined Opposition to (1) Motion<br>to Turnover Assets and Dissolve Injunction over<br>Trust Assets; (2) Motion to 1. Expunge Lis<br>Pendens and 2. Preliminary Injunction and<br>Countermotion for Distribution/ Termination of Trust;<br>Alternatively for Stay/ Set Bond and Set Evidentiary<br>Hearing | APP-ROA-1233-1254      |
| 4/19/18                            | Opposition to Motion for (1) fees, (2) compliance,<br>(3) for Order to Show Cause and (4) Extension<br>of Discovery, countermotion to Distribute Trust<br>Property (2nd request)                                                                                                                                         | APP-ROA-1255-1292      |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                          | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 16:</b></i> |                                                                                                                                                                                                                                                                                                                                 |                        |
| 5/8/18                            | Response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction Over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Opposition to Countermotion or Distribution/Termination of Trust; Alternatively for Stay, Set Bond and Set Evidentiary Hearing               | APP-ROA-1293-1333      |
| 5/11/18                           | Supplement to response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction Over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Opposition to Countermotion for Distribution/Termination of Trust; Alternatively for Stay/Set Bond and Set Evidentiary Hearing | APP-ROA-1334-1337      |
| 5/16/18                           | Hearing Transcript                                                                                                                                                                                                                                                                                                              | APP-ROA-1338-1390      |
| <i><b>APPENDIX VOLUME 17:</b></i> |                                                                                                                                                                                                                                                                                                                                 |                        |
| 6/1/18                            | Notice of Entry of Order (Utkin suspension)                                                                                                                                                                                                                                                                                     | APP-ROA-1391-1401      |
| 10/8/18                           | Notice of Entry – Probate Commissioner R&R (Hearing re Utkin removal)                                                                                                                                                                                                                                                           | APP-ROA-1402-1408      |
| 11/13/18                          | Notice of Entry – Order Affirming Probate Commissioner R&R (Utkin removal)                                                                                                                                                                                                                                                      | APP-ROA-1409-1414      |





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*Attorney for Jacqueline Utkin,  
Successor Trustee to the Christian Family Trust  
Dated October 11, 2016*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the  
THE CHRISTIAN FAMILY TRUST

Case Number: P-17-092512-T  
Dept.: S

Dated October 11, 2016

**RESPONSE TO COMBINED OPPOSITION TO  
(1) MOTION TO TURNOVER ASSETS AND DISSOLVE INJUNCTION OVER  
TRUST ASSETS;  
(2) MOTION TO 1. EXPUNGE LIS PENDENS AND 2. PRELIMINARY INJUNCTION  
AND  
OPPOSITION TO COUNTER-MOTION FOR DISTRIBUTION/TERMINATION OF  
TRUST; ALTERNATIVELY FOR STAY/SET BOND AND SET EVIDENTARY HEARING**

COMES NOW, Jacqueline Utkin ("Trustee Utkin"), Successor Trustee to the Christian Family Trust, Dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby files this RESPONSE TO COMBINED OPPOSITION TO (1) MOTION TO TURNOVER ASSETS AND DISSOLVE INJUNCTION OVER TRUST ASSETS; (2) MOTION TO 1. EXPUNGE LIS PENDENS AND 2. PRELIMINARY

1 INJUNCTION; AND OPPOSITION TO COUNTER-MOTION FOR  
2 DISTRIBUTION/TERMINATION OF TRUST; ALTERNATIVELY, FOR STAY/SET BOND  
3 AND SET EVIDENTARY HEARING ("Response").

4 This Response is made based on the following Memorandum of Points and Authorities, the  
5 exhibits thereto, the papers and pleadings already on file herein and any oral argument the Court  
6 may permit at a hearing of this matter.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 I. ARGUMENT

10 A. RRS BENEFICIARIES FAILURE TO COOPERATE IS CAUSING  
11 INCREASED COSTS, NOT FRIVOLOUS FILINGS

12 Trustee Utkin is struggling to perform the functions of a trustee while the RRS  
13 Beneficiaries have engaged in a strategy of maximum resistance which unnecessarily drives up  
14 cost. As an example, RRS Beneficiaries<sup>1</sup> will not respond to even basic requests for  
15 information/assistance which undeniably benefit trust administration, such as (1) does any previous  
16 trustee know of outstanding creditor claims;<sup>2</sup> (2) any insurance information, such as homeowners  
17 insurance;<sup>3</sup> and (3) assistance with payment to Trustee Utkin so she could make payment to  
18 creditors as required by the Court's April 12, 2018 Order.<sup>4</sup> Not only that, but the RRS  
19 Beneficiaries have still failed to provide an inventory and accounting from the moment they  
20 became trustees on October 11, 2016.<sup>5</sup>

22 RRS Beneficiaries *did* produce some checks, online print outs, and receipts in response to  
23 specific requests for production, but it is still missing checks and explanations for some expenses.<sup>6</sup>

25  
26 <sup>1</sup> By and through counsel.

27 <sup>2</sup> Requests for this information were made to Mr. Payne's office on April 5, 6, 9, and 11<sup>th</sup>.

28 <sup>3</sup> See, Fn. #2.

<sup>4</sup> Requests for compliance/assistance were made April 20, 23, 24, 25, and 26<sup>th</sup>.

<sup>5</sup> See, Omnibus Order Entered February 5, 2018.

<sup>6</sup> RRS Beneficiaries submitted responsive documents on April 13, 2018.

1 To that extent, RRS Beneficiaries have been more responsive to discovery requests, than court  
2 orders to turnover the same information. The effect is to drive up the costs which achieving the  
3 *exact same result* which should have occurred back in March of 2018.

4 Regarding the subpoenas, they were sent out to approximately five banks and one credit  
5 card company because Trustee Utkin cannot access those records as a result of them being in RRS  
6 Beneficiaries names. This is not dozens of subpoenas, although a few were reissued after the  
7 individual banks asked that they be served on the individual branch where Trust business would  
8 have been conducted. The choice was to bring a motion to compel, or a reissue, and reissuing was  
9 cheaper. That being said, the discovery is being conducted because RRS Beneficiaries have been  
10 successful in blocking Trustee Utkin from obtaining control over the accounts and getting the  
11 statements at significantly less cost. Once again, the increased cost is a result of RRS  
12 Beneficiaries resistance.

13  
14 The RRS Beneficiaries insistence that any "malfeasance" would be paid out of their own  
15 does not override the requirement to account. Trustee Utkin needs information about blank checks  
16 that were issued to parties and RRS Beneficiaries, as well as answers to expenses related to RRS  
17 Beneficiary trips<sup>7</sup> after Raymond Sr. passed away. Nancy's estate is alleging that the Trust failed  
18 to provide for her at the same time the RRS Beneficiaries were using CFT funds to go on what  
19 appear to be trips to Disneyland and a yacht ride. The optics are very poor for the CFT. The CFT's  
20 position is further hurt by the fact that RRS Beneficiaries claim there is no record of them  
21 discussing HEMS for Nancy. Trustee Utkin needs these answers to help deter/defend an expected  
22 claim from Nancy's estate when notices to creditors go out.<sup>8</sup>  
23  
24  
25  
26

27 <sup>7</sup> Responses to Request for Production have revealed trips to Disneyland and what appears to be a yacht ride.

28 <sup>8</sup> No notices have gone out because Trustee Utkin has not had access or control to CFT funds to pay any claims that came in, nor the administrative costs with sending out the notices.

1 Trustee Utkin is trying to perform the basic functions of a trustee which is to gather the  
2 assets, account for them, pay creditors, and distribute. When RRS Beneficiaries hinder or resist  
3 she is forced to use more formal, and expensive, methods to achieve the same result.

#### 4 5 **B. RRS BENEFICIARIES' COUNTERMOTIONS**

##### 6 **i. Their Bond Request is Confusing and Misguided.**

7 To be clear, the October 31, 2018 Freeze Order which barred access to the CFT funds was  
8 requested by RRS Beneficiaries, not the CFT. *See*, RRS Beneficiary Petition dated July 31, 2017  
9 ("ordering a protective order on all assets from any distribution, except for the payment of  
10 mortgages, utilities, and the like, until final determination is made"). It was CFT's position that no  
11 injunction was needed and that RRS Beneficiaries were required to turn over trust funds to the then  
12 existing trustee, Monte Reason. To the extent that RRS Beneficiaries are stating that the original  
13 Freeze Order should have been accompanied by a bond, Trustee Utkin agrees, however the bond is  
14 to be posted by the party asking for the injunction.

15  
16 Secondly, Section 8.8 of the CFT expressly provides that no bond is to be required of its  
17 trustee. **Exhibit 11<sup>9</sup> - Christian Family Trust**. RRS Beneficiaries citation to Chapter 18 of the  
18 NRS is inapplicable. NRS 18.130 applies to an out of state *plaintiff* who files a *complaint*, neither  
19 of which apply herein. Secondly, NRS 18.090 does not pertain to a bond at all, but rather applies  
20 to recovery of costs for a prevailing party in a dispute by or against a trustee/executor. Its  
21 inclusion in this argument is off base.

22  
23 RRS Beneficiaries complain of costs, but ignore that one thing could deescalate everything  
24 with compliance. Compliance with Court orders; Compliance with statutory accountings;  
25 Compliance with requests for information related to trust expenses. Forcing Trustee Utkin to  
26

27  
28 <sup>9</sup> The designation of 11 is used to avoid confusion as the opposition has consolidated its opposition of three separate petitions into one.

1 complete her job through subpoenas and motions is of course going to raise the costs of  
2 administering the trust. It is a disfavored method, but she has given them numerous opportunities  
3 to comply.

4 Moreover, the RRS Beneficiaries complain about ongoing costs, but this action is  
5 essentially complete except for the accounting and appeal of the Barney Firm fees. The Order  
6 Granting the petition to confirm Trustee Utkin as trustee pursuant to the clear and unambiguous  
7 terms of the trust was entered on April 4, 2018. Pursuant to NRS 155.190(1)(h), any order  
8 "Instructing or appointing a trustee" must be appealed within 30 days of the notice of entry of  
9 order. "[U]nless appeal is taken within 30 days, an order of the kinds mentioned in NRS 155.190  
10 is not thereafter subject to attack." Matter of Estate of Miller, 111 Nev. 1, 6, 888 P.2d 433, 436  
11 (1995) (citing, Luria v. Zucker, 87 Nev. 471, 488 P.2d 1159 (1971)) (emphasis added). The  
12 original petition posed to the court has been resolved and the April 4, 2018 order confirming  
13 Trustee Utkin as trustee is now final. The question of who is the trustee, and whether it was  
14 provided for by the CFT, is over. The remaining issues are administration of the trust, and the  
15 appeal of the order granting the Barney Firm's fees. This should not be an expensive endeavor.  
16  
17

18 ii. The Counter-Motion for a Distribution/Termination of Trust is Premature

19 The RRS Beneficiaries request herein belies a very real problem that there are outstanding  
20 creditor claims and potential liability which Trustee Utkin, the Court and the RRS Beneficiaries all  
21 know exist. In Nevada, "a transferee of a nonprobate transfer is liable to the probate estate of the  
22 decedent for allowed claims against that decedent's probate estate to the extent the estate is  
23 insufficient to satisfy those claims." NRS 111.779(1). Moreover, this liability specifically extends  
24 to the trustee of the trust should they distribute when there are known creditors. *See*, NRS  
25 111.779(2)(b). The claim that the CFT has "no known creditors" is belied by the pleadings of  
26  
27  
28

1 Monte Reason in this very action. There are claims from Nancy Christian's estate which have  
2 been pled in this case, and presented by letter.

3 Trustee Utkin is not proposing that the parties wait forever for a distribution, but  
4 distribution must wait at least until notice to creditors have been issued and the appropriate time  
5 passed. *See* NRS 155.020<sup>10</sup>. Trustee Utkin fully intends on issuing the appropriate notices to all  
6 known creditors and also publish notices to capture unknown creditors in order to cut off liability  
7 and/or make those creditors actually present their claim with supporting evidence. Trustee Utkin  
8 has not yet issued those notices because she has not been given access to CFT funds to (1) pay for  
9 the costs of giving those notices; or (2) paying those claims.  
10

11 Distribution before any creditor notices are premature, and exposes beneficiaries and the  
12 trustee to liability. As such, the Court should reject the RRS Beneficiaries request.  
13

### 14 C. REPLY TO OPPOSITION TO MOTIONS

#### 15 i. Response to Opposition to Preliminary Injunction

16 RRS Beneficiaries opposition to the request for a preliminary injunction preventing them  
17 from interfering with the Bluff Point Property fails to dispute a single one of the elements in the  
18 Motion. They have sought to obtain access without consulting either Trustee Utkin or her counsel,  
19 which is an interference with her administration of the estate. There is a freeze order in place with  
20 prevents Trustee Utkin from doing anything substantive with the home, and the RRS Beneficiaries  
21 have made no overtures to her. Instead they have contacted third parties claiming to have the right  
22 to possession of the residence which they very clearly do not have. They have also presented third  
23 parties with representations of this Court's rulings which bear little resemblance to the underlying  
24 language and borders on misrepresentation. Trustee Utkin should not have to content with RRS  
25 Beneficiaries pretending to still be the co-trustees.  
26

27  
28 <sup>10</sup> Made applicable to testamentary trusts through NRS 164.005.

1 Trustee Utkin cannot administer the CFT if she is being actively interfered with by the RRS  
2 Beneficiaries which is why she has sought this injunction. The RRS Beneficiaries have failed to  
3 substantively oppose the request, therefore it should be granted.

4 ii. Response to Opposition to Dissolve Injunction (October 31, 2017 Freeze  
5 Order)  
6

7 RRS Beneficiaries opposition to the motion to dissolve the injunction fails to address any of  
8 the points within the request. The purpose of a bond is to protect the enjoined party from the harm  
9 caused by the injunction, therefore the party requesting the injunction is required to provide surety  
10 in the form of a bond. The RRS Beneficiaries were the requesting parties, which is made clear  
11 through their initial petition. *See*, RRS Beneficiary Petition dated July 31, 2017 ("ordering a  
12 protective order on all assets from any distribution, except for the payment of mortgages, utilities,  
13 and the like, until final determination is made"). CFT, and its confirmed trustee, has been the party  
14 prevented from accessing funds of the trust during this time (enjoined party). The CFT is the  
15 aggrieved party which is entitled to the protection of the bond, not the other way around. The RRS  
16 Beneficiaries arguments herein are backwards.

17  
18 As to the multiple petitions, that was by design and not in any way intended to multiply  
19 proceedings. Each of the three petitions had separate and distinct legal issues for the Court to  
20 consider, separate standards for review, and separate standards for an award of legal fees to the  
21 CFT in the event they are the prevailing party on any of the three motions. When there is a decision  
22 on the motions, the record should be crystal clear as to the record, the rationale, and the amount of  
23 work spent on each task since attorney's fees would be limited to that specific task. This is not  
24 vexatious, it is bringing procedural discipline to what has thus far been an all-out brawl.  
25  
26  
27  
28



1                   iii. Response to Opposition to Motion to Expunge Lis Pendens

2           The RRS Beneficiaries opposition ignores that their filing creates a cloud upon title which  
3 she is seeking to relieve, and they struggle to misconstrue the February 5, 2018 Omnibus Order. To  
4 be clear, it was Trustee Utkin's counsel which brought the sale to the Court's attention. Broaching  
5 the topic was necessary due to a listing agreement with a real estate agent, which is a *contract*,  
6 obligating the CFT to pay is commission if he found a buyer to purchase the Bluff Point Property.  
7 The listing agreement could not be cancelled/voided without making the real estate agent a party to  
8 this action. A court order halting the CFT's authority was a ceasefire without causing due process  
9 problems or provoking a breach of contract claim. As a result, the Bluff Point Property is still  
10 listed for sale. There is no bad faith associated with this decision; it is threading the needle of a  
11 legal problem to avoid exposing the CFT to needless liability and should be appreciated by both the  
12 RRS Beneficiaries and this Court.

