

**In the Supreme Court of the State of Nevada**

IN THE MATTER OF THE CHRISTIAN )  
FAMILY TRUST u.a.d. 10/11/16 )

Electronically Filed  
Jan 09 2019 04:51 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

Appellants, )

Case No.: 75750

-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. )

~~~~~ )

**APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 4a**

*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 |

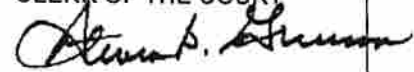
| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                    | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 9:</b></i>  |                                                                                                                                           |                        |
| 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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15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 In the Matter of the

Case Number: P-17-092512-T

18 THE CHRISTIAN FAMILY TRUST

Dept.: S

19 Dated October 11, 2016

20 JOINT OBJECTION TO PETITION TO ASSUME JURISDICTION OF TRUST;  
21 CONFIRM TRUSTEES; INSTRUCTIONS, ETC.

22 AND

23 JOINT COUNTERPETITION TO ASSUME IN REM JURISDICTION OF THE TRUST,  
24 TO CONFIRM TRUSTEE, TO FIND BREACH OF FIDUCIARY DUTY,  
25 CONVERSION, AND FRAUD AGAINST FORMER TRUSTEES, TO INVALIDATE  
26 ALL TRANSFERS TO THE FORMER TRUSTEES AS THE PRODUCT OF UNDUE  
27 INFLUENCE, TO ORDER THE IMMEDIATE DELIVERY OF ALL TRUST ASSETS,  
28 AND TO IMPOSE A CONSTRUCTIVE TRUST

1 Nancy Christian ("Nancy" or "Trustor"), by and through her attorneys at the law firm of  
2 Anthony L. Barney, Ltd., and Monte Reason, also known as Monte B. Reason and Monte Brian  
3 Reason, Trustee, by and through his attorney, Joseph J. Powell, Esq., of the law firm of  
4 Rushforth, Keifer & Lee, LLP, hereby file their above-referenced Joint Objection to Assume in  
5 Rem Jurisdiction of the Trust, to Appoint Trustee; Confirm Trustees; Instructions, Etc. and their  
6 Joint Petition to Assume in Rem Jurisdiction over the Trust, to Appoint Trustee, to find Breach  
7 of Fiduciary Duty, Conversion and Fraud Against Former Trustees, to Invalidate all Transfers to  
8 Former Trustees as the Product of Undue Influence, to Order the Immediate Delivery of all  
9 Trust Assets, and to Impose a Constructive Trust ("Objection and Counterpetition") requesting  
10 relief from this Court. This Objection and Counterpetition is based upon the pleadings and  
11 papers on file herein, the memoranda of points and authorities, any exhibits filed herewith, the  
12 Verifications attached hereto, and any oral arguments presented at the time of the hearing.

13  
14  
15  
16 **MEMORANDUM OF POINTS AND AUTHORITIES**  
17 **ON OBJECTION**

18 **I. Facts Presented:**

19 On or before October 2017, Nancy and her husband were being cared for by the Former  
20 Trustees after Nancy's husband was released from the hospital in early 2016. Susan Christian-  
21 Payne ("Susan"), Raymond Christian, Jr. ("Raymond Jr."), and Rosemary Keach ("Rosemary")  
22 (collectively referred to as the "Former Trustees"), essentially forced their way back into Nancy  
23 and her husband's life in 2016 after being estranged from Nancy and her husband, Raymond T.  
24 Christian ("Raymond Sr.") for several years.<sup>1</sup> Susan and Raymond Jr. were abusive to both  
25  
26  
27  
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<sup>1</sup> See Declaration of Jackie Utkin at page 2:18-20, attached hereto and incorporated herein as Exhibit A

1 Nancy and her husband and it is believed that they directly contributed to Raymond Sr.'s death.<sup>2</sup>  
2 Rosemary appears to have simply followed along with her siblings, Susan and Raymond Jr.

3  
4 On or around October 2016, Nancy and her husband Raymond Sr. (collectively  
5 "Trustors") were bedridden and/or physically weak.<sup>3</sup> Nancy believes that sedatives were  
6 administered to her by the Former Trustees in her food because she slept all the time, while  
7 under the guard of the Former Trustees.<sup>4</sup> Despite the Trustors' health while in the care of the  
8 Former Trustees, the Christian Family Trust dated October 11, 2016 ("Trust") was drafted and  
9 executed. The Trustors first met with David Grant, Esq., the drafting attorney on or around  
10 October 6, 2016.<sup>5</sup> The Trustors received no drafts of the documents prepared by Mr. Grant prior  
11 to signing the document on October 11, 2016. The stated purpose of the Trust was to provide for  
12 the Trustors, maintain them or the Survivor of them in their trust-owned property and,  
13 additionally, after the death of one of them, the Trust was also to provide for the Survivor's  
14 health, education, maintenance and support.<sup>6</sup>

15  
16  
17 Immediately after execution of the Trust, however, the Former Trustees started moving  
18 money from the Trustors' bank accounts, selling and buying properties, changing beneficiary  
19 designations to themselves on retirement accounts, and took lavish vacations to California with  
