

# In the Supreme Court of the State of Nevada

IN THE MATTER OF THECHRISTIAN )  
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. )

~~~~~ )

Electronically Filed  
Jan 30 2019 04:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.: 75750

## APPELLANT/CROSS-RESPONDENTS' RESPONSE REGARDING RESPONDENT UTKIN

COMES NOW Appellants, Susan Christian-Payne, Rosemary Keach and Raymond Christian Jr., by and through their attorney, Cary Colt Payne, Esq., of the lawfirm of CARY COLT PAYNE, CHTD., hereby submits this Response pursuant to this court's order filed January 24, 2019, in that Respondent Jacqueline Utkin (hereinafter "Utkin") must remain an interested party to this appeal, and needs to respond.

Utkin was both an interested and a necessary party when the original Petition for Fees (APP-ROA-V8-577-pleading as Exhibit "A") was filed in this matter. Utkin asserted same in her Notice of Substitution of Real Party in Interest (NRCP 17), filed in the court below on January 15, 2018 (APP-ROA-V18-1415-Exhibit "B"<sup>1</sup>). She was the purported trustee who then, according to Respondent Barney firm, joined and filed a Notice of Non-Opposition and Limited Joinder on February 23, 2018 (APP-ROA-V8-660) (Exhibit "C") to the Respondent Barney firm Petition for Fees and Costs. This matter was cited to the District Court (4/4/18) and basis for such award. (Exhibit "D") She is the consenting and necessary party in this matter, and should file a response, etc.

Dated: January 30, 2019

*Filed by:*



CARY COLT PAYNE, ESQ.  
Nevada Bar No.: 4357  
CARY COLT PAYNE, CHTD.  
700 S. Eighth Street  
Las Vegas, NV 89101  
(702) 383-9010  
[carycoltpaynechtd@yahoo.com](mailto:carycoltpaynechtd@yahoo.com)

---

<sup>1</sup> Appellant's Appendix will be supplemented to include this volume.

## CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 30<sup>th</sup> day of January, 2019, I have served to the following copy of the foregoing as follows:


X via electronic filing by electronic filing through the Court's E-Flex System:

Anthony L. Barney, Esq.  
ANTHONY L. BARNEY LTD.  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102  
*Email: anthony@anthonybarney.com*

Joseph Powell, Esq.  
RUSHFORTH, LEE & KIEFER, LLP  
1701 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
*email: joey@rushforth.com*  
Attorney for Monte Reason

X via U.S. Mail to the parties last known address:

Jacqueline Utkin  
445 Seaside Avenue, Apt. 4005  
Honolulu, HI 96815

  
An employee of  
CARY COLT PAYNE, CHTD.



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT "A"**



1 ANTHONY L. BARNEY, ESQ.  
NV State Bar No. 8366  
2 TIFFANY S. BARNEY, ESQ.  
NV State Bar No. 9754  
3 ZACHARY D. HOLYOAK, ESQ.  
NV State Bar No. 14217  
4 ANTHONY L. BARNEY, LTD.  
3317 W. Charleston Boulevard, Suite B  
5 Las Vegas, NV 89102-1835  
6 Telephone: (702) 438-7878  
7 Facsimile: (702) 259-1116  
8 E-Mail: office@anthonybarney.com  
9 *Prior Attorneys for Nancy Christian,  
Creditors of The Christian Family Trust*

10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the

Case Number: P-17-092512-T

13 THE CHRISTIAN FAMILY TRUST

Dept.: S

14 Dated October 11, 2016

15 PETITION FOR FEES AND COSTS

16  
17 Anthony L. Barney, Ltd., creditor of The Christian Family Trust dated October 11, 2016  
18 ("Trust"), who were the attorneys for the late Nancy Christian ("Nancy" or "Trustor"), hereby  
19 files their petition for fees and costs pursuant to the terms of the Trust. This Petition is based  
20 upon the pleadings and papers on file herein, the memorandum of points and authorities and  
21 exhibits attached hereto, and any oral arguments presented at the time of the hearing.  
22

23 Dated this 8<sup>th</sup> day of February 2018.

24 RESPECTFULLY SUBMITTED,



25 TIFFANY S. BARNEY, ESQ.  
26 3317 W. Charleston Blvd., Suite B  
27 Las Vegas, Nevada 89102-1835  
28 Telephone: (702) 438-7878  
office@anthonybarney.com  
*Creditors of The Christian Family Trust*

# Exhibit 3

## Anthony L. Barney

---

**From:** Jeremy Kirschner <jerimy@jkirschnerlaw.com>  
**Sent:** Thursday, February 1, 2018 9:00 AM  
**To:** Tiffany Barney  
**Cc:** Secretary; anthony@anthonybarney.com; Zachary Holyoak  
**Subject:** Re: Letter from TSB - Christian Family Trust

Hello Tiffany,

I have spoken with my client and she approves the fees for your firm in her role as trustee for the Christian Family Trust.