13           Furthermore, the eviction proceeding referenced by the Opposition was filed and granted  
14 prior to Nancy dying, not after. *See*. Las Vegas Justice Court Case No. 17C023096. It is  
15 understood that Monte, as the then existing trustee, was attempting to secure the Bluff Point  
16 Property for the benefit of Nancy, who was unable to live in the home purchased in part with her  
17 funds. Raymond Jr. refused to vacate the home and was evicted as a result. A simple review of  
18 the justice court docket reveals RRS Beneficiaries statements in this regarding to be wrong.

19           Trustee Utkin is the trustee of the CFT, and the order granting her confirmation as trustee is  
20 now final. Clearing title to property and freeing the CFT from bondless injunctions is not  
21 frivolous, it is exactly what a trustee should be doing.

22                   iv. The Court Should Strike Exhibit C of the Opposition from the Record.

23           Finally, Trustee Utkin requests that the Court strike exhibit C to the Opposition from this  
24 Court's record. Pleadings before this Court are a matter of public record and Exhibit C contains  
25  
26  
27  
28



1 the full names, addresses, phone numbers, dates of birth and unredacted social security number for  
2 the Trustor Raymond Sr., as well as those of all three RRS Beneficiaries. Its disclosure creates  
3 unnecessary risk as third parties may seek to use Raymond Sr.'s information for an improper  
4 purpose and create needless headaches for the CFT.

## 5 II. CONCLUSION

6 Trustee Utkin requests that her motions be granted as RRS Beneficiaries have failed to  
7 substantially oppose them. Trustee Utkin also requests that the Counter-Motions be denied as moot  
8 due to the April 4, 2018 Order becoming final.

9 DATED this 8<sup>th</sup> day of May, 2018.

10 JERIMY KIRSCHNER & ASSOCIATES, PLLC

11 /s/ Jerimy L. Kirschner, Esq.

12 JERIMY L. KIRSCHNER, ESQ.

13 Nevada Bar No. 12012

14 5550 Painted Mirage Rd., Suite 320

15 Las Vegas, NV 89149

16 *Attorney for Jacqueline Utkin, Successor Trustee to the Christian Family Trust Dated October 11,*  
17 *2016*

# EXHIBIT 11

# THE CHRISTIAN FAMILY TRUST

Dated October 11, 2016

Prepared by:



2520 St. Rose Parkway, Suite 319  
Henderson, Nevada 89074

[www.gmdlegal.com](http://www.gmdlegal.com)

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# Trust Agreement

## OF THE

### CHRISTIAN FAMILY TRUST

THIS DECLARATION OF TRUST AGREEMENT is made on October 11, 2016, by RAYMOND T. CHRISTIAN, also known as RAYMOND T. CHRISTIAN, SR., and NANCY I. CHRISTIAN, Husband and Wife (hereinafter referred to as the "Trustors" or "Grantors" when reference is made to them in their capacity as creators of this Trust and the transferors of the principal properties thereof) and ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR., and SUSAN G. CHRISTIAN-PAYNE, of Clark County, Nevada (hereinafter referred to as the "Trustees," or collectively as the "Trustee," when reference is made to them in their capacity as Trustees or fiduciaries hereunder);

Witnesseth:

WHEREAS, the Trustors desire by this Trust Agreement to establish the "CHRISTIAN FAMILY TRUST" for the use and purposes hereinafter set forth, to make provisions for the care and management of certain of their present properties and for the ultimate distribution of the Trust properties;

NOW, THEREFORE, all property subject to this Trust Agreement shall constitute the Trust estate and shall be held for the purpose of protecting and preserving it, collecting the income therefrom, and making distributions of the principal and income thereof as hereinafter provided.

Additional property may be added to the Trust estate, at any time and from time to time, by the Trustors or any person or persons, by inter vivos act or testamentary transfer, or by insurance contract or Trust designation.

The property comprising the original Trust estate, during the joint lives of the Trustors, shall retain its character as their community property or separate property, as designated on the document of transfer or conveyance. Property subsequently received by the Trustees during the joint lives of the Trustors shall have the separate or community character designated on the document of transfer or conveyance.

## ARTICLE 1

### NAME AND BENEFICIARIES OF THE TRUST

1.1 Name. The Trusts created in this Instrument may be referred to collectively as the "CHRISTIAN FAMILY TRUST" and any separate Trust may be referred to by adding the name of the beneficiary.

1.2 Beneficiaries. The Trust estate created hereby shall be for the use and benefit of RAYMOND T. CHRISTIAN and NANCY I. CHRISTIAN, and for the other beneficiaries named herein. The names of the four (4) now living children from the Trustors' marriage are ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR., TOMMY L. CHRISTIAN and SUSAN G. CHRISTIAN-PAYNE. The name of the one (1) now living child of RAYMOND T. CHRISTIAN from a previous marriage is CHRISTOPHER A. CHRISTIAN. The name of the one (1) now living child of NANCY I. CHRISTIAN from a previous marriage is MONTE B. REASON.

## ARTICLE 2

### DISTRIBUTION OF INCOME AND PRINCIPAL

#### WHILE BOTH TRUSTORS SHALL LIVE

2.1 Distributions While Both Trustors Live. During the joint lifetimes of RAYMOND T. CHRISTIAN and NANCY I. CHRISTIAN, they shall be entitled to all income and principal of their community property without limitation. With regard to the separate property of either RAYMOND T. CHRISTIAN or NANCY I. CHRISTIAN, either Trustor shall be entitled to all income and principal of his or her own separate property estate without limitation.

2.2 Use of Residence. While Trustors both shall live, they may possess and use, without rental or accounting to Trustees, any residence owned by this Trust.

### ARTICLE 3

#### INCAPACITY

3.1 Incapacity of Trustors. If at any time a Trustor has become physically or mentally incapacitated, as certified in writing by a licensed physician, psychologist, or psychiatrist, and whether or not a court of competent jurisdiction has declared such Trustor incompetent, mentally ill, or in need of a guardian or conservator, the other Co-Trustee or the Successor Trustee (hereinafter "Trustee") shall pay to the incapacitated Trustor or apply for his or her benefit or for the benefit of those who are dependent upon him or her, first from the community estate and then from the incapacitated Trustor's separate estate, the amounts of net income and principal necessary, in the Trustee's discretion, for the proper health, support and maintenance of the Trustor and his or her family members who are dependent upon him or her, in accordance with their accustomed manner of living at the date of this instrument, until the incapacitated Trustor, either in the Trustee's discretion or as certified by a licensed physician, psychologist, or psychiatrist, is again able to manage his or her own affairs or until his or her death. This shall include, but not be limited to, distribution of income and principal to retain personal aides, homemakers, bill payers, or other persons who may assist the Trustor in activities of daily living and otherwise enable the Trustor to continue to reside in his or her home for as long as it is feasible to do so, taking into account safety and financial considerations. In exercising such discretion, the Trustee shall consider the duty and ability of anyone else to support the Trustor and his or her family and shall also consider all other funds known to the Trustee to be available from other sources for such purposes.

The Trustors direct that the Trustee maintain the Trustors in the same custom and style to which the Trustors have been accustomed during their lifetimes. It is the Trustors' express desire to remain in their home for the remainder of their lifetimes and not be placed in a nursing home or retirement care facility. The Trustors direct that the Trustee

shall utilize income and principal from this Trust as may be necessary, including amounts necessary for required nursing and other care, so as to maintain the Trustors in their home, unless in the opinion of the incapacitated Trustor's attending physician, together with the opinion of a second independent or consulting physician, residence in a nursing home would be required for such Trustor's physical well being.

All undistributed income shall be accumulated and added to the Trust principal annually. In addition, it is Trustors' desire that, in the event of a Trustor's incapacity or in the event a Trustor is unable to remain in the primary residence, the Trustee hereunder shall continue to maintain the Trustors' primary residence and shall continue to pay for all taxes, insurance, fees, and encumbrances on such residence for as long as it is owned by this Trust.

3.2 Reliance on Writing. Anyone dealing with this Trust may rely on the physicians', psychologists' or psychiatrists' or any combination thereof, written statements regarding the Trustor's incapacity, or a photocopy of the statements, presented to them by the Co-Trustee or the Successor Trustee. A third party relying on such written statements shall not incur any liability to any beneficiary for any dealings with the Co-Trustee or the Successor Trustee in reliance upon such written statements. This provision is inserted in this Trust Agreement to encourage third parties to deal with Co-Trustee or Successor Trustee without the need for court proceedings.

#### ARTICLE 4

##### DISTRIBUTION OF INCOME AND PRINCIPAL

##### UPON THE DEATH OF A TRUSTOR

4.1 Decedent and Survivor Defined. Reference to the "Decedent" shall refer to either of the Trustors whose death shall first occur and reference to the "Survivor" shall refer to the surviving Trustor.

4.2 Payment of Debts. After the death of the Decedent, the Trustee may, in the Trustee's sole discretion, pay from the income and/or principal of the Decedent's



separate property and Decedent's one-half of the community property, which is a part of this Trust estate, the administrative expenses, the expenses of the last illness and funeral of the Decedent and any debt owed by the Decedent.

4.3 Survivor's Trust. Any remaining property, both income and principal of this Trust estate shall be retained in the Survivor's Trust for the benefit of the Survivor and the Trustee shall hold, manage, invest and reinvest the Survivor's Trust and shall collect the income therefrom and dispose of the net income and principal as follows:

- (a) During the lifetime of the Survivor, the Trustee, in the Trustee's sole discretion, may pay to the Survivor all of the net income of the Trust estate, as the Trustee may determine necessary, in the Trustee's sole discretion, for the health, education, support and maintenance of the Survivor.
- (b) If, in the opinion of the Trustee, the income from all sources of which Trustee has knowledge shall not be sufficient for the health, education, support and maintenance of the Survivor, the Trustee is authorized to use and may expend such part of the Trust principal as may be necessary to meet such needs.

4.4 Use of Residence. Until the Survivor's death, the Trustee shall allow the Survivor to occupy and use any residence used by either or both Trustors as a residence at the time of the Decedent's death. The Trustee shall, at the direction of the Survivor, sell any such residence, and if the Survivor so directs, use the proceeds therefrom to purchase or build another residence for the Survivor. The Survivor shall not be required to pay rent or account for the use of any residence.

## ARTICLE 5

### DISTRIBUTION OF HOUSEHOLD AND PERSONAL EFFECTS AFTER DEATH OF EITHER OR BOTH TRUSTORS

5.1 Distribution of Personal Property. After the death of either Trustor, the Trustee shall distribute all tangible personal property of the deceased Trustor, including but not limited to, furniture, furnishings, rugs, pictures, books, silver-plate, linen, china, glassware, objects of art, wearing apparel, jewelry, and ornaments, in accordance with

any written statement or list that the Trustor leaves disposing of this property. Any such statement or list then in existence shall be determinative with respect to all bequests made therein. Any property not included on said list shall be distributed as follows:

- (a) To the surviving Trustor, if he or she survives the Decedent.
- (b) Upon the death of RAYMOND T. CHRISTIAN, SR., the Trustee shall first distribute the Trustors' Gold Watch, to LEE M. KEACH, the Trustors' son-in-law, if he is then living, outright and free of Trust. If LEE M. KEACH is not then living, this bequest shall lapse.
- (c) The Trustee shall distribute any remaining household and personal effects, which are not distributed by a written statement or list or any lapsed bequest from above, equally to ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR. and SUSAN G. CHRISTIAN-PAYNE, as they shall select.
- (d) The individuals referred to above in Section 5.1(c) may also share any such household and personal effects with TOMMY L. CHRISTIAN, CHRISTOPHER A. CHRISTIAN, or MONTE B. REASON, as they may see fit. Any household and personal effects which they do not select shall be added to the Trust created in Article 6 below.

#### ARTICLE 6

#### DISTRIBUTION OF INCOME AND PRINCIPAL

#### AFTER DEATH OF BOTH TRUSTORS

6.1 Specific Bequest. Upon the death of both Trustors, the Trustee shall first sell the Trustors' primary residence located at 1060 Dancing Vines, Ave., Las Vegas, Nevada, and the proceeds from the sale of such home shall be distributed as follows:

- (a) ROSEMARY K. CHRISTIAN-KEACH, if she is then living, shall receive Twenty Percent (20%) of this Trust share, outright and free of Trust. If ROSEMARY K. CHRISTIAN-KEACH is not then living, this Trust share shall be proportionately added to the Trust shares of the then surviving beneficiaries who are named in this Section 6.1.
- (b) RAYMOND T. CHRISTIAN, JR., if he is then living, shall receive Twenty Percent (20%) of this Trust share, outright and free of Trust.

If RAYMOND T. CHRISTIAN, JR. is not then living, this Trust share shall be proportionately added to the Trust shares of the then surviving beneficiaries who are named in this Section 6.1.

- (c) TOMMY L. CHRISTIAN, if he is then living, shall receive Twenty Percent (20%) of this Trust share, outright and free of Trust. If TOMMY L. CHRISTIAN is not then living, this Trust share shall be proportionately added to the Trust shares of the then surviving beneficiaries who are named in this Section 6.1.
- (d) SUSAN G. CHRISTIAN-PAYNE, if she is then living, shall receive Twenty Percent (20%) of this Trust share, outright and free of Trust. If SUSAN G. CHRISTIAN-PAYNE is not then living, this Trust share shall be proportionately added to the Trust shares of the then surviving beneficiaries who are named in this Section 6.1.
- (e) CHRISTOPHER A. CHRISTIAN, if he is then living, shall receive Ten Percent (10%) of this Trust share, outright and free of Trust. If CHRISTOPHER A. CHRISTIAN is not then living, this Trust share shall be proportionately added to the Trust shares of the then surviving beneficiaries who are named in this Section 6.1.
- (f) MONTE B. REASON, if he is then living, shall receive Ten Percent (10%) of this Trust share, and this Trust share shall be held, in Trust and distributed to him in the sole discretion of SUSAN G. CHRISTIAN-PAYNE for his health, education, maintenance and support. If MONTE B. REASON is not then living, this Trust share shall be proportionately added to the Trust shares of the then surviving beneficiaries who are named in this Section 6.1.
- (g) Notwithstanding anything to the contrary hereinabove, any amounts to be distributed to TOMMY L. CHRISTIAN, CHRISTOPHER A. CHRISTIAN, or MONTE B. REASON in Sections 6.1(c), (e) and (f) above, are to be held, in Trust, for and distributed to them, respectively, for their health, education, maintenance and support, in the sole and unfettered discretion of the Successor Trustees. Moreover, in the event the home referred to in this Section 6.1 was sold prior to the Survivor's death, then an amount equal to the net proceeds from such earlier sale shall be set aside to be held and distributed pursuant to the above terms of this Section 6.1.

6.2 Distribution of the Remaining Trust Estate. Any remaining property, both income and principal of this Trust estate, shall be distributed as follows:

- (a) ROSEMARY K. CHRISTIAN-KEACH, if she is then living, shall receive one-third (1/3) of the remaining Trust estate, outright and

free of Trust. If ROSEMARY K. CHRISTIAN-KEACH is not then living, this Trust share shall be distributed equally among the then living spouse and children of ROSEMARY K. CHRISTIAN-KEACH, outright and free of Trust.