20 Trust funds to the exclusion of Nancy.<sup>7</sup> Their mistreatment of Nancy escalated.

21  
22 Before Nancy was thrown out of her home by the Former Trustees, Nancy was suffering  
23 from chest pains and she attempted to call 911. One of the Former Trustees snatched the phone  
24 out of her hand, yelled at Nancy, and gave Nancy a pill that made her sleep all day. Under the  
25

26  
27 <sup>2</sup> See Exhibit A generally.

28 <sup>3</sup> Id. at page 3:1-2

<sup>4</sup> Id. at page 4:9

<sup>5</sup> See check to Grant, Morris, Dodds dated October 6, 2016, attached hereto and incorporated herein as Exhibit B

<sup>6</sup> See Christian Family Trust submitted in camera as Exhibit C, at Articles 3.1 and 4.3.

<sup>7</sup> See Exhibit A at page 4:21-28 and page 5:1-6

1 guard of the Former Trustees, Nancy's prescription medication for diabetes, heart problems, and  
2 high blood pressure went unfilled for two months.<sup>8</sup>

3 In a drunken rage, the Former Trustees kicked Nancy out of the home located at 2848  
4 Bluff Point Drive, Las Vegas, NV 89134 ("Bluff Point Home") on Christmas Eve because  
5 Nancy, being diabetic, refused to eat the pasta ordered by the Former Trustees for her.<sup>9</sup>  
6 Raymond Sr., eventually persuaded the Former Trustees to let Nancy return to be with him.  
7 Nancy's nephew was present at the Bluff Point Home when he heard Raymond Jr. tell Nancy  
8 that he wished she was dead already and tell her to "just go and die."<sup>10</sup>

9  
10 Again, on January 16, 2017 the Former Trustees kicked Nancy out of the home because  
11 she requested oatmeal for breakfast instead of the unhealthy food the Former Trustees were  
12 forcing on her. While throwing Nancy and her belongings out of the home, Raymond Jr. told  
13 Nancy, "I hope I never see your face again! I hope you die and I will piss on your grave."  
14 Raymond Jr. continues to reside in the Bluff Point Home to the exclusion of Nancy and will not  
15 leave although he has been requested to do so.<sup>11</sup> Again, this is against the terms of the Trust.<sup>12</sup>

16  
17 Shortly before Raymond Sr.'s death on January 31, 2017, the Former Trustees guarded  
18 Nancy and Raymond in shifts and communication from outside friends and family was halted.<sup>13</sup>  
19 The Former Trustees fed Raymond Sr. food which is not recommended for a diabetic.<sup>14</sup> The  
20 Former Trustees attempted to prevent Nancy from ever seeing or speaking to Raymond Sr.  
21 again. However, on one occasion about a week prior to Raymond Sr.'s death, Nancy was able  
22 to speak to him by telephone because a hospice nurse allowed him to call her. During this  
23  
24  
25

26  
27 <sup>8</sup> Id. at page 4:1-5

<sup>9</sup> Id. at page 4:17-19

<sup>10</sup> See Page 2, paragraph 11 of Declaration of Ray Iokia attached hereto and incorporated herein as Exhibit D.

<sup>11</sup> See Exhibit A at page 7:12-13

<sup>12</sup> See Exhibit C, at Article 4.4.

<sup>13</sup> See Exhibit A at page 3:11-22

1 telephone call, Raymond Sr. expressed his fear of the Former Trustees and indicated that his  
2 bank account had been emptied. Nancy told Raymond Sr. to leave and move in with her to her  
3 condo, however Nancy could hear the Former Trustees enter the room and the phone was  
4 abruptly hung up. This telephone call was the last contact Nancy had with her husband before  
5 he passed away. The Former Trustees informed Nancy by text message that Raymond passed  
6 away and they did not include Nancy in any funeral arrangements for Raymond Sr.<sup>15</sup>

8 During his last few weeks of life, Raymond Sr. expressed to his sister serious concerns  
9 regarding the Former Trustees, including: his fear that the Former Trustees were "cheating" him  
10 and Nancy;<sup>16</sup> a specific instance when Susan took a large sum of money from Raymond Sr.  