On Fri, Jan 26, 2018 at 1:55 PM, Tiffany Barney <tiffany@anthonybarney.com> wrote:

Dear Mr. Kirschner –

Thank you for your prompt response. Also, I wanted to make you aware that I inadvertently left off Attachment 2 to the letter. Please see the letter with Attachment 2 attached. The letter with the proper attachments was sent today to your office in Tacoma, Washington rather than the address on the letter. Thank you.

Sincerely,

Tiffany S. Barney

Attorney at Law

Anthony L. Barney, Ltd.

3317 W. Charleston Blvd., Suite B

Las Vegas, NV 89102-1835

O: 702-438-7878

F: 702-259-1116

tiffany@anthonybarney.com

www.anthonybarney.com

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encrypted e-mail, let me know. The attorney-client privilege may apply to this message, but such privilege may be lost if it is shared with someone other than an employee of Anthony L. Barney, Ltd. or of another attorney or law firm who represents you. In accordance with Internal Revenue Service Circular 230, we hereby advise you that if this email or any attachment hereto contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service.

**From:** Jerimy Kirschner [mailto:[jerimy@jkirschnerlaw.com](mailto:jerimy@jkirschnerlaw.com)]  
**Sent:** Friday, January 26, 2018 12:15 PM  
**To:** Secretary  
**Cc:** [anthony@anthonybarney.com](mailto:anthony@anthonybarney.com); Zachary Holyoak; Tiffany Barney  
**Subject:** Re: Letter from TSB - Christian Family Trust

Hello Mrs. Barney,

I am forwarding a copy of this letter to the Trustee. I hope to have feedback for you by the end of Monday at the latest.

On Fri, Jan 26, 2018 at 11:19 AM, Secretary <[secretary@anthonybarney.com](mailto:secretary@anthonybarney.com)> wrote:

Dear Mr. Kirschner –

Please find attached the letter from Tiffany S. Barney, Esq., regarding the Christian Family Trust.



Sincerely,

Neva Liebe

Legal Secretary

Anthony L. Barney, Ltd.

3317 W. Charleston Blvd., Suite B



Las Vegas, NV 89102-1835

O: 702-438-7878

F: 702-259-1116

secretary@anthonybarney.com

www.anthonybarney.com

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—  
Jeremy Kirschner, Esq.

Managing Partner

Jeremy Kirschner & Associates PLLC

**NEVADA**

5550 Painted Mirage Rd., Suite 320

Las Vegas, NV 89149

Phone: (702) 563-4444

Fax (702) 563-4445

**WASHINGTON**

1326 Tacoma Ave S #200

Tacoma, WA 98402

Phone: (206) 623-4444

Fax (206) 538-2008

Notice: This fax or email is from a law firm, Jerimy Kirschner & Associates ("JKA"), and is intended solely for the use and review of the individual(s) to whom it is addressed. If you have received this fax or email in error, please notify the sender immediately. In addition, please destroy the fax and/or delete the email from your computer. Please do not copy or disclose it to anyone else as it may contain important private information.

If you are not an existing client of JKA, it is not the intent of this fax or email to make you a client unless it contains a specific written statement to that effect and do not disclose anything to JKA in reply that you expect it to hold in confidence.

If you are counsel in litigation with JKA, either associated or opposing, and would like to participate in facsimile service of future pleadings under NRCP, please contact us at (702)563-4444 to arrange for a reciprocal facsimile agreement.

—  
Jerimy Kirschner, Esq.  
Managing Partner  
Jerimy Kirschner & Associates PLLC

**NEVADA**

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Las Vegas, NV 89149  
Phone: (702) 563-4444  
Fax (702) 563-4445

**WASHINGTON**

1326 Tacoma Ave S #200  
Tacoma, WA 98402  
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Fax (206) 538-2008

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If you are not an existing client of JKA, it is not the intent of this fax or email to make you a client unless it contains a specific written statement to that effect and do not disclose anything to JKA in reply that you expect it to hold in confidence.

If you are counsel in litigation with JKA, either associated or opposing, and would like to participate in facsimile service of future pleadings under NRCP, please contact us at (702)563-4444 to arrange for a reciprocal facsimile agreement.

# Exhibit 4

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

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

Zachary Holvoak, J.D.  