- (b) RAYMOND T. CHRISTIAN, JR., if he is then living, shall receive one-third (1/3) of the remaining Trust estate, outright and free of Trust. If RAYMOND T. CHRISTIAN, JR. is not then living, this Trust share shall be distributed to the issue of RAYMOND T. CHRISTIAN, JR., *per stirpes*, to be administered and distributed as set forth in Section 6.2(d) below.
- (c) SUSAN G. CHRISTIAN-PAYNE, if she is then living, shall receive one-third (1/3) of the remaining Trust estate, outright and free of Trust. If SUSAN G. CHRISTIAN-PAYNE is not then living, this Trust share shall be distributed to the issue of SUSAN G. CHRISTIAN-PAYNE, *per stirpes*, to be administered and distributed as set forth in Section 6.2(d) below.
- (d) For each beneficiary hereunder who shall be under the age of Twenty-five (25) years at the time such beneficiary becomes entitled to a share of the Trust estate pursuant to Sections 6.2(a), 6.2(b) and 6.2(c) above, each such beneficiary's Trust share shall not be distributed outright to such beneficiary, but rather, shall be retained in trust, and shall be distributed as follows:
  - (1) If any beneficiary is then over the age of Twenty-five (25) years, his or her share shall be distributed to him or her outright and free of Trust.
  - (2) For each beneficiary who is then under the age of Twenty-five (25) years, his or her Trust share shall be retained in a separate trust and, until the beneficiary attains the age of Twenty-five (25) years, the net income and principal from such beneficiary's Trust share shall be distributed to or for the benefit of the beneficiary as the Trustee deems necessary, in the Trustee's discretion, for the beneficiary's health, education, maintenance and support. Any excess income that is not distributed for these purposes shall be accumulated and added to principal.
  - (3) Upon the beneficiary attaining the age of Twenty-five (25) years, the entire remaining balance of the beneficiary's Trust share shall be distributed to such beneficiary, outright and free of Trust.

- (4) If prior to full distribution a beneficiary becomes deceased, his or her remaining Trust share shall be distributed to the issue of such deceased beneficiary, by right of representation, in accordance with the same terms and conditions as set forth in this Section 6.2(d). In the event a beneficiary becomes deceased and has no then living issue, his or her Trust share shall be distributed equally among the other Trust shares set forth in Sections 6.2(a), 6.2(b) and 6.2(c) above; provided, however, that if any such distributee is under the age of Twenty-five (25) years, the share of such distributee shall, instead of being distributed outright, be retained in Trust, to be distributed according to the terms and conditions as provided for in this Section 6.2(d).
- (e) Notwithstanding anything to the contrary, it is the Trustors' desire that the three (3) Children of the Trustors, and/or the issue of the children of the Trustors, as the case may be, who are referred to above in this Section 6.2, would use a portion of the Trust estate to care for TOMMY L. CHRISTIAN and CHRISTOPHER A. CHRISTIAN, as they see fit and in their sole discretion, without any requirement to do so. This language of this subsection (e) is merely ment as a precatory, non-binding declaration.

**6.3 Generation Skipping Trusts.** If the special generation skipping transfer tax exemption election provided by Section 2652(a)(3) of the Internal Revenue Code (Code) is exercised as to any property held in this Trust or if this Trust is receiving property from any other Trust to which the special election has been made, the Trustees are authorized, at any time in the exercise of absolute discretion, to set apart such property in a separate trust so that its inclusion ratio, as defined in Section 2642(a) of the Code is or remains zero. If such Trust(s) is (are) created, then any estate or death taxes shall be first charged against and paid out of the principal of the Trust(s) as to which the special election provided by Section 2652(a)(3) is not applicable.

**6.4 Last Resort.** In the event that the principal of the Trust administered under this Article 6 is not disposed of under the foregoing provisions, the remainder, if any, shall be distributed, outright and free of Trust, to the heirs at law of RAYMOND T. CHRISTIAN, their identities and shares to be determined according to the laws of the State of Nevada then in effect relating to the intestate succession of separate property.

## ARTICLE 7

### TRUSTEE'S DISCRETION ON DISTRIBUTION TO

#### PRIMARY BENEFICIARIES

7.1 Delay of Distribution. Notwithstanding the distribution provisions of Article 6, the following powers and directions are given to the Trustee:

- (a) If, upon any of the dates described in Article 6, the Trustee for any reason described below determines, in the Trustee's sole discretion, that it would not be in the best interest of the beneficiary that a distribution take place, then in the event the said distribution shall be totally or partially postponed until the reason for the postponement has been eliminated. During the period of postponement, the Trustee shall have the absolute discretion to distribute income or principal to the beneficiary as the Trustee deems advisable for the beneficiary's welfare.
- (b) If said causes for delayed distribution are never removed, then the Trust share of that beneficiary shall continue until the death of the beneficiary and then be distributed as provided in this Trust Instrument. The causes of such delay in the distribution shall be limited to any of the following:
  - (1) The current involvement of the beneficiary in a divorce proceeding or a bankruptcy or other insolvency proceedings.
  - (2) The existence of a large judgment against the beneficiary.
  - (3) Chemical abuse or dependency.
  - (4) The existence of any event that would deprive the beneficiary of complete freedom to expend the distribution from the Trust estate according to his or her own desires.
  - (5) In the event that a beneficiary is not residing in the United State of America at any given time, then the Trustee may decline to transmit to him or her any part or all of the income and shall not be required to transmit to him or her any of the principal if, in the Trustee's sole and uncontrolled judgment, the political and/or economic conditions of such place or residence of the beneficiary are such that it is likely the money would not reach him or her, or upon reaching him or her, would be unduly taxed, seized, confiscated, appropriated, or in any way taken from him or her in such a



manner as to prevent his or her use and enjoyment of the same.

- (6) The judicially declared incompetency of the beneficiary.
- (c) The Trustee shall not be responsible unless the Trustee has knowledge of the happening of any event set forth above.
- (d) To safeguard the rights of the beneficiary, if any distribution from his or her Trust share has been delayed for more than one (1) year, he or she may apply to the District Court in Las Vegas, Nevada, for a judicial determination as to whether the Trustee has reasonably adhered to the standards set forth herein. The Trustee shall not have any liability in the event the Court determines the Trustee made a good faith attempt to reasonably follow the standards set forth above

**7.2 Power to Establish a Special Needs Trust and to Amend or Reform the Trust.** If an individual beneficiary of this Trust has applied for or is receiving government assistance that is based on financial eligibility requirements or if the Trustee reasonably anticipates that a beneficiary may need and qualify for such government assistance in the foreseeable future, the Trustee may in its sole, absolute and uncontrolled discretion withhold the Trust property otherwise distributable to such beneficiary and establish a third-party created and funded discretionary non-support spendthrift special needs trust or; if that is not possible or practicable, establish by court order a first-party (*i.e.* a self-settled) discretionary non-support spendthrift special needs trust (such as a self-settled special needs trust permitted under 42 U.S.C. section 1396p(d)(4)(A) or 42 U.S.C. section 1396p(d)(4)(C)). The Trustee shall then fund the special needs trust with the property that would otherwise be distributed to the beneficiary. In establishing a special needs trust, the Trustee may select a trustee and successor trustees (other than the beneficiary or the beneficiary's spouse), establish accounting requirements and shall include all provisions determined to be reasonable and necessary by the Trustee, after consultation with a qualified attorney.

It is the Trustors' intent that any special needs trust established pursuant to this provisions be drafted and administered so as to provide the maximum benefit to the beneficiary and that the assets of the special needs trust not be available to the beneficiary for determining the beneficiary's income or assets under rules by which any

government agency determines eligibility for need-based services or financial services (such as SSI and Medicaid). To the extent required by law, the special needs trust shall be for the sole benefit of the beneficiary during his or her lifetime. To the extent not prohibited by law, distributions from the special needs trust shall be made in the sole, absolute and uncontrolled discretion of the special needs trustee to or for the benefit of the beneficiary. In making such distributions, the special needs trustee shall consider the effect such distributions may have on the beneficiary's said government assistance benefits. The special needs trust (or joinder agreement as concerns a special needs trust established pursuant to 42 U.S.C. section 1396p(d)(4)(C)) shall provide (to the extent possible) that upon the beneficiary's death and after all proper reimbursements and payment of expenses have been made (to the extent such reimbursements and payments are required by law), the special needs trustee shall distribute the remaining trust property, if any, in the manner provided for herein as if the special needs beneficiary had predeceased the Trustors. The Trustee shall neither possess nor exercise its authority hereunder in a manner that would impair or prevent a beneficiary's unexercised right of withdrawal that has not yet lapsed or prevent an existing bequest from qualifying for the marital or charitable deduction, or would impair the status or qualification of a trust that holds shares of stock in a Subchapter S corporation, or would prevent a trust from qualifying as a look through trust with a designated beneficiary (or beneficiaries).

After the death of the Trustors, the Trustee may obtain an order from a court of competent jurisdiction to amend or reform any trust (or any trust created or to be created) under this Agreement to the minimum extent necessary to comply with the Trustors' intent and to comply with applicable federal and state laws or regulations, including those pertaining to special needs trusts. The Trustee's authority hereunder is to be exercised only in a fiduciary capacity and may not be used to enlarge or shift any beneficial interest, except as an incidental consequence of the discharge of fiduciary duties, and in no event shall any amendment or reformation increase the class of beneficiaries. No Trustee (or court) shall have the power to amend or reform this Agreement in a manner that would thwart the Trustors' intent, impair or prevent a beneficiary's unexercised right of withdrawal that has not yet lapsed, or prevent an



existing bequest from qualifying for the marital or charitable deduction or would impair the status or qualification of a trust that holds shares of stock in a Subchapter S corporation or would prevent a trust from qualifying as a look through trust with a designated beneficiary (or beneficiaries). In no event shall this power of amendment or reformation be construed or exercised in a manner so as to bestow upon the Trustee a general power of appointment (as that term is defined under the Internal Revenue Code).

## ARTICLE 8

### PROVISIONS RELATING TO TRUSTEESHIP

8.1 Successor Trustee. In the event of the death or incapacity of any current Trustee, the remaining Trustees shall act as Co-Trustees or sole Trustee, as the case may be. In determining the incapacity of any Trustee serving hereunder, the guidelines set forth in Section 3.1 may be followed.

If no Successor Trustee is designated to act in the event of the death, incapacity or resignation of the Trustee then acting, or no Successor Trustee accepts the office, the Trustee then acting may appoint a Successor Trustee. If no such appointment is made, the majority of the adult beneficiaries entitled to distribution from this trust may appoint a Successor Trustee.

8.2 Liability of Successor Trustee. No Successor Trustee shall be liable for the acts, omissions, or default of a prior Trustee. Unless requested in writing within sixty (60) days of appointment by an adult beneficiary of the Trust, no Successor Trustee shall have any duty to audit or investigate the accounts or administration of any such Trustee, and may accept the accounting records of the predecessor Trustee showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the Trust.

8.3 Acceptance by Trustee. A Trustee shall become Trustee or Co-Trustee jointly with any remaining or surviving Co-Trustees, and assume the duties thereof, immediately upon delivery of written acceptance to Trustors, during their lifetimes and thereafter to any Trustee hereunder, or to any beneficiary hereunder, if for any reason there shall be no Trustee then serving, without the necessity of any other act, conveyance or transfer.

8.4 Delegation by Trustee. Any individual Co-Trustee shall have the right at any time, by an instrument in writing delivered to the other Co-Trustee, to delegate to such other Co-Trustee any and all of the Trustee's powers and discretion.

8.5 Resignation of Trustee. Any Trustee at any time serving hereunder may resign as Trustee by delivering to Trustors, during their lifetimes and thereafter to any Trustee hereunder, or to any beneficiary hereunder if for any reason there shall be no Trustee then serving hereunder, an instrument in writing signed by the resigning Trustee.

8.6 Corporate Trustee. During the Trust periods, if any, that a corporate Trustee acts as Co-Trustee with an individual, the corporate Trustee shall have the unrestricted right to the custody of all securities, funds, and other property of the Trusts and it shall make all payments and distributions provided hereunder.

8.7 Majority. Subject to any limitations stated elsewhere in this Trust Agreement, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously.

8.8 Bond. No bond shall ever be required of any Trustee hereunder.

8.9 Expenses and Fees. The Successor Trustee shall be reimbursed for all actual expenses incurred in the administration of any Trust created herein. The Successor Trustee shall be entitled to reasonable compensation for service rendered to the Trust. In no event, however, shall the fees exceed those fees that would have been

charged by state or federal banks in the jurisdiction in which the Trust is being governed.

## ARTICLE 9

### PROVISIONS RELATING TO TRUSTORS' POWERS

9.1 Power to Amend. During the joint lifetime of Trustors, this Trust Agreement may be amended in whole or in part by an instrument in writing, signed by both Trustors, and delivered to the Trustee. In the event that either Trustor should become deceased or incapacitated, as defined herein, the Trust may not be amended. Upon the death of both Trustors, this Trust Agreement shall not be amended.

9.2 Power to Revoke. During the joint lifetime of Trustors, the Trustors may revoke, in whole or in part, this Trust Agreement by an instrument in writing, signed by both Trustors, and delivered to the Trustee. In the event that either Trustor should become incapacitated or deceased, the Trust may not be revoked by the surviving Trustor. Upon the death of both Trustors, this Trust Agreement shall not be revoked.

9.3 Power to Change Trustee. During the joint lifetime of the Trustors, Trustors may change the Trustee or Successor Trustee of this Trust by an instrument in writing, signed by both Trustors, and delivered to the Trustee. In the event that either Trustor should become incapacitated, the other Trustor shall retain the power to change the Trustee or Successor Trustee of this Trust by an instrument in writing, signed by such Trustor and delivered to the Trustee. After the death of the first Trustor to die, the surviving Trustor shall have the power to change the Trustee or Successor Trustee of the Trust by an instrument in writing signed by the surviving Trustor and delivered to the Trustee.

9.4 Additions to Trust. Any additional property acceptable to the Trustee may be transferred to this Trust. The property shall be subject to the terms of this Trust.

9.5 Special Gifts. If either Trustor becomes legally incompetent, or if in the Trustee's judgment reasonable doubt exists regarding capacity, the Trustee is

authorized in such Trustee's sole discretion to continue any gift program which such Trustor had previously commenced, to make use of the federal gift tax annual exclusion, including consenting to gifts by the other Trustor. Such gifts may be made outright or in Trust.

## ARTICLE 10

### PROVISIONS RELATING TO TRUSTEES' POWERS

10.1 Management of Trust Property. With respect to the Trust property, except as otherwise specifically provided in this Trust, the Trustee shall have all powers now or hereafter conferred upon trustees by applicable state law, and also those powers appropriate to the orderly and effective administration of the Trust. Any expenditure involved in the exercise of the Trustees' powers shall be borne by the Trust estate. Such powers shall include, but not be limited to, the following powers with respect to the assets in the Trust estate:

- (a) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust (including, but not limited to any real property, the Trustee may hereafter acquire or receive and the Trustor's personal residence) to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize any and all of such rents, profits and receipts for management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.
- (b) To register any securities or other property held hereunder in the names of Trustees or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any

securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustees shall show that all such investments are part of their respective funds.

- (c) To hold, manage, invest and account for the separate trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.
- (d) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and unitization agreements.
- (e) To borrow money, mortgage, pledge or lease trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (f) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of trust funds.
- (g) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.
- (h) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (i) To institute, compromise, and defend any actions and proceedings.
- (j) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (k) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make division or partial or final distribution of any of the Trusts.