11 without his permission;<sup>17</sup> and, his fear that the Former Trustees would harm Nancy, physically,  
12 emotionally, or financially and that he was unable to prevent such harm.<sup>18</sup> Raymond's sister has  
13 expressed her concerns that the Former Trustees procured their beneficial interest in the Trust as  
14 well as their control of the Trust through manipulation and threats against Raymond Sr.<sup>19</sup> Finally,  
15 in what may have been Raymond, Sr.'s dying wish, he made his sister promise to try and  
16 prevent the abuse and exploitation of Nancy by the Former Trustees.<sup>20</sup> After Nancy recovered  
17 from the effects of the mental, physical, and emotional abuse she suffered at the hands of the  
18 Former Trustees, she retained the undersigned attorney to investigate the matter and work on a  
19 solution. The undersigned sought information from the Former Trustees, made requests for  
20 information pursuant to the terms of the Trust and also made requests for distributions from the  
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22  
23  
24

25 <sup>14</sup> Id. at page 4:4-5

26 <sup>15</sup> Id. at page 4:24-25

27 <sup>16</sup> Id. at page 5:22-23

28 <sup>17</sup> Id. at page 5:24-25

<sup>18</sup> Id. at page 5:27-28

<sup>19</sup> Id. at page 6:1-2

<sup>20</sup> Id. at page 6:4-5

1 Trust for Nancy's physical and mental well-being. The Former Trustees refused to provide  
2 Nancy with any distributions from the Trust, which as they explained to Nancy was to increase  
3 their own beneficial interest at the death of Nancy.<sup>21</sup> Notably, the former Trustees did not offer  
4 to provide her even a penny of the trust funds.  
5

6 After being forced from the Trust owned property where she briefly lived with her  
7 husband before his death, Nancy currently lives in a 600-square foot condo which has a  
8 mortgage on it.<sup>22</sup> In contrast, one of the Former Trustees, Raymond, is currently living, rent-  
9 free, in the trust owned home which is nearly three (3) times as large as Nancy's condo, much  
10 newer and more comfortable than Nancy's condo, in a much safer area, and far more age  
11 friendly than Nancy's condo.<sup>23</sup> Nancy's current living situation is not the same custom and  
12 style to which the Trustors were accustomed during their joint lifetime. Nancy has monthly  
13 expenses beyond basic needs, including substantial medical expenses for her heart condition,  
14 diabetes, and high blood pressure. Furthermore, Nancy has been forced to hire an attorney to  
15 protect her from the malicious behavior of the Former Trustees.  
16  
17

18 Based in part on the Former Trustees' abusive treatment of Nancy, she chose to exercise  
19 her rights under the Trust to change Trustees. Article 9.3 of the Trust provides Nancy, the  
20 Survivor, the absolute power to change the Trustee of the Trust.<sup>24</sup> There is no limitation on this  
21 power and there is no language in the Trust which prevents the Survivor (Nancy) from changing  
22 the Trustee of the Trust, for any reason, or for no reason at all. Nancy considered her options  
23 with full knowledge of Monte Reason's past legal issues. Nancy was horrified at the thought of  
24  
25  
26  
27

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28 <sup>21</sup> Id. at page 7:1-2

<sup>22</sup> See a picture of Nancy's condo attached hereto and incorporated herein as Exhibit E

<sup>23</sup> See pictures of the Trust owned home located on Bluffpoint Drive attached hereto and incorporated herein as Exhibit F

1 the Former Trustees continuing in their reign of terror over her and her property, which is the  
2 reason for which she exercised her right to change the Trustee of the Trust.

3 Nancy's attorney drafted the Modification and Designation of Trustee and Successor  
4 Trustee in accordance with Nancy's request.<sup>25</sup> Nancy's action to replace the Former Trustees  
5 was reviewed by an independent attorney, Sean Tanko, Esq., who also serves as the Probate  
6 Commissioner Pro Tem. Mr. Tanko provided a certificate of independent review pursuant to  
7 NRS 155.0975 wherein he certified that the action was not the product of fraud, duress, or  
8 undue influence.<sup>26</sup> This written instrument replacing the Former Trustees was provided to the  
9 Former Trustees on June 13, 2017.<sup>27</sup>

10 Then, on June 21, 2017, Nancy followed up with an electronic correspondence to alert  
11 Mr. Payne and the Former Trustees of the attorney for the new trustee, Monte Reason ("Mr.  
12 Reason") and to safeguard the trust assets until the Certificate of Incumbency was provided.<sup>28</sup>  
13 On June 27, 2017, Joseph Powell, Esq., counsel for Mr. Reason, provided Mr. Payne with a  
14 Certificate of Incumbency indicating that Monte Reason had been appointed as Trustee.<sup>29</sup>

15 However, three days later, on June 30, 2017, the Former Trustees removed \$267,902.53  
16 from the Trust bank account despite the fact that they had been given explicit notice of their lack  
17 of authority to act on behalf of the Trust.<sup>30</sup> They apparently deposited these funds into Mr.  