Attorney at Law  
Licensed in Nevada

**ANTHONY L. BARNEY, LTD.**  
**A Nevada Professional Law**  
**Corporation**

3317 W. Charleston Boulevard, Suite B  
Las Vegas, Nevada 89102-1835  
Receptionist: 702-438-7878  
Fax: 702-259-1116

Neva Liehe  
Administrative Assistant

Website Address  
[www.anthonybarney.com](http://www.anthonybarney.com)

E-mail Address  
[office@anthonybarney.com](mailto:office@anthonybarney.com)

January 26, 2018

Jerimy L. Kirschner, Esq.  
Jerimy L. Kirschner & Associates  
3333 E. Serene Ave., #150  
Henderson, NV 89074

Re: Christian Family Trust dated October 11, 2016 ("Trust")  
Our Prior Client: Nancy Christian, Trustor and Survivor of the Trust

VIA US FIRST CLASS MAIL AND EMAIL

Dear Mr. Kirschner -

We are formally requesting payment from the Trustee of the Christian Family Trust dated October 11, 2016 ("Trust") for legal work done for and on behalf of Nancy Christian, Trustor of the Trust. Nancy Christian passed away on December 14, 2017; however, prior to her passing, we represented Nancy on various matters relating to the Trust, including but not limited to, changing her trustee, defending her in Case #P-17-092512-T ("Probate Case") and obtaining possession of Trust-owned property in Case No.: 17C-023096 ("Justice Court Case").

We expended fees and costs to further Nancy's wishes in the Probate Case and the Justice Court Case. We believe that the fees and costs were necessary and reasonable to further Nancy's intent and her wishes. Therefore, pursuant to provision 4.2 of the Trust we are requesting payment of the debts of the Decedent as represented in the billing statements attached hereto and incorporated herein as Attachment 1.


The attached bills evidence the work performed for and on behalf of Nancy Christian and some bills or portions thereof were paid personally by Nancy although it was work to further her stated intent in the Trust. Most of the bills remain unpaid and are debts of the Decedent. Therefore, we are requesting that Nancy's estate be reimbursed for the portions that she paid personally and that the Trust pay Nancy's outstanding debts to our law office as provided in provision 4.2 of the Trust. Notably, the spendthrift provision does not apply to the Trustor's interest in the Trust estate (see provision 14.2 of the Trust).

The amounts incurred by our law firm in fees and costs to further Nancy's wishes are as follows (dates correspond to the respective billing statement in Attachment 1):

February 28, 2017: \$100.00  
March 15, 2017: \$210.00  
March 30, 2017: \$1,470.00  
April 17, 2017: \$140.00  
April 28, 2017: \$420.00  
May 15, 2017: \$1,055.00  
May 31, 2017: \$890.00  
June 15, 2017: \$1,140.00  
June 30, 2017: \$315.00  
July 15, 2017: \$175.00  
July 31, 2017: \$2,913.50  
August 15, 2017: \$1,155.00  
August 31, 2017: \$3,489.40  
September 15, 2017: \$875.00  
September 29, 2017: \$8,659.40  
October 16, 2017: \$6,045.00  
October 31, 2017: \$6,822.50  
November 15, 2017: \$11,259.80  
November 30, 2017: \$4,101.80  
December 15, 2017: \$5,970.50  
December 30, 2017: \$2,536.00  
January 15, 2018: \$ 430.00  
January 25, 2018: \$ 1,932.74 (Not A Final Bill)  
**TOTAL FEES AND COSTS: \$62,105.64**

The Prior Trustee, Monte Reason, approved the amount of \$57,206.90 which were amounts that were incurred as of December 15, 2017. See Letter from Joseph J. Powell, Esq., attached hereto and incorporated herein as Attachment 2. However, there are further amounts that have been expended in wrapping up the Justice Court Case, for attendance at the court hearing as a result of our status as a creditor, and to include expended costs that were not included on prior billing statements.

We formally request a determination by the Successor Trustee, Jackie Utkin, to approve the fees and costs from the Trust estate that are listed above. These amounts were expended pursuant to Nancy's instruction and wishes and the Trust is authorized to pay Nancy's debts from the Trust. We would appreciate such a determination to be in writing.



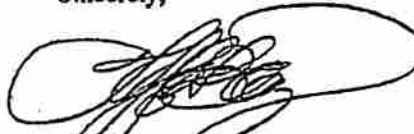
Furthermore, please be on notice that we are alerting you of our lien rights in the Probate Case and Justice Court Case and requesting payment also pursuant to our attorney's liens. Please note that we have an extensive file and discovery that we have performed in this matter. With payment of our liens, we will deliver the file to you. We reserve the right to assert and file our attorney's lien in the Probate Case and Justice

Court Case for the total amount of the fees that were expended for Nancy that should be paid.