- (l) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (m) To make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustees, or by direct payment of such beneficiary's expenses.
- (n) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (o) To accept additions of property to the Trusts, whether made by the Trustors, a member of the Trustors' family, by any beneficiaries hereunder, or by any one interested in such beneficiaries.
- (p) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financing institution and in such form of account, whether or not interest bearing, as Trustees may determine, without regard to the amount of any such deposit or to whether or not it would otherwise by a suitable investment for funds of a trust.
- (q) To open and maintain safety deposit boxes in the name of this Trust.
- (r) To make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed. The Trustors request but do not direct, that the Trustees make distributions in a manner which will result in maximizing the aggregate increase in income tax basis of assets of the estate on account of federal and state estate, inheritance and succession taxes attributable to appreciation of such assets.
- (s) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.



- (t) The enumeration of certain powers of the Trustees shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers and privileges which an absolute owner of the same property would have.
- (u) The Trustees shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, buy and sell listed securities options, individually and in combination employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transactions will be effected.
- (v) The power to guaranty loans made for the benefit of, in whole or in part, any Trustor or Beneficiary or any entity in which any Trustor or Beneficiary has a direct or indirect interest.
- (w) In regard to the operation of any closely held business of the Trust, the Trustees shall have the following powers:
  - (1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.
  - (2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a beneficiary or Trustee hereunder.
  - (3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement, compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a beneficiary or Trustee hereunder.

- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

10.2 Power to Appoint Agent. The Trustee is authorized to employ attorneys, accountants, investment managers, specialists, and such other agents as the Trustee shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said investment manager the discretionary power to acquire and dispose of assets of the Trust. The Trustee may charge the compensation of such attorneys, accountants, investment managers, specialists, and other agents against the Trust, including any other related expenses.

10.3 Broad Power of Distribution. After the death of both Trustors, upon any division or partial or final distribution of the Trust estate, the Successor Trustee shall have the power to partition, allot and distribute the Trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee, in the Trustee's discretion, considers necessary to make such division or distribution. In making any division or partial or final distribution of the Trust estate, the Trustee shall be under no obligation to make pro rata division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustee may, in the Trustee's discretion, make non pro rata divisions between Trusts or shares and non pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The income tax basis of assets allocated or distributed non pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustee, in his or her discretion, and no adjustment need be made to compensate for any difference in basis.



10.4 Power to Hold Title in the Name of One Trustee Only. With regard to the separate property of one Trustor, that Trustor may, at his or her option, be the sole Trustee with regard to title to that property. Upon the death or incapacity of the Trustee in whose name title to that property is held, the Successor Trustee shall assume management of the property.

10.5 Apply for Government Assistance. The Trustee shall have the power to deal with governmental agencies. To make applications for, receive and administer any of the following benefits, if applicable: Social Security, Medicare, Medicaid, Supplemental Security Income, In-Home Support Services, and any other government resources and community support services available to the elderly.

10.6 Catastrophic Health Care Planning. The Trustee shall have the power to explore and implement planning strategies and options and to plan and accomplish asset preservation in the event a Trustor needs long-term health care and nursing care. Such planning shall include, but is not necessarily limited to, the power and authority to: (1) make home improvements and additions to the Trustors' family residence; (2) pay off, partly or in full, the encumbrance, if any, on the Trustors' family residence; (3) purchase a family residence, if the Trustors do not own one; (4) purchase a more expensive family residence; (5) transfer the family residence to the Trustor-spouse who does not need long-term medical, health, or nursing care; (6) divide community property assets equally between the Trustors; or (7) make gifts of assets for estate planning purposes to the beneficiaries and in the proportions set forth in Article 6.

10.7 Power of Co-Trustee to Act Alone. As long as Trustors are also Co-Trustees, either one of the Co-Trustees may act alone with reference to any powers of the Trustee just as if he or she was the sole Trustee. Any person dealing with one of the Trustees shall not have the right to insist on the other Co-Trustee joining in on any transaction.

## ARTICLE 11

### PROTECTION OF AND ACCOUNTING BY TRUSTEES

11.1 Protection. Trustees shall not be liable for any loss or injury to the property at any time held by them hereunder, except only such as may result from their fraud, willful misconduct, or gross negligence. Every election, determination, or other exercise by Trustees of any discretion vested, either expressly or by implication, in them, pursuant to this Trust Agreement, whether made upon a question actually raised or implied in their acts and proceedings, shall be conclusive and binding upon all parties in interest.

11.2 Accounting. Upon the written request delivered or mailed to the Trustees by an income beneficiary hereunder, the Trustees shall render a written statement of the financial status of the Trust. Such statement shall include the receipts and disbursements of the Trust for the period requested or for the period transpired since the last statement and the principal of the Trust at the end of such period. Statements need not be rendered more frequently than annually.

## ARTICLE 12

### EXONERATION OF PERSONS DEALING WITH THE TRUSTEES

No person dealing with the Trustees shall be obliged to see to the application of any property paid or delivered to them or to inquire into the expediency or propriety of any transaction or the authority of the Trustees to enter into and consummate the same upon such terms as they may deem advisable.

## ARTICLE 13

### HIPAA RELEASE

If any person's authority under the instrument is dependent upon any determination that a Trustor is unable to properly manage his or her affairs or a determination of his or her incapacity, then any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care

provider, any insurance company, and any health-care clearinghouse that has provided treatment or services to such Trustor or is otherwise requested by a Trustor's nominated Successor Trustee to determine his or her incapacity, and any other person or entity in possession of any of the Trustor's "protected health information," as contemplated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164, is hereby authorized and directed to disclose the Trustor's protected health information to the nominated Successor Trustee to the extent necessary, and only to the extent necessary, in order for the nominated Successor Trustee to determine whether an event of incapacity has occurred pursuant to Article 3 hereinabove. This release of authority applies even if that person has not yet been appointed as Successor Trustee. Any limitation on protected health information to be disclosed hereunder shall have no effect upon any rights to such information any other party may have under any other instrument granting access to such information.

#### ARTICLE 14

##### GENERAL PROVISIONS

14.1 Controlling Law. This Trust Agreement is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustees shall have the discretion, exercisable at any later time and from time to time, to administer any trust created hereunder pursuant to the laws of any jurisdiction in which the Trustees, or any of them, may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustees exercise the discretion, as above provided, this Trust Agreement shall be administered from that time forth by the laws of the other state or jurisdiction.

14.2 Spendthrift Provision. No interest in the principal or income of any trust created under this Trust Instrument shall be anticipated, assigned, encumbered or subjected to creditors' claims or legal process before actual receipt by a beneficiary. This provision shall not apply to a Trustor's interest in the Trust estate. The income and principal of this Trust shall be paid over to the beneficiary at the time and in the manner

provided by the terms of this Trust, and not upon any written or oral order, nor upon any assignment or transfer by the beneficiary, nor by operation of law.

**14.3 Perpetuities Savings Clause.** Notwithstanding anything to the contrary contained in this Trust agreement, the Trusts created herein, unless earlier terminated according to the terms of this Trust agreement, shall all terminate one (1) day less than three hundred and sixty-five (365) years after the execution date of this Trust. Upon such termination each Trust shall forthwith be distributed to the Beneficiaries of such Trust; provided however, that if no Beneficiary is then living, such property shall be distributed to those persons so designated in said Trust, as therein provided. Notwithstanding the foregoing, in the event any Trust created hereunder should be controlled and governed by the laws of any state which state has modified or repealed the common law Rule Against Perpetuities, then such modified Rule Against Perpetuities shall apply to such Trust, and if the Rule Against Perpetuities shall have been repealed by the law of the governing state, then termination of any Trusts hereunder pursuant to the common law Rule Against Perpetuities shall not apply to any Trust which is, as a result, not subject to any such Rule Against Perpetuities, and all other references throughout this Trust Agreement to termination of any Trust hereunder pursuant to any applicable Rule Against Perpetuities shall not be applicable to such Trust or Trusts.

**14.4 No-Contest Provision.** The Trustors specifically desire that this Trust Agreement and these Trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these trusts or any other person, whether stranger, relative, or heir, or any legatee or devisee under the Last Will and Testament of either of the Trustors or the successors-in-interest of any such persons, including the Trustors' estates under the intestate laws of the State of Nevada or any other state lawfully or indirectly, singly or in conjunction with another person, seek or establish to assert any claim or claims to the assets of these Trusts established herein, or attach, oppose or seek to set aside the administration and distribution of the Trusts, or to invalidate, impair or set aside its provisions, or to have the same or any part thereof declared null and void or diminished, or to defeat or change any part of the

provisions of the Trusts established herein, then in any and all of the above-mentioned cases and events, such person or persons shall receive One Dollar (\$1.00), and no more, in lieu of any interest in the assets of the trusts or interest in income or principal.

14.5 Provision for Others. The Trustors have, except as otherwise expressly provided in this Trust Agreement, intentionally and with full knowledge declined to provide for any and all of their heirs or other persons who may claim an interest in their respective estates or in these Trusts.

14.6 Severability. In the event any clause, provision or provisions of this Trust Agreement prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible.

14.7 Distribution of Small Trust. If the Trustee, in the Trustee's absolute discretion, determines that the amount held in Trust is not large enough to be administered in Trust on an economical basis, then the Trustee may distribute the Trust assets free of Trust to those persons then entitled to receive the same

14.8 Headings. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Agreement.

14.9 More Than One Original. This Trust Agreement may be executed in any number of copies and each shall constitute an original of one and the same instrument.

14.10 Interpretation. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

14.11 Definitions. The following words are defined as follows:

- (a) "Principal" and "Income". Except as otherwise specifically provided in this Trust Agreement, the determination of all matters with respect to what is principal and income of the Trust estate and the apportionment and allocation of receipts and expenses thereon

shall be governed by the provisions of Nevada's Revised Uniform Principal and Income Act, as it may be amended from time to time and so long as such Act does not conflict with any provision of this instrument. Notwithstanding such Act, no allowance for depreciation shall be charged against income or net income payable to any beneficiary.

- (b) "Education". Whenever provision is made in this Trust Indenture for payment for the "education" of a beneficiary, the term "education" shall be construed to include technical or trade schooling, college or postgraduate study, so long as pursued to advantage by the beneficiary at an institution of the beneficiary's choice and in determining payments to be made for such college or post-graduate education, the Trustees shall take into consideration the beneficiary's related living and traveling expenses to the extent that they are reasonable.
- (c) "Child, Children, Descendants or Issue". As used in this instrument, the term "descendants" or "issue" of a person means all of that person's lineal descendants of all generations. The terms "child, children, descendants or issue" include adopted persons, but do not include a step-child or step-grandchild, unless that person is entitled to inherit as a legally adopted person.
- (d) "Tangible Personal Property". As used in this instrument, the term "tangible personal property" shall not include money, evidences of indebtedness, documents of title, securities and property used in a trade or business.

EXECUTED in Clark County, Nevada, on October 11, 2016.

TRUSTORS:

  
RAYMOND T. CHRISTIAN

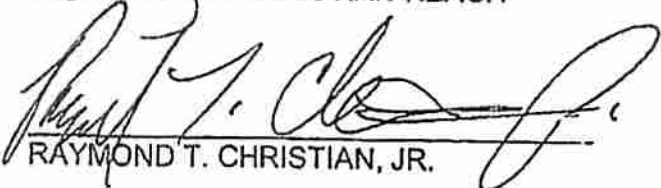
  
NANCY I. CHRISTIAN



ACCEPTANCE BY TRUSTEES

We certify that we have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by us as Trustees. We accept the Declaration of Trust in all particulars and acknowledge receipt of the Trust property.

  
ROSEMARY K. CHRISTIAN-KEACH

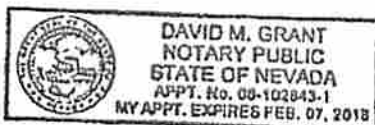
  
RAYMOND T. CHRISTIAN, JR.


  
SUSAN G. CHRISTIAN-PAYNE

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK     )

On October 11, 2016, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared RAYMOND T. CHRISTIAN and NANCY I. CHRISTIAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this document first above written.

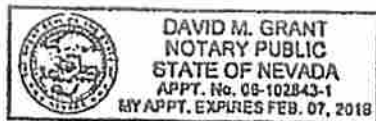


  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF CLARK     )

On October 11, 2016, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared ROSEMARY K. CHRISTIAN-KEACH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



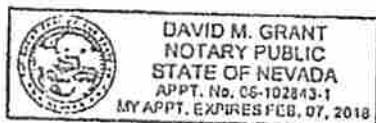
A handwritten signature in black ink, appearing to be "DMG", written over a horizontal line.

NOTARY PUBLIC

STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF CLARK     )

On October 11, 2016, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared RAYMOND T. CHRISTIAN, JR., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



A handwritten signature in black ink, appearing to be "DMG", written over a horizontal line.

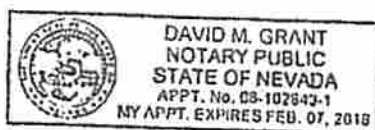
NOTARY PUBLIC



STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF CLARK     )

On October 11, 2016, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared SUSAN G. CHRISTIAN-PAYNE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



A handwritten signature in black ink, appearing to be "DM Grant", written over a horizontal line.

NOTARY PUBLIC

*Steven D. Grierson*

JERIMY L. KIRSCHNER, ESQ.  
Nevada Bar No. 12012  
JERIMY KIRSCHNER & ASSOCIATES, PLLC  
5550 Painted Mirage Rd., Suite 320  
Las Vegas, NV 89149  
Telephone: (702) 563-4444  
Fax: (702) 563-4445  
[jerimy@jkirschnerlaw.com](mailto:jerimy@jkirschnerlaw.com)

*Attorney for Jacqueline Utkin,  
Successor Trustee to the Christian Family Trust  
Dated October 11, 2016*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the

THE CHRISTIAN FAMILY TRUST

Dated October 11, 2016

Case Number: P-17-092512-T

Dept.: S

**SUPPLEMENT TO RESPONSE TO COMBINED OPPOSITION TO  
(1) MOTION TO TURNOVER ASSETS AND DISSOLVE INJUNCTION OVER  
TRUST ASSETS;  
(2) MOTION TO 1. EXPUNGE LIS PENDENS AND 2. PRELIMINARY INJUNCTION  
AND  
OPPOSITION TO COUNTER-MOTION FOR DISTRIBUTION/TERMINATION OF  
TRUST; ALTERNATIVELY FOR STAY/SET BOND AND SET EVIDENTARY HEARING**

COMES NOW, Jacqueline Utkin ("Trustee Utkin"), Successor Trustee to the Christian Family Trust, Dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby files this SUPPLEMENT TO RESPONSE TO COMBINED OPPOSITION TO (1) MOTION TO TURNOVER ASSETS AND DISSOLVE INJUNCTION OVER TRUST ASSETS; (2) MOTION TO 1. EXPUNGE LIS PENDENS AND 2.

1 PRELIMINARY INJUNCTION; AND OPPOSITION TO COUNTER-MOTION FOR  
2 DISTRIBUTION/TERMINATION OF TRUST; ALTERNATIVELY, FOR STAY/SET BOND  
3 AND SET EVIDENTARY HEARING ("Supplement").

- 4 1. Verification of Jaqueline Utkin for Response to Combined Opposition to (1) Motion to  
5 Turnover Assets and Dissolve Injunction over Trust Assets; (2) Motion to 1. Expunge Lis  
6 Pendens and 2. Preliminary Injunction; and Opposition to Counter-Motion for  
7 Distribution/Termination of Trust; Alternatively, for Stay/Set Bond and Set Evidentary  
Hearing ("Supplement"). **Exhibit A – Verification.**

8 DATED this 11<sup>th</sup> day of May, 2018.

9 JERIMY KIRSCHNER & ASSOCIATES, PLLC

10 /s/ Jerimy L. Kirschner, Esq.