18 Payne's attorney client trust account. Furthermore, the Former Trustees appear to have removed

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24 <sup>24</sup> See Exhibit C at Article 9.3 stating in part; "After the Death of the first Trustor to die, the surviving Trustor shall  
25 have the power to change the Trustee or Successor Trustee of the Trust by an instrument in writing signed by the  
26 surviving Trustor and delivered to the Trustee."

27 <sup>25</sup> See Modification and Designation of Trustee and Successor Trustee attached hereto and incorporated herein as  
28 Exhibit G

<sup>26</sup> See Certificate of Independent Review attached hereto and incorporated herein as Exhibit H.

<sup>27</sup> See Letter dated June 13, 2017 with Modification and Designation of Trustee and Successor Trustee attached  
hereto and incorporated herein as Exhibit I.

<sup>28</sup> See Email dated June 21, 2017 from Tiffany S. Barney, Esq., to Cary Colt Payne, Esq., attached hereto and  
incorporated herein as Exhibit J.

<sup>29</sup> See Certificate of Incumbency attached hereto and incorporated herein as Exhibit K.



1 an additional approximately \$160,000.00 from some other Trust owned accounts and deposited  
2 these into their attorney's trust account.<sup>31</sup> This appears to be an effort to prevent the Trustee  
3 from accessing the trust funds in order to limit Nancy from further uncovering and prosecuting  
4 the claims against the former Trustees. There is no justification for the Former Trustees' actions  
5 in this regard. On September 21, 2017, after Nancy received documentary evidence of the  
6 withdrawal of Trust funds, Nancy again requested that the Trust funds be provided to the new  
7 trustee.<sup>32</sup>

8  
9 Again, on October 6, 2017, Nancy requested that the Former Trustees provide the trust  
10 funds to the new trustee. The Former Trustees and their counsel were also put on notice that  
11 any use of the funds would be deemed conversion and any transfers deemed fraudulent.<sup>33</sup> As of  
12 the filing of this Petition, the Former Trustees have ignored any and all requests by Nancy, the  
13 trustor, or Mr. Reason, the successor trustee, to deliver the Trust funds to the successor trustee  
14 who is the rightful custodian of the Trust funds.

15  
16 Further, the Former Trustees have requested that they receive distributions under the  
17 Trust, when there is no distribution authorized under the terms of the Trust to any person other  
18 than Nancy until after her death.<sup>34</sup> This is further proof that their only motive for sequestering  
19 the funds in a "blocked account" is solely for their own benefit.  
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24 <sup>30</sup> See Bank Statement for Chase Bank Account attached hereto and incorporated herein as Exhibit L.

25 <sup>31</sup> See Inventory filed by the Former Trustees on October 25, 2017 showing a total of \$428,828.93 currently held in  
26 Mr. Payne's attorney client trust account. This amount represents a staggering 97% of the liquid assets of the Trust  
27 estate and is being held by the Former Trustees' attorney without any authorization under the terms of the Trust.

28 <sup>32</sup> See Letter from Tiffany S. Barney, Esq., to Cary Colt Payne, Esq., dated September 21, 2017, attached hereto  
and incorporated herein as Exhibit M.

<sup>33</sup> See letter dated October 6, 2017 from Tiffany S. Barney, Esq. to Cary Colt Payne, Esq., attached hereto and  
incorporated herein as Exhibit N.

<sup>34</sup> See Exhibit C at Article 6.1 of the Trust which the Former Trustees have alleged authorizes their requested  
distribution to themselves, indicating that distributions be made "[u]pon the death of both Trustors."



1 During a hearing before the honorable Judge Vincent Ochoa, Mr. Payne represented that  
2 his clients "sat at the table and negotiated the terms of the Trust."<sup>35</sup> It is clear that the three  
3 Former Trustees were exerting inappropriate and undue influence by dictating the Trust terms.  
4

## 5 6 **II. Legal Authority and Argument**

7 The only cognizable claims from the Former Trustees' petition were based upon NRS  
8 153.031 and NRS 163.115 and their requests for instructions, which will each be discussed  
9 below. There are no other cognizable claims beyond the request for this Court to provide  
10 instructions. If the Former Trustees believe they have raised any other claims in their petition,  
11 then Nancy and Mr. Reason reserve the right to address said claims when they are fully  
12 addressed or pled.  