As requested by Judge Ochoa at the last court hearing, we will shortly be filing a Petition for Fees and Costs. We would kindly appreciate a response before we file this petition in which we will request the judge to unfreeze trust assets and order the payment of Nancy's attorney fees and costs to Anthony L. Barney, Ltd. ✓

If you have any further questions, please feel to contact my office. Thank you for your anticipated cooperation in this matter.

Sincerely,



TIFFANY S. BARNEY  
Attorney at Law  
[tiffany@anthonybarney.com](mailto:tiffany@anthonybarney.com)

Encl: Bills dated from February 2017 to January 2018



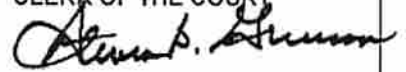
**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT “B”**



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 Christen 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.: (PC-1) 26

**NOTICE OF SUBSTITUTION OF REAL PARTY IN INTEREST**

COMES NOW, Jacqueline Utkin, Successor Trustee to the Christen Family Trust Dated October 11, 2016 ("Trustee"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby submits this NOTICE OF SUBSTITUTION OF REAL PARTY IN INTEREST pursuant to Nevada Rule of Civil Procedure 17(a).

1. On October 11, 2016, NANCY CHRISTIAN, also known as NANCY I. CHRISTIAN, established, along with her late husband, RAYMOND T. CHRISTIAN, also known as RAYMOND T. CHRISTIAN, SR., a revocable Trust entitled the "CHRISTIAN FAMILY TRUST" (the "Trust")



2. On June 12, 2017 NANCY CHRISTIAN executed a "Modification and Designation of Trustee and Successor Trustee" (" Modification" ) which expressly removed the then serving co-trustees ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR., and SUSANG. CHRISTIAN-PAYNE and in their place, NANCY CHRISTIAN designated MONTE BRIAN REASON to serve as trustee of the Trust.

3. MONTE BRIAN REASON has sought to resign as the Trustee of the Trust.

4. Pursuant to the Modification's order of succession, MONTE BRIAN REASON sought to designate Wells Fargo Bank as the successor.

5. On December 22, 2017, Wells Fargo Bank declined the appointment, and has executed a Declination to Act as Successor Trustee. **Exhibit 1.**

6. Thereafter, and pursuant to Section 9.3 and Section 8.1 of the Trust, MONTE BRIAN REASON has nominated JACQUELINE UTKIN to serve as the successor trustee, and has done through his Resignation Of Trustee And Nomination Of Successor Trust. **Exhibit 2**

7. JACQUELINE UTKIN has agreed to accept the appointment as successor trustee, and has executed a Certificate of Incumbency to reflect the acceptance. **Exhibit 3.**

8. Pursuant to Nevada Rule of Civil Procedure 17(a), she is now the real party in interest as the Trustee for the Trust, and hereby substitutes into this matter, taking the place of the former Trustee MONTE BRIAN REASON.

///

///

///

1           9.       In doing so, JACQUELINE UTKIN, also substitutes Trust counsel for her attorney,  
2 the undersigned.

3  
4 DATED this 15<sup>th</sup> day of January, 2018.

5  
6 JERIMY KIRSCHNER & ASSOCIATES, PLLC

7  
8 /s/ Jerimiy L. Kirschner, Esq.  
9 JERIMY L. KIRSCHNER, ESQ.  
10 Nevada Bar No. 12012  
11 5550 Painted Mirage Rd., Suite 320  
12 Las Vegas, NV 89149  
13 Telephone:(702) 563-4444  
14 *Attorney for Jacqueline Utkin,*  
15 *Successor Trustee to the Christen Family Trust*  
16 *Dated October 11, 2016*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jeremy Kirschner & Associates, PLLC, and on January 15, 2018, I caused a copy of the foregoing NOTICE OF SUBSTITUTION OF REAL PARTY IN INTEREST to be served through the electronic court filing system or via first class, US mail, postage prepaid upon the following persons/entities:

Cary Colt Payne, Esq.  
Cary Colt Payne, Chtd.  
700 S. 8th St.  
Las Vegas, NV 89101

*Attorney for Susan Christian-Payne,  
Rosemary Keach and Raymond Christian, Jr.*

Joey Powell, Esq.  
Rushforth, Lee & Kiefer LLP  
1707 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
*Attorney for Monte Reason*

/Jeremy L. Kirschner, Esq.  