11 JERIMY L. KIRSCHNER, ESQ.

12 Nevada Bar No. 12012

13 5550 Painted Mirage Rd., Suite 320

14 Las Vegas, NV 89149

15 *Attorney for Jacqueline Utkin, Successor Trustee to the Christian Family Trust Dated October 11,*  
16 *2016*

# EXHIBIT A

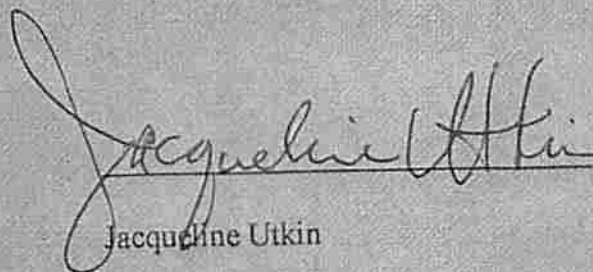
1 VERIFICATION OF JACQUELINE UTKIN FOR REPOSE TO COMBINED  
2 OPPOSITION TO (1) MOTION TO TURNOVER ASSETS AND DISSOLVE INJUNCTION  
3 OVER TRUST ASSETS; (2) MOTION TO 1. EXPUNGE LIS PENDENS AND 2.  
4 PRELIMINARY INJUNCTION AND OPPOSITION TO COUNTER-MOTION FOR  
5 DISTRIBUTION/TERMINATION OF TRUST; ALTERNATIVELY FOR STAY/SET  
6 BOND AND SET EVIDENTARY HEARING

7 I, JACQUELINE UTKIN, declare that:

- 8 1. I am submitting a REPOSE TO COMBINED OPPOSITION TO (1) MOTION TO  
9 TURNOVER ASSETS AND DISSOLVE INJUNCTION OVER TRUST ASSETS; (2)  
10 MOTION TO 1. EXPUNGE LIS PENDENS AND 2. PRELIMINARY INJUNCTION  
11 AND OPPOSITION TO COUNTER-MOTION FOR DISTRIBUTION/TERMINATION  
12 OF TRUST; ALTERNATIVELY FOR STAY/SET BOND AND SET EVIDENTARY  
13 HEARING
- 14 2. I know the contents of the Response which I know to be true of my own knowledge, except  
15 for those matters stated on information and belief.

16 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true  
17 and correct.

18 May 9, 2018  
19 Date

20   
21 Jacqueline Utkin

ORIGINAL

FILED

JUN 22 2018

*Ann L. Johnson*  
CLERK OF COURT

TRANS

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

IN THE MATTER OF THE )  
TRUST OF: )

THE CHRISTIAN FAMILY )

TRUST, U.A.D. 10/11/16 )

CASE NO. P-17-092512-T

APPEAL CASE NO. 76053

DEPT. PROBATE

BEFORE THE HONORABLE VINCENT OCHOA  
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, MAY 16, 2018

APPEARANCES:

The Petitioner:  
For the Petitioner:

SUSAN CHRISTIAN PAYNE  
GARY COLT PAYNE, ESQ.  
700 S. Eighth St.  
Las Vegas, Nevada 89101  
(702) 383-9010

The Trustee:  
For the Trustee:

JACQUELINE UTKIN  
JERIMY KIRSCHNER, ESQ.  
5550 Painted Mirage Rd.  
Suite #320  
Las Vegas, Nevada 89149  
(702) 563-4444

1 LAS VEGAS, NEVADA

WEDNESDAY, MAY 16, 2018

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 02:14:09)

4

5 THE MARSHAL: -- presiding.

6 THE COURT: Where's everybody at?

7 MR. KIRSCHNER: Your Honor, we've succeeded in  
8 eliminating the number of attorneys that are involved in this  
9 case.

10 THE COURT: That's good. Now we only have two left  
11 to get rid of.

12 MR. KIRSCHNER: I understand, Your Honor.

13 THE COURT: I hope you can appreciate my humor.

14 MR. KIRSCHNER: Oh, I do. I do. I can laugh at  
15 myself all day long. I give myself enough cause to do so.

16 THE COURT: This is on the Christian Family Trust.  
17 Counselor, I also thought we were going to have a trustee from  
18 Hawaii. I thought a trustee was coming from Hawaii.

19 MR. KIRSCHNER: She was coming in. She has an  
20 appointment with the bank at 2:30, 3:00 o'clock, that she's  
21 trying to make.

22 THE COURT: Okay. So she's --

23 MR. KIRSCHNER: That's (indiscernible) --

24 THE COURT: -- not here?

1 MR. KIRSCHNER: Yeah, she wasn't able to make it  
2 because the hearing was going to conflict with her meeting.

3 THE COURT: Well, that's kind of bad --

4 MR. KIRSCHNER: And she changed --

5 THE COURT: -- planning.

6 MR. KIRSCHNER: And she changed that at the last  
7 minute.

8 THE COURT: Okay. Counselor, your name and bar  
9 number and --

10 MR. PAYNE: Good morning, Your Honor. Gary Colt  
11 Payne, 435 -- 57 on behalf of Susan Christian Payne who is  
12 present, Rosemary Keach, and Raymond Christian.

13 MR. KIRSCHNER: And good morning, Your Honor.  
14 Jerimy Kirschner on behalf of Trustee Jacqueline Utkin.

15 THE COURT: Okay.

16 MR. KIRSCHNER: Here for the Christian Family Trust.

17 THE MARSHAL: You can have a seat.

18 THE COURT: So you have several motions and how many  
19 motions do you have today?

20 MR. KIRSCHNER: There are three different petitions,  
21 but I want to start with a general status check, Your Honor.  
22 As the first --

23 THE COURT: On the -- on the general status check,  
24 can you let me know what the litigation's about, the big



1 picture first?

2 MR. KIRSCHNER: Well, and that's fundamentally what  
3 I was going to be addressing in the status check is that we  
4 originally -- this dispute was about who's the trustee of the  
5 trust. This Court entered its orders back in April that under  
6 the clear terms of the trust that Jacqueline Utkin was the  
7 trustee. That order had 30 days in which to be appealed,  
8 otherwise it's not subject to review. That order is now  
9 final. My client is the trustee. We would like to begin  
10 administration of the trust, begin sending out notice to  
11 creditors.

12 Now there had been a claim by Mr. Monte Reason  
13 through Counsel that they might have a dispute as to undue  
14 influence or some other problem that they have. One of two --  
15 two things to take care of that. One, we wanted to issue the  
16 notice to creditors so that they have 30 days in which to  
17 bring anything that they have done to make a done to make a  
18 claim against this trust.

19 I will tell this Court that they haven't done any  
20 discovery in this action. So if they don't have anything,  
21 we're shutting this -- we're -- we're going to be rejecting  
22 this claim.

23 So we want to do our notice to creditors, to cut off  
24 liability to any known creditors and we're going to consider

1 Nancy's estate a known creditor. We're going to send it out.  
2 If they don't respond within 30 days, statutorily they're  
3 barred from bringing anything in the future.

4 THE COURT: Nancy's estate?

5 MR. KIRSCHNER: Nancy's estate, the trust, who --  
6 whoever Monte Reason represents we're going to do that. The  
7 second thing we're going to do once that period of time --

8 THE COURT: What -- what claim does Nancy have?

9 MR. KIRSCHNER: They have claimed that they have an  
10 intentional interference with a beneficial interest. They've  
11 also claimed that the -- the trust was a product of undue  
12 influence. They've also claimed that some of the transfers  
13 into the trust were a result of undue influence. So this has  
14 been their claim that they sent --

15 THE COURT: Nancy's going to make that claim.

16 MR. KIRSCHNER: Nancy's estate has the -- has the  
17 standing to make that claim, should they make it.

18 THE COURT: And who represents her?

19 MR. KIRSCHNER: That would be Mr. Monte Reason. So  
20 what we want to do --

21 THE COURT: Who represents Mr. Monte Reason?

22 MR. KIRSCHNER: That would be the Rushforth firm,  
23 Your Honor.

24 THE COURT: So Monte Reason is claiming that his mom

1 Nancy estate -- Nanc -- you're talking about Nancy  
2 Christiansen (ph).

3 MR. KIRSCHNER: Yes, Nancy Christiansen.

4 THE COURT: That she somehow has a claim for --

5 MR. KIRSCHNER: They sent -- they -- they sent me --  
6 they -- they sent a letter approximately within the last 30  
7 days that stated that they're alleging -- they're alleging  
8 that there is undue influence in the creation of the trust and  
9 undue influence in some of the transfers into the trust and  
10 that she may also have a claim for an intention in -- in --  
11 intentional interference with a beneficial interest.

12 THE COURT: For what period of time?

13 MR. KIRSCHNER: Which would have been the period of  
14 time when Monte Reason was the trustee all the way up until  
15 the time she passed away when they were attempting to do  
16 distributions.

17 THE COURT: Okay.

18 MR. KIRSCHNER: For me, Your Honor, the problem I  
19 have, one, an intentional interference with a beneficial  
20 interest.

21 THE COURT: And you represent --

22 MR. KIRSCHNER: I represent the Trust, so I would be  
23 -- I'm trying to give the Court the lay of the land on this.

24 THE COURT: Okay.

1 MR. KIRSCHNER: As I pointed out to Mr. Joey Powell  
2 (ph), I don't believe intentional infliction of a -- or excuse  
3 me, intentional interference with a beneficial interest is  
4 actually recognized in the state of Nevada. So I don't think  
5 you can make a claim based on that.

6 As to the other ones, you guys haven't done any  
7 discovery during this period of time. We're going to send out  
8 notice to creditors. You don't submit anything within 30  
9 days. We shut this down. We'll do the proposed distribution  
10 to the parties which is under the terms of the trust, get this  
11 thing finalized and over with.

12 But what I -- we need to do is we know there's  
13 potential creditors because they've sent letters out. Send  
14 her notice to the creditors and force them to take action.  
15 Previously, we had discussed their ability to one, open up a  
16 separate action in order to cause problems over a multi-year  
17 period of time or whether or not there's going to be an undue  
18 infla -- influence action in this case.

19 And the one of the problems we had is we can't have  
20 this lingering liability just out standing there and then  
21 start doing distributions to everybody. We have liability to  
22 the beneficiaries having to be able to be clawed back in if  
23 he's successful in a later action. We have liability to the  
24 trustee if they do the distribution while there's outstanding

1 liability.

2           The only way we can force the hands if anybody's  
3 going to make a claim is send out the notice to creditors. If  
4 they don't file a claim within 30 days, they're done. But  
5 that's the basic administration of the trust. That's what we  
6 want to do.

7           THE COURT: Okay.

8           MR. KIRSCHNER: So that's where we're at. We  
9 have --

10           THE COURT: The only thing I -- the very first  
11 sentence you said is that I have approved Monte Reason as the  
12 trustee because it was clear -- clear language in the -- in  
13 the trust. I agree that there was clear language in the trust  
14 that said he was -- he -- Nancy Christiansen could appoint a  
15 new trustee, but that's the whole subject of this litigation,  
16 whether that's a -- if that's true because they -- they --  
17 they're saying that that -- that was a -- a mistake in the  
18 language and that's what they're litigating is whether saying  
19 that we're going to give 90 percent to one person and five  
20 percent over here. They have total discretion to give  
21 everything to Nancy or give nothing under their sole and total  
22 discretion. That's the language in the trust, but at the same  
23 time have Nancy have the ability to terminate them as  
24 trustees. If in their sole -- and -- sole discretion they

1 disagree with her, it doesn't seem to make sense that that's  
2 the com -- that was their intent. So there's a question of  
3 clear language and question of intent of the trust.

4           So I did permit -- hopefully I -- I permitted Monte  
5 Reason to become the trustee so the trust was very simple,  
6 five percent, 10 percent to him, 90 percent over here. And  
7 then it became even more simple when Nancy died and we're at  
8 this position now. So I wanted you to address why we can't  
9 follow the clear language, and there is clear language on how  
10 to distribute the funds, and start requesting orders of claims  
11 like you asked for.

12           So that -- that's exactly what we're proposing, Your  
13 Honor, is to start the claim process, send out notices to it,  
14 do proposed distributions right afterwards. So what we're  
15 doing by the notice of the claims process, we're doing two  
16 different things. First, we want to do the notice of claims  
17 in order to cut off liability to any creditors. Second, we  
18 can do the notice of proposed distributions to further cement  
19 in this is how we're going to send the money out --

20           THE COURT: Where --

21           MR. KIRSCHNER: -- to the third --

22           THE COURT: Where is that motion? What do you call  
23 that motion? Do you have that motion before me today?

24           MR. KIRSCHNER: No, Your Honor. You're asking for a

1 status check. I was trying to give you a general --

2 THE COURT: Okay. So --

3 MR. KIRSCHNER: -- sense of where -- where we're at.

4 THE COURT: Okay.

5 MR. KIRSCHNER: And -- and so that would be where  
6 we're at in the administration of the trust.

7 As far as the petitions today, there are three  
8 different petitions on -- I'd like to, one, address the first  
9 one which was the motion for sanctions which is unopposed. I  
10 want to simply say in our -- part of our previous discussion  
11 we discussed this Court issuing an order to show cause with a  
12 60 day deadline for them to comply with it. And from my  
13 research, we can't do that as a fundamental -- failure of  
14 procedural due process, a notice of an opportunity to be  
15 heard.

16 So that's why the petition was brought to provide  
17 the Court the -- the grounds to be able to issue an OSC,  
18 because if we just did it in court and there were certain  
19 parties not present at the time, it's actually ineffective  
20 against them. And rather than having a procedural battle  
21 later on --

22 THE COURT: Do you want an order to show cause why  
23 former trustee should not be held in contempt?

24 MR. KIRSCHNER: What -- what I would like at this

1 point Your Honor is with the -- just with the -- the position  
2 of trustee as the trustee being finalized, it's not subject to  
3 appeal at this point. We want to simply just go through the  
4 administration of the trust. Any -- any claims of attorney's  
5 fees as to rule to that, let's just hold it in abeyance and/or  
6 kick it out 90 days. We're not asking for them today. I want  
7 to be clear on that one. We're not.

8 But what we need to do is in the event that this  
9 Court wants an order to show cause, we wanted to provide the  
10 groundwork for the Court to be able to do that, because I did  
11 not believe that we can do it just on the hearing when the  
12 parties were not present. As -- I -- I think we had a problem  
13 with notice of provisions. So that was the groundwork for  
14 that.

15 The other two motions that we have before us -- so  
16 for that motion, Your Honor, we're asking for essentially no  
17 decision on it, continue it out in 90 days. For the other  
18 two, Your Honor, we have the one petition which is the motion  
19 to set aside the prior freeze order on the basis that there  
20 was no bond attached to it and that now that she's the  
21 trustee, she should be able to go about just administering  
22 trust, which she fully intends on doing.

23 THE COURT: You said something about the appeal time  
24 has run. What has the appeal time run on?



1 MR. KIRSCHNER: The appeal time on this Court's  
2 order appointing Jacqueline Utkin as the trustee, they have 30  
3 days from which to appeal that and I believe that is under the  
4 155 -- I can't remember the subsection. But by statute, they  
5 have 30 days in which to appeal that, otherwise it becomes a  
6 final order. And there was no appeal.

7 They did file an appeal as to this Court's award of  
8 attorney's fees to Mr. Barney, but they did not appeal the  
9 appointment of the trustee.