An Employee of JERIMY KIRSCHNER & ASSOCIATES, PLLC

# EXHIBIT 1

## DECLINATION TO ACT AS SUCCESSOR TRUSTEE

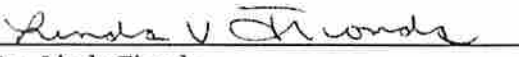
The Christian Family Trust, established on October 11, 2016 (the "Trust"), was modified and amended by the surviving Trustor, Nancy Christian, on June 12, 2017 in accordance with section 9.3 of the Trust. On that date, Nancy Christian executed the "Modification and Designation of Trustee and Successor Trustee" ("Modification") in which she removed and replaced the then serving trustees, and all designated successor trustees, with Monte Brian Reason. In so doing, she also named Wells Fargo Bank to serve as a successor trustee in the event that Monte Brian Reason, at any time, is no longer willing or able to continue to act as the trustee.

Specifically, the Modification provides, in relevant part, as follows:

*6. In the event that MONTE BRIAN REASON is unable or unwilling to serve as the designated Trustee, then WELLS FARGO BANK, as designated Successor Trustee shall be empowered to act pursuant to the Trust provisions and, if appropriate, filing with the Recorder of each county in which Trust real property is located a Certificate of Incumbency or similar instrument thereto. The Certificate of Incumbency shall contain a statement setting forth the circumstances and Trust provisions that entitle the Trustee to act and a declaration that the successor trustee agrees to be bound by the terms of the Trust and agrees to perform the duties of the trustee as required therein and bylaw.*

Wells Fargo Bank hereby respectfully declines to serve as the successor trustee of the Trust.

WELLS FARGO BANK, N.A.

  
By: Linda Fionda,  
Vice President, Risk Manager

  
Date

# EXHIBIT 2

## **RESIGNATION OF TRUSTEE AND NOMINATION OF SUCCESSOR TRUST**

The undersigned, MONTE BRIAN REASON, hereby declares that:

1. Raymond T. Christian and Nancy I. Christian established the "Christian Family Trust" on October 11, 2016 (the "Trust").
2. On June 12, 2017, as the surviving Trustor, Nancy I. Christian ("Nancy") executed a "Modification and Designation of Trustee and Successor Trustee" ("Modification").
3. Under the Modification, Nancy exercised her right under section 9.3 of the Trust to remove the then current serving co-trustees of the Trust and designated me, Monte Brian Reason, to serve as the Trustee of the Trust. Under the Modification, Nancy also designated Wells Fargo Bank to serve as the successor trustee of the Trust I ever chose not to serve as the Trustee.
4. I confirmed my acceptance of Nancy's nomination and designation on June 21, 2017 by executing a "Certificate of Incumbency".
5. I have served as the Trustee of the Trust since such date.
6. I have come to the decision that I no longer wish to serve as the Trustee of the Trust provided that the person I have named as my successor should choose to replace me in such capacity.
7. Section 8.1 of the Trust provides, in pertinent part, as follows:

*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.*
8. Section 8.5 of the Trust provides as follows:

*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.*
9. Through my counsel, I have asked Wells Fargo Bank, N.A. if they would choose to serve in my place should I decide to step down and resign from serving as the Trustee of the Trust. In reply, Wells Fargo Bank, N.A. has indicated that they have no desire to serve as a trustee of the Trust, as evidenced by their "Declination to Act as Successor Trustee", dated December 22, 2017, which is attached hereto.
10. Due to the decision of Wells Fargo Bank, N.A. to decline to serve as trustee of the Trust, pursuant to the terms of the Trust, specifically section 8.1, I have the power to designate a substitute trustee, and as such I hereby designate Jacqueline Utkin to serve as the trustee of the Trust, my replacement.

11. Therefore, in accordance with section 8.5 of the Trust, I hereby announce my resignation as Trustee of the Trust, which shall be effective upon the acceptance by Jacqueline Utkin after she has executed a certificate of incumbency in which she agrees to accept the trusteeship for the Trust.

DATED January 4, 2018

  
\_\_\_\_\_  
MONTE BRIAN REASON



# EXHIBIT 3

RECORDING REQUESTED BY and  
when recorded, mail to:  
Jerimy Kirschner & Associates, PLLC  
5550 Painted Mirage Rd. Suite 320  
Las Vegas, NV 89149

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## **CERTIFICATE OF INCUMBENCY**

### ***AFFIDAVIT OF INCUMBENT TRUSTEE OF THE CHRISTIAN FAMILY TRUST***

JACQUELINE UTKIN, under penalties of perjury, does hereby certify and says that:

1. On October 11, 2016, **NANCY CHRISTIAN**, also known as **NANCY I. CHRISTIAN**, established, along with her late husband, **RAYMOND T. CHRISTIAN**, also known as **RAYMOND T. CHRISTIAN, SR.**, a revocable Trust entitled the "CHRISTIAN FAMILY TRUST" (the "Trust").
2. Under the terms of said Trust, **ROSEMARY K. CHRISTIAN-KEACH**, **RAYMOND T. CHRISTIAN, JR.**, and **SUSAN G. CHRISTIAN-PAYNE**, were designated as co-Trustees. However, the surviving Trustor, **NANCY CHRISTIAN** retains the power to remove any or all trustees and appoint a replacement trustee, which she has done.
3. Section 9.3 of the Trust, titled "Power to Change Trustee" provides for the following:

*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.*

4. In accordance with the right afforded to her under Section 9.3 of the Trust, **NANCY CHRISTIAN** executed a "Modification and Designation of Trustee and Successor Trustee" on June 12, 2017 in which she expressly removed the then serving co-trustees **ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR.,** and **SUSANG. CHRISTIAN-PAYNE.** In their place, **NANCY CHRISTIAN** designated **MONTE BRIAN REASON** to serve as trustee of the Trust
5. **MONTE BRIAN REASON** has sought to resign as the Trustee of the Trust.
6. Pursuant to the "Modification and Designation of Trustee and Successor Trustee" ("Modification" ) executed June 12, 2017 by the then surviving Trustor, Nancy Christen, **MONTE BRIAN REASON** sought to designate Wells Fargo Bank as the successor trustee based on the Modification specifically stating, in relevant part,;  
  
*6. In the event that MONTE BRIAN REASON is unable or unwilling to serve as the designated Trustee, then WELLS FARGO BANK, as designated Successor Trustee shall be empowered to act pursuant to the Trust provisions and, if appropriate, filing with the Recorder of each county in which Trust real property is located a Certificate of Incumbency or similar instrument thereto. The Certificate of Incumbency shall contain a statement setting forth the circumstances and Trust provisions that entitle the Trustee to act and a declaration that the successor trustee agrees to be bound by the terms of the Trust and agrees to perform the duties of the trustee as required therein and bylaw.*
7. Wells Fargo Bank declined the appointment, and has executed a Declination to Act as Successor Trustee which is attached to this Certificate of Incumbency.
8. Thereafter, and pursuant to Section 9.3 and Section 8.1 of the Trust, **MONTE BRIAN REASON** has nominated **JACQUELINE UTKIN** to serve as the successor trustee, and has done through his Resignation Of Trustee And Nomination Of Successor Trust, which is attached to this Certificate of incumbency.
9. **JACQUELINE UTKIN** has agreed to accept the appointment as successor trustee.
10. Therefore, pursuant to the terms of the Trust, **JACQUELINE UTKIN** is the designated Trustee. By signing this certificate, **JACQUELINE UTKIN** agrees to serve as Trustee, accept the duties and responsibilities thereof, and agrees to be bound by the terms of the Trust.
11. The Trustee has, among other powers, the power to sell, exchange, lease, and otherwise engage in transactions involving Trust assets as the Trustees deem appropriate. The Trustee has the power to make all types of investments without limitation.

12. For purposes of the federal Health Insurance Portability and Accountability Act of 1996 and related regulations (42 USC § 1320d and 45 CFR §§ 160-164) ("HIPAA"), the undersigned does hereby designate appoint each co-trustee (if any) and each successor Trustee designated in accordance with the terms hereof (even prior to serving in that office) as his or her "personal representative", with full authority to receive private, privileged, protected, or personal health information related to the Trustee or co-trustee's health and/or incapacity and to divulge such information as necessary to accomplish the purposes of the Trust. The undersigned acknowledges that any Trustee or co-Trustee who fails to authorize the release of private, privileged, protected, or personal health information related to the Trustee or co-trustee's health and/or incapacity upon the request of a co-trustee or of a successor Trustee or co-trustee) or who fails to divulge such information as necessary to accomplish the purposes of the Trust shall cease to be the Trustee or a co-trustee.

13. The trust instrument provides that no person dealing with the Trust is obligated to inquire as to the powers of the Trustees or to inquire as to how the Trustees apply any funds delivered to the Trustees.

DATED

Jan. 12, 2018

  
JACQUELINE UTKIN

STATE OF

}

ss.

COUNTY OF

}

This instrument was acknowledged before me on \_\_\_\_\_, by JACQUELINE UTKIN.

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



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

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**EXHIBIT "C"**

*Steven D. Grierson*

JERIMY L. KIRSCHNER, ESQ.  