10 THE COURT: Well, I -- I don't look at it as a final  
11 order because this whole thing is built on -- on sand and the  
12 sand is we haven't decided who the proper trustee was based  
13 upon the language, because we haven't decided whether the  
14 language was incorrect or correct or mirrored the intent of  
15 the trust or not. So we're kind of moving too fast on  
16 trustees after trustees after trustees when we don't even know  
17 whether she had the authority to terminate these trustees.  
18 And that's what they're litigating, that Monte Reason should  
19 never have been appointed trustee except for that language  
20 mistake.

21 MR. KIRSCHNER: Well, Your Honor, a -- a couple  
22 points as to that. First and foremost, as to the scribe's  
23 error which has been made previously in an argument by -- by  
24 the original petitioners. It was a scribe's error. And

1 sscriber's errors are much more limited. They're not entire  
2 provisions of a contract.

3 Secondly, as to this Court -- this Court has  
4 previously ruled that it was the clear and unambiguous  
5 language of the trust. That means we don't get to extrinsic  
6 evidence of intent that they're claiming exist and only that.  
7 And -- and that's barred because it's a contract. So we don't  
8 get to declare an unambig -- or we don't get to extrinsic  
9 evidence of intent. It frankly doesn't matter what Mr. Grant  
10 Morris -- or Mr. Grant testifies to. The contract doesn't let  
11 in extrinsic evidence of intent. So we're beyond that point.  
12 And the language of the trust is clear on what can be done.

13 Now as far as the intent of the original settlors,  
14 it's a bit -- the -- one of the -- this is not a situation  
15 where we had original settlors where both have passed away and  
16 we're trying to reach back in and rebuild their memory and  
17 they're intact. We actually had one of the original settlors  
18 to the trust utilize this provision of the trust. So even if  
19 Mr. Grant comes in and says well, it wasn't the original  
20 intent of the settlors to have this, well, we know at least  
21 one settlor intended it to be there and actually used it. So  
22 we --

23 THE COURT: After the first settlor died.

24 MR. KIRSCHNER: Af -- after the first settlor died.

1 So what we have is we have one of the original parties to the  
2 agreement saying yes, this was her intention, the clear  
3 language of the trust saying yes, this is what you can do.  
4 And then you have somebody who is coming in after the fact and  
5 saying. But one of the parties didn't actually intend that.  
6 That's a little bit closer to a unilateral mistake, Your  
7 Honor, but I don't think that there's been any evidence of  
8 that at this point.

9           So my -- my statement on that is that the trustee  
10 who can -- has been appointed as the trustee, the deadline to  
11 appeal this is gone. The Court's clear -- the clear and  
12 unambiguous language of the trust means that they don't get to  
13 draw in extrinsic evidence. Let's begin administration and  
14 stop filing pleadings back and forth on this.

15           THE COURT: So you want to administer this trust and  
16 -- and close it.

17           MR. KIRSCHNER: Yes, that's -- that's what we're  
18 trying to do, administer the trust, do -- do distributions.  
19 That's the whole point of it.

20           THE COURT: Okay.

21           MR. KIRSCHNER: And so that was our motion for the  
22 turnover and the dissolve of the injunction. I think that  
23 there was a counter petition that was asking for a bond for my  
24 client. To that extent, the trust specifically states that it

1 does not want to bond. I believe that's under Section 8.8 of  
2 the trust, that the trustee is not required to serve a bond.

3 The other provisions that were cited from the trust  
4 -- that was cited applied to an out of state Plaintiff  
5 involving a complaint, so they're inapplicable.  
6 And then the other one to the extent that there is a bond  
7 required, it would be paid from trust funds anyways.

8 THE COURT: Okay. What's your relationship? You --  
9 you represent the Trustee --

10 MR. KIRSCHNER: Yes, I do.

11 THE COURT: -- and the Trust. What's her  
12 relationship to Monte Reason?

13 MR. KIRSCHNER: She is -- I believe she is the aunt  
14 for all the parties who are in this action.

15 THE COURT: Anything else?

16 MR. KIRSCHNER: I believe that is it for that  
17 motion, Your Honor. I'll let opposing Counsel argue if they  
18 wish at this point.

19 THE COURT: And which motion did you just start?  
20 You --

21 MR. KIRSCHNER: So we -- the -- the motion for  
22 sanctions was unopposed.

23 THE COURT: So you -- your -- your -- this motion is  
24 the motion to set aside the injunction.

1 MR. KIRSCHNER: This is the motion to set aside the  
2 injunction and also to compel turnover of assets to the  
3 Trustee. So the -- that -- that was the -- the second motion,  
4 Your Honor.

5 THE COURT: So injunction and set -- and to provide  
6 you with the assets of -- for the trust.

7 MR. KIRSCHNER: Yes, Your Honor.

8 THE COURT: Okay. Now do you -- you have  
9 oppositions to that?

10 MR. PAYNE: Yes, Your Honor. I'm -- I'm not sure  
11 what he means --

12 THE COURT: And keep -- try to keep it to five  
13 minutes.

14 MR. PAYNE: Sure, Your Honor. I -- I'm -- I'm not  
15 sure what he means by unopposed on -- on the sanctions motion.  
16 I'm not sure what he's talking about.

17 Your Honor, the first time Mr. Kirschner appeared in  
18 this matter, he said to Your Honor -- this actually was on  
19 March 15th of this year, '18, hearing.

20 We have right now Your Honor if they're trying to  
21 get appointed this trustee position, mostly because there is  
22 an attempt to evade questioning on prior expenses and things  
23 that went on with this trust.

24 The reason why we asked for the accounting

1 substantiation is that there were a large number of expenses  
2 that simply said 5 to \$10,000 to people over and over again  
3 and we asked what was this spent on.

4           So he comes before you and makes these claims that  
5 all this money is missing and demands this accounting. If you  
6 recall, you initially said to him -- you said listen, we've  
7 already done the accounting. It was as of whatever the date  
8 was. I had a dispute with Counsel just before this hearing as  
9 to what the date was supposed to be, whether it was October  
10 11th or was it October 26th or was it when their dad died.  
11 And -- and we tried to work through that. Your Honor was very  
12 clear and says whatever information, you put it into a letter,  
13 send it over to them, and we will respond. Never happened.

14           And instead, they went on this mantra we need an  
15 accounting, we did an accounting. So we went -- put -- spent  
16 all this time and energy to put together another accounting  
17 which we called the amended first hand account and report.  
18 And the only thing that -- that differed from that was we had  
19 disclosed that there was this -- the -- that the original  
20 accounting didn't include this Wells Fargo annuities of a  
21 hundred and forty-three thousand dollars because they hadn't  
22 been marshaled and they had -- they had beneficiaries, which  
23 were my three clients. So in an abundance of overdisclosure,  
24 we even added that.

1           And he wants to sell -- say to Your Honor every time  
2 he's before you, we need this accounting. That was the  
3 first --

4           THE COURT: Well, I'm --

5           MR. PAYNE: -- mantra.

6           THE COURT: -- I'm going to grant 45 more days of  
7 discovery of the assets. Now -- and I want to advise your  
8 clients that if they turnout after the 45 days that they find  
9 more things, they're going to have to suffer some consequence  
10 for not letting them -- them know the full stakes.

11          MR. PAYNE: Your Honor, there hasn't been a change  
12 in the assets at all.

13          THE COURT: Okay. Then there shouldn't be a  
14 problem.

15          MR. PAYNE: Exactly.

16          THE COURT: So -- so they have 45 days to keep  
17 looking. After 45 days, we're done looking. And then if they  
18 -- if it turns out later that there's something that -- that  
19 you failed to report and you say --

20          MR. PAYNE: Well --

21          THE COURT: -- well, it -- it was not really related  
22 to the trust, then we'll have to litigate it and --

23          MR. PAYNE: Fine.

24          THE COURT: -- and just --

1 MR. PAYNE: But -- but as an example, today, I got  
2 -- I got a -- by the way, he's issued 16 subpoenas, everything  
3 from Sam's Club to whoever. But today I get served with bank  
4 statements from U.S. Bank statement of -- of Nancy. And --  
5 and somebody had closed out this account after she died and  
6 \$20,000 is -- is gone. Now if this turns out to be an -- an  
7 asset that is of the trust, I'm going to be held responsible  
8 for that?

9 THE COURT: If you didn't know about it, no.

10 MR. PAYNE: I mean, I just got this today. And --  
11 and there's \$20,000 gone out of Nancy's account.

12 THE COURT: If your clients don't know about it,  
13 they're not going to be held responsible.

14 MR. PAYNE: Well, one of the --

15 THE COURT: My -- my statement was --

16 MR. PAYNE: One of the clients --

17 THE COURT: -- if they know --

18 MR. PAYNE: Right.

19 THE COURT: -- and it turns out later they didn't  
20 report it --

21 MR. PAYNE: Well --

22 THE COURT: -- then there's going to be  
23 consequences.

24 MR. PAYNE: Rose --



1 THE COURT: If they don't know about it --

2 MR. PAYNE: Rosemary Keach, my other client, would

3 appear to be on the bank account with her mother. So if she

4 closed out that account, she had every right to do that. Now

5 you can't hold me accountable for not putting that into the --

6 THE COURT: I'm not holding you --

7 MR. PAYNE: Okay.

8 THE COURT: -- accountable. I'm saying the

9 beneficiaries may be held accountable.

10 MR. PAYNE: Your Honor, they're the primary

11 beneficiaries. Why on Earth would they even avoid -- why --

12 THE COURT: I don't know.

13 MR. PAYNE: But Your Honor --

14 THE COURT: They should --

15 MR. PAYNE: -- just listen to me.

16 THE COURT: They have no reason. Now --

17 MR. PAYNE: That's right.

18 THE COURT: -- I am advising them they have no

19 reason and --

20 MR. PAYNE: It would be stealing --

21 THE COURT: -- they shouldn't do it --

22 MR. PAYNE: -- stealing --

23 THE COURT: -- because --

24 MR. PAYNE: -- from themselves.

1 THE COURT: -- they're going to get 90 percent.  
2 MR. PAYNE: It would be --  
3 THE COURT: The only way they're not going to get 90  
4 percent is if they --  
5 MR. PAYNE: Right.  
6 THE COURT: -- don't report it.  
7 MR. PAYNE: Right. I understand.  
8 THE COURT: And I promised myself I wasn't going to  
9 raise -- raise any questions, but I'm just advising you  
10 they're going to get 90 percent. That's what the -- that's  
11 what the trust says.  
12 MR. PAYNE: More or less.  
13 THE COURT: Okay.  
14 MR. PAYNE: Right.  
15 THE COURT: So why wouldn't they report it?  
16 MR. PAYNE: It doesn't make any sense --  
17 THE COURT: Okay.  
18 MR. PAYNE: -- Your Honor.  
19 THE COURT: But if they do, what's going to happen?  
20 MR. PAYNE: You're --  
21 THE COURT: If they --  
22 MR. PAYNE: They're going to be held accountable.  
23 THE COURT: -- fail to report something and they  
24 should have reported it.

1 MR. PAYNE: Okay. Full disclosure, he just  
2 mentioned today he believes there's a safe deposit box. This  
3 is the first time I've heard of this.

4 THE COURT: I'm saying if they know and they can --  
5 and it is proven that they should have known or could -- or  
6 did know, that's all I'm saying.

7 MR. KIRSCHNER: Your Honor, that wasn't a gotcha  
8 game. I discovered that there were a safety deposit box at  
9 Wells Fargo. I've asked them for additional information on  
10 it. I -- I don't want this Court to think that I was trying  
11 to play a gotcha game.

12 THE COURT: So 45 days more and that's it. You find  
13 it or you don't find it.

14 MR. PAYNE: All right.

15 THE COURT: And you're -- like I agree 100 percent  
16 with you. There should be no reason for your clients to hide  
17 any of the assets since they're going to get most of them  
18 anyway.

19 MR. PAYNE: Exactly.

20 THE COURT: So if they do and they -- it's proven  
21 that they -- they didn't provide all the information which  
22 they could have or should have -- have knowledge of --

23 MR. PAYNE: I understand, Your Honor. Okay. So the  
24 next issue as far as I'm concerned is this issue with the 2848

1 Bluffpoint which is the -- the house that they ultimately  
2 inherit anyways.

3 MR. KIRSCHNER: Your Honor, I would request that if  
4 we're going to be discussing the next motion, that I would be  
5 permitted to argue my motion, Your Honor.

6 THE COURT: Are you done of your -- your client of  
7 his request for --

8 MR. PAYNE: To unfreeze, I guess.

9 THE COURT: To do it -- do -- set aside the  
10 injunction and --

11 MR. PAYNE: Well, we -- we oppose it for the primary  
12 reason is it -- is -- it is -- Your Honor -- when we first  
13 came in front of Your Honor when this whole thing said -- hit,  
14 you said listen, I'm going to keep the status quo until this  
15 thing is resolved. If you recall, there was about \$400,000 in  
16 cash in my trust account which was transferred to another  
17 blocked account which is still there except for now attorney's  
18 fees have been removed or so I'm told or led to believe.

19 There is a house in Reno -- or excuse me, a house in  
20 Yermo (ph) and the Bluffpoint residence. So there's two  
21 pieces of -- two piece -- two pieces of real estate and the  
22 cash. That's all there is. Your Honor, and the Bluffpoint  
23 would go to my clients as the residual beneficiaries. When  
24 this thing hit and Nancy died, the house was -- was left

1 vacant. Your Honor said I want somebody to move in there and  
2 more or less instructed either my client or my client's  
3 brother to move back in because he had lived there with his  
4 father when they had died. We couldn't get the keys from  
5 either Mr. Kirschner or Mr. Joey Powell for some reason.

6 So if -- if you're inclined to grant the order, we  
7 don't think it should be regarding that -- that house asset.  
8 We should -- you should just distri --

9 THE COURT: What's -- what house are you talking  
10 about?

11 MR. PAYNE: 2848 Bluffpoint. Has been vacant since  
12 they had kicked out Mr. Christiansen, the son who was taking  
13 care of his dad. This was the house that was bought when they  
14 -- when both were alive. Dad lived there with son, son was  
15 taking care of dad, dad died. They then came back and -- and  
16 had an -- an eviction process. He was evicted and about that  
17 -- that time we came in front of Your Honor I think it was in  
18 January 31st. Then when this issue came up and you said we  
19 don't want a vacant house.

20 So the last time I was here in front of you on March  
21 whatever the day it was, I said Your Honor, we need to get  
22 back in and you said bring another motion. And so that --  
23 that's before you today.

24 MR. KIRSCHNER: Well, Your Honor, there hasn't been

1 a motion --

2 THE COURT: How is that --

3 MR. KIRSCHNER: -- before us.

4 THE COURT: -- before me today and what motion was

5 that?

6 MR. KIRSCHNER: Yeah, that's not a motion before the

7 Court. On top of that, I -- I -- there are some factual legal

8 representations in there I would like to be able to correct in

9 writing.

10 THE COURT: Well, I -- okay.

11 MR. KIRSCHNER: But I -- I can say them now. First

12 and foremost, this Court hasn't ordered that he be let back in

13 the house. That -- that's never been ordered. What this

14 Court said is that to the extent that they need access to get

15 their personal belongings, let's have Counsel work together.

16 I have never had a communication from --

17 THE COURT: Well --

18 MR. KIRSCHNER: -- Mr. Payne to --

19 THE COURT: -- let's talk about the injunction.

20 That's -- the --

21 MR. KIRSCHNER: But --

22 THE COURT: -- side points --

23 MR. KIRSCHNER: Correct.

24 THE COURT: -- are -- are not --

1 MR. KIRSCHNER: Correct.

2 THE COURT: -- before me.

3 MR. KIRSCHNER: And -- and as far as the injunction  
4 goes, once again, to the extent that they're asking for an  
5 injunction per --

6 THE COURT: Now there is an injunction in place.  
7 You're asking it to be removed.

8 MR. KIRSCHNER: Yeah, we're asking for the  
9 injunction to be -- we're -- we're asking for the injunction  
10 to be resolved -- or dissolved.