Nevada Bar No. 12012  
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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.: (PC-1) 26

Dated October 11, 2016

**NOTICE OF NON-OPPOSITION AND LIMITED JOINDER TO THE PETITION FOR  
FEES AND COSTS FOR ANTHONY L BARNEY, LTD.**

COMES NOW, Jacqueline Utkin ("Trustee"), Successor Trustee to the Christian Family Trust Dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jerimy Kirschner & Associates, PLLC., and hereby files this Notice of Non-Opposition and Limited Joinder to the Petition for Fees and Costs for Anthony L Barney, Ltd. ("Non-Opposition").

1. The Trustee has reviewed the billing of Anthony L Barney, Ltd. included as part of their Petition for Fees and Costs ("Petition").

2. Nancy I. Christian ("Settlor Nancy") was one of the two settlors for the CFT, with the other being.

1           3. Settlor Nancy retained the law office of Anthony L. Barney, Ltd. ("Creditor") to  
2 make changes to her trust, and then to defend those changes before this court.

3           4. The billing for Creditor reflects that that the vast majority of their billing was  
4 incurred during Settlor Nancy's lifetime with small amount representing the Creditor's work  
5 wrapping up representation.

6           5. The CFT was not an asset protection trust, thus the creditor claims against the  
7 settlors can reach CFT property.

8           6. The fees of Creditor are a debt owed by Nancy and the assets of the trust are subject  
9 to this Creditor's claim.

10           7. Section 4.2 of the CFT authorizes the Trustee as the trustee to pay creditor claims,  
11 specifically:

12           4.2 **Payment of Debts.** After the death of the Decedent, the Trustee may, in the Trustee's  
13 sole discretion, pay from the income and/or principal of the Decedent's separate property  
14 and Decedent's one-half of the community property, which is a part of this Trust estate, the  
15 administrative expenses, the expenses of the last illness and funeral of the Decedent and  
16 any debt owed by the Decedent

17           8. The Trustee has not found a legal or factual basis for denial of the Creditor claim.

18           9. Trustee believes Creditor claims are a debt owed by Settlor Nancy which she would  
19 pay.

20           10. The Trustee is unable to make payment of these funds directly because Rosemary K.  
21 Christian-Keach, Susan G. Christian-Payne and Raymond T. Christian, Jr., (Collectively, "RSR  
22 Beneficiaries") have placed CFT funds into an account under their control and one for which they  
23 list themselves as "Trustees for the Christian Family Trust."

24           11. RSR Beneficiaries have not provided proof of the accounts being frozen.  
25  
26  
27  
28



12. As part of relief for this matter, Trustee would request these funds be transferred to an account under her control so that she might make payment and that RSR be required to provide the EIN for the trust, which they have refused to provide to date.

DATED this 21<sup>st</sup> day of February, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.

JERIMY L. KIRSCHNER, ESQ.

Nevada Bar No. 12012

5550 Painted Mirage Rd., Suite 320

Las Vegas, NV 89149

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

**VERIFICATION OF JACQUELINE UTKIN FOR PETITION TO CONFIRM  
SUCCESSOR TRUSTEE**

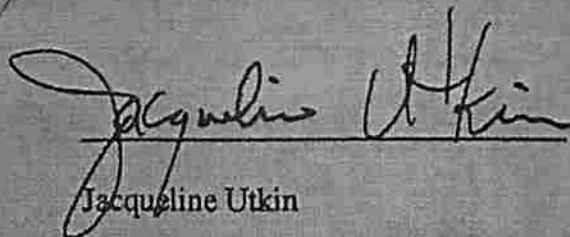
I, JACQUELINE UTKIN, declare that:

1. I am submitting NOTICE OF NON-OPPOSITION AND LIMITED JOINDER TO THE PETITION FOR FEES AND COSTS FOR ANTHONY L BARNEY, LTD.
2. I know the contents of the Petition, which I know to be true of my own knowledge, except for those matters stated on information and belief.

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

Feb 21, 2018

Date

  
Jacqueline Utkin





**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

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**EXHIBIT “D”**

FILED

SEP 13 2018

*Ann L. Johnson*  
CLERK OF COURT

ORIGINAL

1 TRANS

2  
3  
4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8  
9

10 IN THE MATTER OF THE )  
11 TRUST OF: )

12 THE CHRISTIAN FAMILY )  
13 TRUST, U.A.D. 10/11/16 )

CASE NO. P-17-092512-T

DEPT. PROBATE

14  
15 BEFORE THE HONORABLE VINCENT OCHOA  
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: PETITION

18 WEDNESDAY, APRIL 4, 2018  
19  
20  
21  
22  
23  
24

P-17-092512-T CHRISTIAN FAMILY TRUST 04/04/2018 TRANSCRIPT  
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7356

1 party fees. You know, I mean, we -- we sent -- we essentially  
2 indulged the Court on the -- on the issue of the -- on the  
3 Brunzell factors. It's -- Brunzell factors really don't come  
4 into play on a trust payment, because the terms of the trust  
5 control in terms of us getting paid.