11 THE COURT: Why?

12 MR. KIRSCHNER: I -- I laid that out in both my  
13 petition and as far as my arguments here today, Your Honor.  
14 One, it's a bondless injunction, so they would need to post a  
15 bond as part of getting the injunction. Secondly, it  
16 interferes with the administration of the estate which is  
17 trying to be taking place right now. And as we continue to  
18 have injunctions and/or limits on the trustee's powers to  
19 basically do this administration that we're going to continue  
20 to litigate over this over and over again.

21 THE COURT: Correct.

22 MR. KIRSCHNER: Let her do her administration which  
23 is what she's been asking to do. I set out the -- the plan  
24 that we've planned -- or the plan of administering the estate

1 from here. You know, everything goes according to plan, we  
2 get it, we send out our creditor notices, nobody opposes,  
3 we're done, we do our distribution letters, this thing can be  
4 wrapped up quickly. That's the hope. But we're going to do  
5 it the right way.

6 THE COURT: Well, how many attorney's fees are going  
7 to come in as part of claims?

8 MR. KIRSCHNER: You know, Your Honor, I'm sending  
9 out my notices -- whatever -- anybody -- we know we have the  
10 -- the Barney firm that -- from the prior order which is now  
11 up on appeal, we know that the Rushforth --

12 THE COURT: Why is that -- I gave them 50,000. Why  
13 is it on appeal?

14 MR. KIRSCHNER: I think Mr. Cary Payne appealed.

15 MR. PAYNE: The -- cross appealed.

16 MR. KIRSCHNER: Appealed. They -- they --

17 MR. PAYNE: Both appealed.

18 MR. KIRSCHNER: -- appealed the order.

19 THE COURT: Okay.

20 MR. KIRSCHNER: And I think there was a cross appeal  
21 that it came afterwards.

22 THE COURT: Now is -- are there going to be any  
23 claims by Monte Reason or Nancy Christian or we don't know?

24 MR. KIRSCHNER: I -- my -- my opinion is Your Honor



1 as -- as for the Counsel for the Trustee, they didn't do any  
2 discovery. Their letter that they've sent to me claiming that  
3 they have a basis for it doesn't work. I reject that claim if  
4 that comes in. If they haven't done -- done discovery, they  
5 don't have deposition, they don't have letters. They don't  
6 have documents, I am bound as the Trustee Counsel to reject  
7 this and I plan on doing that. So I'm going to -- and do my  
8 duty as the Trustee Counsel. My trustee is going to her duty  
9 as the Trustee Counsel. So that's what we're asking to do,  
10 finalize this, administer it, get it done.

11 THE COURT: All right.

12 MR. KIRSCHNER: Okay. And -- and one of my worries  
13 is that this Court opening up discovery 45 days, I want to be  
14 clear. Is this discovery just for us or it's for anybody that  
15 who has an interest in this action?

16 THE COURT: That was just for you to find any assets  
17 for the trust.

18 MR. KIRSCHNER: All right. And I just -- I just  
19 want to clarify that for that --

20 THE COURT: So prepare that order to that limited  
21 extent. We're looking for assets for the estate that you said  
22 you may be missing or you think they're still out there. I  
23 thought one of your requests was for a little bit more time to  
24 do that.

1 MR. KIRSCHNER: Yes. The -- we -- we do want to be  
2 able to do that, Your Honor, although frankly if I just get a  
3 letter regarding the contents of the safety deposit box and  
4 things like that --

5 THE COURT: You -- you decide --

6 MR. KIRSCHNER: -- we -- we can --

7 THE COURT: -- how you want to handle that.

8 MR. KIRSCHNER: Yeah. So for -- for that one, Your  
9 Honor, I -- I guess that would -- are we moving onto the next  
10 motion or do we want to still talk about this one?

11 THE COURT: No, we're -- we -- we're -- we're done  
12 with the injunction. Next motion.

13 MR. KIRSCHNER: All right. For the next motion,  
14 Your Honor, I believe that there was a -- there is a potential  
15 cloud on a title as a result of the house. The potential  
16 cloud on title is that this final report that there was a lis  
17 pendens that was asserted against it. To the extent --

18 THE COURT: And what house are we talking about?

19 MR. KIRSCHNER: This would be the Bluffpoint  
20 property. There was a filing that said that there was a lis  
21 pendens that was placed against the property. Now from my  
22 understanding, the opposition to Mr. Payne is --

23 THE COURT: Who gets the Bluffpoint property?

24 MR. KIRSCHNER: The Bluffpoint is actually -- does

1 not have a directed distribution in the trust.

2 THE COURT: So what -- what does the trust say we  
3 should do with it?

4 MR. PAYNE: It goes to the res -- resident remainder  
5 which are my three clients.

6 MR. KIRSCHNER: It can go to the -- it can go to the  
7 three clients.

8 THE COURT: It can go or should go --

9 MR. KIRSCHNER: It can --

10 THE COURT: -- or --

11 MR. KIRSCHNER: It's trustee -- it's trustee  
12 discretion, Your Honor.

13 THE COURT: Is that what it says?

14 MR. KIRSCHNER: Yes, it is. Real property is  
15 subject to the discretion of the trust unless that there is a  
16 dispositive provision that requires -- or a mandatory  
17 distribution to the beneficiaries.

18 THE COURT: And your client doesn't get along with  
19 these individuals.

20 MR. KIRSCHNER: Your Honor, my client --

21 THE COURT: But what's the --

22 MR. KIRSCHNER: -- my client is prepared to do her  
23 duties as trustee which is what she's been all along.

24 THE COURT: Okay.

1 MR. KIRSCHNER: So one, we have this document on  
2 this court filing which says that we need to do this -- or  
3 that there is a lis pendens against the property. Now Mr.  
4 Payne has informed me that it was never actually filed with  
5 their quarters office. Now the confu -- confusion we had is  
6 we weren't sure if this was recorded against the property or  
7 recorded incorrectly against a different person or whatever it  
8 is, we do have a filing with this Court that there has been a  
9 lis pendens against the property.

10 To the extent one hasn't been filed, either wrongly  
11 or under a different parcel number, we're asking for it to be  
12 expunged and/or stricken from the record so that we don't have  
13 this cloud sitting out on title.

14 Secondly, as to the property itself, this Court  
15 has stated that they need to work with us to get access to the  
16 property, to get their personal belongings that they claim  
17 that are in the property to give them to them. The problem we  
18 have is we have not had that communication. We have not had  
19 the request. What we've had is the beneficiaries go to the  
20 real estate agent and say give me the keys to the house, I'm  
21 going to move back in.

22 There's a problem with that. One, we have the  
23 eviction order. Two, it's the trustee's discretion.

24 THE COURT: The eviction order cost us 50,000.

1 MR. KIRSCHNER: No, the eviction order was done in  
2 December, Your Honor. And to be fair, Nancy Christian was  
3 alive during that time and wanted access to her house and the  
4 beneficiaries remove -- refused to move out. So the Trustee  
5 did what the trustee is supposed to do which is get her access  
6 to her house which is what was done. If we want to talk about  
7 \$50,000 for that, that was incurred because the beneficiaries  
8 refers -- refused to move out of the house, that if the trust  
9 wanted the settlor to live in.

10 So, I mean, if we're going to characterize that, we  
11 need to make sure that she was alive at that point in time and  
12 she was trying to get access to her house which is a  
13 completely valid reason for the trust to seek eviction.

14 THE COURT: I just know that Barney said that's what  
15 he was charging us for.

16 MR. KIRSCHNER: Right. I understand. And I'm --  
17 I'm telling you that -- at that point in time that's a  
18 legitimate expense if the settlor is trying to get access to a  
19 house that she wants to live in.

20 THE COURT: I already ordered it paid.

21 MR. KIRSCHNER: Right. The -- I understand, Your  
22 Honor. So I -- I'm not trying to re-litigate those arguments.  
23 What I'm saying is that we want the -- to the extent that the  
24 trust gives us control over the asset, we want control, we

1 don't want somebody going in and saying -- presenting this  
2 Court's language in the minutes, not in an order, in the  
3 minutes and saying we're getting this house, so give us  
4 access, give us the keys to it, because that type of  
5 interference with the house whether they're going to come in  
6 and say maybe to a -- a third party, you get to work on this  
7 house, this is going to be ours anyways. We're just asking  
8 for an injunction so that they don't continue to try to  
9 interfere with the home.

10 THE COURT: No, you're talking about remove the lis  
11 pendens so they don't --

12 MR. KIRSCHNER: Remove the lis pendens and there was  
13 a two part to that final motion. It was, one, remove the lis  
14 pendens. And also an injunction preventing the parties from  
15 continuing to interfere with the house. To the extent that  
16 they can't go to third parties and say give me access to the  
17 house, give me ownership of the house, because it puts third  
18 parties in an awkward position where you have a trustee who --  
19 who is asking --

20 THE COURT: Well, that -- that -- I just heard, and  
21 I haven't read the trust recently, that the house is supposed  
22 to go to them.

23 MR. KIRSCHNER: No, the trust --

24 THE COURT: Is that --

1 MR. KIRSCHNER: -- does not --

2 THE COURT: That's up to the discretion of the -- of  
3 the --

4 MR. KIRSCHNER: That --

5 THE COURT: -- Trustee.

6 MS. OWENS: That is absolutely up to the discretion  
7 of the Trustee. I believe that's in subsection (1)(a), if I  
8 recall correctly. And there is no dispositive or mandatory  
9 distribution of that house anywhere in the trust. The only  
10 mandatory distribution was attached to the Dancing Vines  
11 property which is the one that we have the funds for the bank  
12 account for. So that's the only mandatory distribution.

13 The other one is perm -- is permissive to the extent  
14 the Trustee wants to.

15 THE COURT: Well, or otherwise where does it go?

16 MR. KIRSCHNER: It goes to the residual  
17 beneficiaries and/or creditors of the trust.

18 THE COURT: And who are they?

19 MR. KIRSCHNER: Creditors of the trust.

20 THE COURT: If you get the creditors, we'll find out  
21 later who they are.

22 MR. KIRSCHNER: So we're going to send -- pursuant  
23 to statute, we're going to send out notice to the creditors as  
24 required to known creditors. We're going to review the tax

1 statements, going to review any bank statements to see if  
2 there's any bills outstanding, send notices out to known  
3 creditors. To the extent that there's not known creditors, we  
4 simply do a publish of the notice for the next three -- three  
5 or four months, publish notice so that we wrap up anybody who  
6 has claims, it's done.

7 THE MARSHAL: Five minutes.

8 THE COURT: Okay. Resi -- well, if there's a  
9 residue, where does it go to?

10 MR. KIRSCHNER: The residues would go to them.

11 THE COURT: Okay. So that's what they're saying.  
12 Is that what you're saying? So where does the discretion  
13 comes in?

14 MR. KIRSCHNER: The discretion of the -- the trust  
15 actually provides the discretion. It's under the expressed  
16 provisions of the trust.

17 THE COURT: To do what?

18 MR. KIRSCHNER: The Trustee has unilateral authority  
19 to decide what to do with the real property that's not  
20 otherwise subject to a mandatory distribution.

21 THE COURT: What would they do with it. They --  
22 they would either sell it to pay the claims or what else would  
23 they do?

24 MR. KIRSCHNER: I think that's really the only two



1 options, Your Honor.

2 THE COURT: Okay.

3 MR. KIRSCHNER: But to the extent that we're going  
4 to be -- have incremental encroachment on the Trustee's  
5 authority through petition after the other, we want to make  
6 clear the trust gives that authority to the Trustee. She  
7 intends on using that authority.

8 THE COURT: Okay.

9 MR. KIRSCHNER: Thank you.

10 THE COURT: The lis pendens and injunction to quit  
11 interfering with the house.

12 MR. PAYNE: Your Honor, I've never seen anything  
13 like this. I -- I don't know half the things what he's arg --  
14 talking about. But it was a -- there was a countermotion for  
15 distribution of termination of the trust. I'll --

16 THE COURT: Yes, we'll get to that --

17 MR. PAYNE: Right.

18 THE COURT: -- but let's address this. I -- I --

19 MR. PAYNE: Well, the --

20 THE COURT: -- definitely want to get to that motion  
21 as well.

22 MR. PAYNE: Yeah, the -- the -- it's all related. I  
23 just -- I don't know how to address the issue without  
24 addressing.

1           THE COURT: Well, then let's do it to -- all at one  
2 time. How do we distribute this and do we appoint an  
3 independent trustee to handle this?

4           MR. PAYNE: The beneficiaries under -- under trust  
5 law have the right to say what we want. This argument -- this  
6 question you keep asking him, he's -- he's evading it because  
7 his -- his client is in a conflict of interest. She doesn't  
8 like these children. She filed an affidavit early on said  
9 that they took terrible care of their mother.

10          THE COURT: So should we appoint an independent  
11 trustee to avoid this litigation?

12          MR. PAYNE: Or in the alternative, just do the  
13 distribution and we're done.

14          THE COURT: What I want to do is what the settlors  
15 wanted to do in their trust.

16          MR. PAYNE: Absolutely.

17          THE COURT: I want to do that as soon as possible.

18          MR. PAYNE: Which is what I said the first time I  
19 was in front of Your Honor. When we were here in January when  
20 Nancy died, I said this is a bunch of waste of time and money  
21 and energy.

22          THE COURT: And if --

23          MR. PAYNE: One --

24          THE COURT: -- we're going to do it with this

1 Trustee, fine. If we cannot do it with this Trustee, this is  
2 your chance to say why not.

3 MR. PAYNE: Exactly. I --

4 THE COURT: Well, tell me why not.

5 MR. PAYNE: Why not that we can't do it with her?

6 THE COURT: Why -- why do we need -- a --

7 MR. PAYNE: I agree with you.

8 THE COURT: -- an independent trustee?

9 MR. PAYNE: Well, I -- I agree with you, but -- but  
10 you're going to do -- you're going to potentially restart the  
11 process all over again. There are no creditors. And -- and  
12 your argument to -- to Nancy and to -- and Monte is  
13 disingenuous. They're the ones that look to this agreement to  
14 exercise their rights. Why are they going to now come in and  
15 why would Monte dare come in on Nancy's behalf and say the  
16 trust was subject to undue influence? It's absurd. That's  
17 what got them into their position. That's why they're here.  
18 So for them to collaterally attack the trust or say that these  
19 arguments or these people are going to file a claim is -- is a  
20 waste of time and energy.

21 THE COURT: Well, it --

22 MR. PAYNE: And they --

23 THE COURT: -- they -- they -- according to him,  
24 they have lost their chance. Number two --

1 MR. PAYNE: Exactly.

2 THE COURT: -- I don't know how they're going to  
3 prove that when both settlors are dead --

4 MR. PAYNE: So just --

5 THE COURT: -- and they have already argued that we  
6 shouldn't even discuss this with the attorney who wrote the  
7 trust.

8 MR. PAYNE: I agree with everything you're saying,  
9 Your Honor. Everything you're saying I agree with. This  
10 thing, I -- I practically begged you in January just to do  
11 this distribution to be done with it. The beneficiaries can  
12 waive any of these -- these rights or claims or whatever where  
13 they take the assets subject to these claims and it doesn't  
14 matter.

15 I agree with Your Honor, totally. This is -- is a  
16 tremendous waste of time and energy that just is not going to  
17 stop. And -- and at some point, you got to put your -- put  
18 the brake down.

19 Now I don't want to go too far astray, but I want to  
20 just tell you what happened. We noticed the deposition of Mr.  
21 Grant. Anthony Barney's firm insisted on showing up  
22 unbeknownst to us and wanted to and wanted to attend the  
23 deposition. We had this confrontation about whether Mr. Grant  
24 is going to do this or not do this and -- and because I didn't

1 know what to do in terms -- in terms of the discovery dispute,  
2 do we get your -- Judge Ochoa's Department on the line or do  
3 we get the -- the discovery commissioner's online -- online?  
4 I didn't know what to do. So I continued that deposition. We  
5 had that scheduled for the last two -- two weeks ago. And we  
6 continued it because I needed some help as to Your Honor as to  
7 how to handle that -- that process.

8           Furthermore, it's a little bit technical because in  
9 a way of an offer of proof, Mr. Grant's going to testify that  
10 whether it was an scrivener's error or an error, it was an  
11 error on his part that was not the intent of the settlors but  
12 the issue's going to come up the -- with the attorney/client  
13 privilege. Is it Nancy's privilege or is it Mr.  
14 Christiansen's privilege or is it the family's privilege  
15 because they were all there at the meeting. There was a  
16 family meeting when this trust was established because they  
17 were parties to the original agreement. It was a little bit  
18 unusual. It was not like your normal family estate planning  
19 document -- what -- just mom and dad. It was mom, dad, and  
20 dad's three children were all there at the meeting,  
21 effectively met with the attorney, all these things.

22           THE COURT: Well, that -- that's a side issue.

23           MR. PAYNE: I --

24           THE COURT: The issue right now is the injunction,

1 the lis pendens --

2 MR. PAYNE: I

3 THE COURT: -- and --

4 MR. PAYNE: Well, I --

5 THE COURT: -- whether we order an independent

6 trustee and distribute the assets, go through the normal trust

7 procedures to close the trust out.

8 MR. PAYNE: Here's what I would suggest you do.

9 We'll enter an order to distri --

10 THE COURT: Because the trust is supposed to close

11 at -- at the --

12 MR. PAYNE: Correct.

13 THE COURT: -- death, isn't it?

14 MR. PAYNE: That's -- exactly.

15 THE COURT: And it's not like there's going to --

16 there may be one more trust over here, but other than that,

17 the trust was supposed to end.

18 MR. PAYNE: That's right. Su -- Susan Payne is the

19 sub-trustee of Monte's small --

20 THE COURT: And that's --

21 MR. PAYNE: -- distribution.

22 THE COURT: -- not going to work out too well

23 either.

24 MR. PAYNE: Exactly. And we went to settlement

1 conference. We had a long day with just this --

2 THE COURT: I don't want to talk about that.

3 MR. PAYNE: I know. I know. I'm just saying we --  
4 we went that route and attempt -- here's what I would suggest,  
5 Your Honor. Enter an order issuing the -- the -- turning the  
6 Bluff property over to the beneficiaries subject to any  
7 clawback that this guy -- client/trustee thinks is going to  
8 happen, then Bluffpoint is no longer an issue. They can then  
9 manage it and reside in it. The property in -- in Yermo,  
10 Arizona has been a long term tenant. If you recall, Mr.  
11 Christiansen wanted them in that place for as long as they  
12 could. They always pay rent. The money goes into the  
13 account. It's being administered, not a problem.

14 Really what he wants is you to release this, the  
15 cash, because they want to get a hold of that cash that's in  
16 that blocked account. That's the only one that I -- I'll  
17 defer to the Court what you want to do, but I think it --  
18 there makes some sense to doing it that way.

19 I know courts are reluctant to -- to kind of whittle  
20 down or -- or chip away at these things and I know the courts  
21 like to keep --

22 THE MARSHAL: Five minutes.

23 MR. PAYNE: -- keep things frozen, but I think Your  
24 Honor can figure it out.

1 THE COURT: Okay. So let's discuss his motion to  
2 distribute pursuant to the trust.

3 MR. KIRSCHNER: Your Honor, I think under the terms  
4 of the trust, the only thing we're asking to do is to be able  
5 to do our notice of creditors, to known creditors, do  
6 distributions afterwards. This is standard procedure. This  
7 is not unusual.

8 THE COURT: So you agree that we should distribute  
9 as he's requesting?

10 MR. KIRSCHNER: I think after we do our notice to  
11 creditors, we can then do distribution. That's exactly what  
12 we've been saying. That's what I've said at the onset. Let's  
13 do our notice to creditors, then do distributions.

14 THE COURT: Okay.

15 MR. KIRSCHNER: So and -- and to that extent, I  
16 would say to the distribution we have no objection to the  
17 extent we can do our notice to creditors for everybody.

18 THE COURT: Okay. Anything else?

19 MR. KIRSCHNER: That would be it, Your Honor.

20 THE COURT: Okay. I'll take everything under  
21 advisement.

22 MR. KIRSCHNER: Your Honor, do we have the order  
23 from the -- dissolving the injunction as to the assets?  
24 Because I have a prepared order here for you.



1 THE COURT: You can submit it. We don't have it.  
2 MR. KIRSCHNER: Okay. Thank you, Your Honor.  
3 THE COURT: I -- I didn't grant any motions today.  
4 I'm just taking everything under advisement.  
5 MR. KIRSCHNER: Did we grant the -- the secondary  
6 motion, dissolving the injunction, the -- the freeze order  
7 over the assets and the account? Because --  
8 THE COURT: No.  
9 MR. KIRSCHNER: -- I have that written that we had.  
10 THE COURT: No.  
11 MR. PAYNE: No.  
12 THE COURT: I'm taking everything under advisement.  
13 I never granted anything.  
14 MR. KIRSCHNER: I understand, Your Honor.  
15 MR. PAYNE: Just -- just clarification.  
16 THE COURT: The only thing I did grant is the  
17 further discovery.  
18 MR. PAYNE: Right. Right.  
19 THE COURT: The 45 days --  
20 MR. PAYNE: 45 days.  
21 THE COURT: -- to find all the assets.  
22 MR. KIRSCHNER: So as of today, all the accounts are  
23 still in the names --  
24 THE COURT: Until further --

1 MR. KIRSCHNER: -- of the third --

2 THE COURT: -- order of the Court, yes, which may be  
3 tonight. It may be a week. I -- I'll have to make a  
4 decision.

5 MR. KIRSCHNER: Thank you, Your Honor.

6 THE COURT: But I do --

7 MR. KIRSCHNER: Can I -- I --

8 THE COURT: -- need an order regarding the discovery  
9 so we can start the 45 days. And I advised everyone, and I  
10 want you to make sure, because not all your clients are here,  
11 right?

12 MR. PAYNE: Right.

13 THE COURT: That I don't want any game playing  
14 because it's going to cost them. They -- they --

15 MR. PAYNE: I understand.

16 THE COURT: -- shouldn't have any reason to play  
17 games.

18 MR. KIRSCHNER: Well, Your Honor, we would like to  
19 begin doing our notice to creditors. We were planning on  
20 using the administrative cost that is part of starting this  
21 notice to creditor process with the funds in the Chase  
22 account. So I -- I would say we wanted to be able to get this  
23 started so we can start moving towards the distribution that  
24 they're asking for.

1 MR. PAYNE: Your Honor, we gave them the \$5,000 that  
2 you ordered us to give to them months ago and they've cashed  
3 that check. The -- what do they need more money for?

4 MR. KIRSCHNER: One, that fund -- those funds were  
5 specifically locked down by this Court for only real property  
6 costs. They were not to be used for anything else.

7 MR. PAYNE: The notice to creditors is \$98.

8 MR. KIRSCHNER: Also to the --

9 THE COURT: I will -- I haven't make any decision.  
10 You want a -- you want everything released everything, so --

11 MR. KIRSCHNER: Yes, Your Honor.

12 THE COURT: -- let's wait.

13 MR. PAYNE: Can I --

14 THE COURT: Thank you.

15 MR. PAYNE: Can I just ask one -- one question?

16 It's a discovery dispute. Your Honor, where would you -- what  
17 -- what would be your preference? If we have a dispute, would  
18 we come back to Your Honor or should we go to the discovery  
19 commissioner?

20 THE COURT: It should come back to me, but I see no  
21 reason why you would -- you would turn everything over to him.

22 MR. PAYNE: No. No. I'm talking about the -- the  
23 deposition of Mr. Grant. Mr. Barney's firm showed up at the  
24 deposition, insisted on being at the deposition.

1 THE COURT: What are we litigating with Mr. Grant?  
2 MR. PAYNE: I'm -- I'm sorry, Mr. Grant is --  
3 THE COURT: If you're going to --  
4 MR. PAYNE: -- the witness. Mr. Grant's --  
5 THE COURT: I know --  
6 MR. PAYNE: -- the witness.  
7 THE COURT: -- but if we distribute everything, is  
8 the litigation going to go on?  
9 MR. PAYNE: Well, it -- it impacts -- if we  
10 distribute everything, the litigation go on.  
11 MR. KIRSCHNER: Your -- Your Honor --  
12 THE COURT: I -- I --  
13 MR. KIRSCHNER: -- to the --  
14 THE COURT: -- would stay any more litigation and  
15 discovery. If you want an order for me to stay pending my  
16 decision on this case on distributing everything and giving  
17 her permission to start closing down the trust, I would do  
18 that, because I don't want anymore litigation expenses.  
19 MR. PAYNE: I agree with Your Honor, but you had  
20 said at the last hearing that it would be important to hear  
21 the -- the testimony of Mr. Grant because your analogy was --  
22 THE COURT: But if we distribute everything under an  
23 independent trustee or under this trustee --  
24 MR. PAYNE: It may be over.

1 THE COURT: -- it doesn't -- it may be over.  
2 MR. PAYNE: It --  
3 THE COURT: So --  
4 MR. PAYNE: -- may be over. You're right --  
5 THE COURT: -- let's just --  
6 MR. PAYNE: -- Your Honor.  
7 THE COURT: -- wait on for -- further litigation.  
8 And I -- you -- you should prepare an order, because I don't  
9 want any of your time to be used up while I stayed it. I  
10 don't know if there's any time frame that may come back to  
11 haunt you. But you may want an order from me saying that I've  
12 stayed the litigation pending my order in this -- on these  
13 motions.  
14 MR. PAYNE: Okay. I'll -- I'll prepare an --  
15 MR. KIRSCHNER: Your --  
16 MR. PAYNE: -- order.  
17 MR. KIRSCHNER: Your Honor, stay the litigation  
18 means are we staying discovery or are we staying --  
19 THE COURT: Not the discovery. The discovery on the  
20 assets, I'm talking about the -- I'm talking about the  
21 litigation regarding whether there was a mistake in --  
22 MR. PAYNE: The merits.  
23 THE COURT: -- the trust.  
24 MR. PAYNE: The merits.

1           THE COURT: The actual merits of whether Mr. Monte  
2 Reason should have been the trustee or not have been the  
3 trustee or whether Nancy Christian had the right to remove  
4 them. That's the -- the heart of this issue and we don't --  
5 may -- we may be able to avoid that whole litigation since  
6 both settlors are now dead, the trust is very clear, and I  
7 intend to follow the wills of the settlors and meet their  
8 major requirements under the trust.

9           MR. KIRSCHNER: The Court has made reference to an  
10 independent trustee on several points here today. I want  
11 to --

12           THE COURT: Yeah.

13           MR. KIRSCHNER: -- confirm --

14           THE COURT: You've -- if you want to --

15           MR. KIRSCHNER: -- it's --

16           THE COURT: -- address that, address it.

17           MR. KIRSCHNER: No, I would just say to the extent  
18 that that's been brought, I would ask for one grounds for the  
19 -- to be able to brief the issue to the extent that it's being  
20 sought. Secondly, if -- if there's an evidentiary hearing as  
21 to bad faith or there's not even been a request from the  
22 beneficiaries to remove my client.

23           So I want to be clear. We haven't seen a petition  
24 on that question. We haven't seen the beneficiaries asking

1 for it. And to the extent that the Court is going to order  
2 that in the future, I would actually request a hearing -- an  
3 evidentiary hearing on that matter.

4 THE COURT: On replacing your trustee with --

5 MR. KIRSCHNER: If -- if --

6 THE COURT: -- an independent trustee.

7 MR. KIRSCHNER: If the Court is inclined to replace  
8 my client as trustee, I'm asking for a full hearing on that  
9 matter.

10 MR. PAYNE: But if you grant the petition to  
11 distribute, it's -- it's moot.

12 THE COURT: Well, not -- it's not moot because if  
13 you -- if I grant your request to distribute the assets, she's  
14 going to take action, so it's going to offend your client and  
15 it's going to cost more litigation. What I'm trying to avoid  
16 is litigation.

17 MR. PAYNE: I understand.

18 THE COURT: And that's the purpose of the  
19 independent trustee.

20 MR. PAYNE: I understand.

21 THE COURT: So if you need to file something, file  
22 it. And because you already threatened that she has  
23 discretion. And obviously if she uses discretion, they're  
24 going to be offended by her use of discretion. I don't see

1 her using discretion to make them happy.

2 MR. PAYNE: I understand.

3 THE COURT: So then -- then they're going to object  
4 and then we're going to be back to the same situation and  
5 we're going to be like three months down the road and we still  
6 haven't even answered the first question was whether Nancy  
7 Christian had the authority to replace them as trustees.

8 MR. KIRSCHNER: I think that question was answered  
9 in the courts April 4th, Your Honor -- or April 4th order,  
10 Your Honor.

11 THE COURT: Well, you --

12 MR. KIRSCHNER: That hasn't been appealed.

13 THE COURT: -- you can think what you want to think.  
14 I think what I want to think and I haven't answered that  
15 question. That was the whole purpose to try to get to that  
16 point. That's the whole purpose of Mr. Grant's discovery  
17 because I wanted to hear if Mr. Grant was going to be able to  
18 testify or not testify so we got to understand whether there  
19 was a mistake or not a mistake. The language is clear, but it  
20 doesn't make any sense when you look at the whole trust.

21 MR. KIRSCHNER: Thank you, Your Honor.

22 MR. PAYNE: Thank you.

23 THE COURT: So --

24 THE MARSHAL: Thank you guys.



1 MR. PAYNE: Thank you, Judge.

2 THE COURT: -- I -- I am considering an independent  
3 trustee. So whatever actions you want to take on that, go  
4 ahead and take it because I -- I think an independent trustee  
5 will halt my reason, will have the -- all the beneficiaries  
6 and will meet the complete purpose of this trust --

7 MR. KIRSCHNER: Your Honor, to the extent --

8 THE COURT: -- without litigation.

9 MR. KIRSCHNER: To the extent that Court is seeking  
10 it, we're going to ask for a full hearing on the matter  
11 including an evidentiary hearing to find out the grounds for  
12 this being removed.

13 THE COURT: Well, file your authority to request a  
14 full hearing on that.

15 MR. KIRSCHNER: Your Honor, if the order comes in,  
16 we're going to object on the basis of lack of due process,  
17 lack of hearing and notice of opportunity.

18 THE COURT: Well, file your reasons why you think  
19 it's a lack of due process. I'm giving you a chance to  
20 discuss it. You can do it in a brief or you can do it in a  
21 motion and we'll give you all the due process you want.

22 MR. KIRSCHNER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. PAYNE: Thank you, Judge.

1 THE COURT: But I -- I intend to move forward  
2 quickly on this.

3 MR. PAYNE: Thank you.

4 (PROCEEDINGS CONCLUDED AT 02:59:30)

5 \* \* \* \* \*

6 ATTEST: I do hereby certify that I have truly and  
7 correctly transcribed the digital proceedings in the above-  
8 entitled case to the best of my ability.

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