6 We frankly would like to be out of this case at this  
7 point, Your Honor. Our fees have already been approved by the  
8 trustees, both trustees. The confirmation has occurred.

9 Essentially, you get one less party in here once -- once the  
10 -- the funds are released so that their approval can take  
11 effect. And then we don't have to appear anymore.

12 Believe me, I would really appreciate Your Honor to  
13 not have to appear anymore on this matter.

14 THE COURT: Well --

15 MR. BARNEY: Unfortunately now, I have to file a  
16 motion to strike because there's been something put on the  
17 record that the judges are quiet -- are -- are quietly and  
18 succinctly striking in the different courts that they're in.  
19 Judge Sturman just sealed it. We're waiting for Betsy  
20 Gonzalez to seal it. I will now have to ask you to seal it,  
21 Your Honor.

22 Mr. -- Mr. Payne has about 14,000 in sanctions that  
23 are outstanding that he's fighting right now for doing just  
24 this what he did again.

1 I would like to be out of the -- this case because I  
2 don't like being defamed on a regular basis. And I --  
3 frankly, I think it's bad policy to like beat other attorneys  
4 up and try to besmirch their character. I -- I would just  
5 like to get paid.

6 THE COURT: Okay.

7 MR. BARNEY: And I would like to be out of this. I  
8 of course unfortunately unless Mr. Payne will stipulate to  
9 remove what he put on the record, I'll have to file another --  
10 I'll have to renotice my countermotion to strike if the Court  
11 isn't inclined to strike it today.

12 But yes, I -- I would like to be paid and I don't  
13 think there's anything that prevents me from being paid  
14 because I have both of the prior trustees that approved my  
15 fees.

16 I think at this point essentially --

17 THE COURT: Then why did you ask me to approve it?

18 MR. BARNEY: Only -- we only asked to approve to  
19 release --

20 THE COURT: Okay.

21 MR. BARNEY: -- to -- yeah, you don't have to  
22 approve the fees, just to release the funds so that we can be  
23 paid.

24 THE COURT: Okay.

1 students ought to ask for their money back because it's not a  
2 contract. It's an agreement.

3 THE COURT: No insults, please.

4 MR. PAYNE: Okay. She sat at the table and they  
5 like to say that she contributed property. That was the  
6 problem. She didn't contribute anything. Remember, they were  
7 only married in 2009.

8 THE COURT: I don't want to hear the trust. I want  
9 to hear about his fees. Did he earn them? Did he go to  
10 different courts and do something for him?

11 MR. PAYNE: I have no idea, Your Honor. All that I  
12 can say is that -- that the issue of standing doesn't permit a  
13 creditor to come in to these proceedings and make these  
14 claims. And the trust law is very clear that Mr. -- Utkin and  
15 Mr. -- Mr. Kirschner here has an obligation to object to  
16 those. We've put him on notice that he should be objecting to  
17 that. There's no reason not to object to that.

18 THE COURT: His -- his client already approved them  
19 according --

20 MR. PAYNE: I -- I know that.

21 THE COURT: -- to what I read.

22 MR. PAYNE: And -- and I think that's a breach of  
23 her fiduciary duty --

24 THE COURT: And --

1 or to become due against the settlor or the trust must file  
2 the claim with the trustee. Within 90 days after their  
3 mailing, those required to be mailed, blah, blah, blah.

4 THE COURT: I think they -- they know about the --  
5 the claim. They already --

6 MR. PAYNE: But Your Honor --

7 THE COURT: -- approved it.

8 MR. PAYNE: -- there is a process that is laid out  
9 in the NRS.

10 THE COURT: I don't know who was playing trustee  
11 that day, but they approved it.

12 MR. PAYNE: Your Honor, but they haven't filed a  
13 claim. The -- the -- again, it's like a divorce. You've got  
14 a husband and wife before you and a -- and a creditor of the  
15 wife shows up and she says --

16 THE COURT: Well, let me -- okay. This is the  
17 Trustor's attorney. You want a claim?

18 MR. KIRSCHNER: Your Honor, I think that there's a  
19 multi-part (indiscernible). I filed a nonopposition on this,  
20 but there was some additional facts that had been added in  
21 very recently.

22 Regarding the increase in fees, so we --

23 THE COURT: I'm not going to -- I'm not going to  
24 consider that at all.