13

14 The Former Trustees requested the following relief from this Court in their petition for  
15 instructions: 1) to divide the trust into a survivor's trust and decedent's trust,<sup>36</sup> 2) to confirm the  
16 Former Trustees as the co-Trustees;<sup>37</sup> 3) to remove Monte Reason as the trustee and limit his  
17 involvement;<sup>38</sup> 4) ordering the distribution of the net proceeds of the sale of the Dancing Vines  
18 property;<sup>39</sup> and 5) ordering a protective order on all assets from any distribution, except for the  
19 payment of mortgages, utilities, and the like, until final determination is made.<sup>40</sup>  
20  
21

### 22 ***A. The Trust does not provide for the division of the Trust into a Survivor's Trust and*** 23 ***Decedent's Trust and this Court is prohibited from rewriting the provisions of the*** 24 ***Trust.***

25  
26 <sup>35</sup> This is currently cited from the undersigned's notes of the hearing, but a transcript of the hearing has been  
27 ordered and an official citation will be provided by way of supplement hereto.

28 <sup>36</sup> See Page 10, line 5 of Former Trustee's Original Petition.

<sup>37</sup> See Page 10, line 6 of Former Trustee's Original Petition.

<sup>38</sup> See Page 10, line 7 of Former Trustee's Original Petition.

<sup>39</sup> See Page 10, line 8-9 of Former Trustee's Original Petition.

<sup>40</sup> See Page 10, line 10-12 of Former Trustee's Original Petition.

1 The Former Trustees have cited no provision of the Trust which would allow for the  
2 division of the Trust into a Survivor's Trust and a Decedent's Trust. Indeed, the Former  
3 Trustees are unable to cite a single reference to a Decedent's Trust, or even an Exemption Trust,  
4 because there is no such provision or reference exists.  
5

6 Instead, the Trust provides that upon the death of the first spouse to die, referred to as the  
7 "Decedent," the Trustee(s) are authorized to pay, from the Decedent's separate property or the  
8 Decedent's one-half share of community property, only the following: 1) administrative  
9 expenses; 2) expenses of last illness and funeral expenses of the Decedent; and 3) any debts  
10 owed by the Decedent.<sup>41</sup> Article 4.3 of the Trust, which immediately follows the list of allowed  
11 payments for the Decedent, states that "[a]ny remaining property, both income and principle of  
12 the Trust estate shall be retained in the survivor's Trust for the benefit of the Survivor."  
13 (Emphasis added)."<sup>42</sup> Nancy is the survivor and all Trust property remains in Trust for her  
14 benefit.  
15  
16

17 The Former Trustees' attempt to alter the terms of the Trust for their own benefit and to  
18 the detriment of the Nancy, the surviving Trustor, is one of many examples that evidence the  
19 breach of their fiduciary duty, which is discussed in further detail below. The Former Trustees'  
20 request to divide the Trust is contrary to the terms of the Trust and provides further evidence of  
21 their willingness to ignore Trust terms to Nancy's detriment and in defiance of her rights under  
22 the terms of the Trust. Lacking any support in the document for the division of the Trust, and  
23 lacking any citation to statute or case law that would justify their position in this regard, the  
24 Former Trustees request to divide the Trust should be denied.  
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<sup>41</sup> See Exhibit C at Article 4.2

<sup>42</sup> See Exhibit C at Article 4.3

1           *B. The Former Trustees should not be confirmed because they have been replaced*  
2           *according to the unambiguous Trust terms.*

3           The Former Trustees are no longer trustees because they have been replaced pursuant to  
4 the power to remove and replace trustees, specifically reserved to the Survivor in the Trust  
5 Agreement. Article 9.3 of the Trust provides, “[a]fter the death of the first Trustor to die, the  
6 surviving Trustor (Nancy) shall have the power to change the Trustee or the Successor Trustee  
7 of the Trust by an instrument in writing signed by the surviving Trustor and delivered to the  
8 Trustee.” There are no restrictions and no limitations on this power to remove the Trustee(s)  
9 after the death of the first Trustor to die. Furthermore, this particular provision is clear and  
10 unambiguous and no provision within the remainder of the Trust Agreement creates ambiguity  
11 in Article 9.3.  
12

13  
14           *C. Article 9.3 is not a scrivener’s error and represents the intent of the Trustors*

15           In an attempt to retain control of the Trust for their own benefit and to the detriment of  
16 Nancy, the Former Trustees have alleged that Article 9.3 is a scrivener’s error. This argument  
17 lacks merit for several reasons. First, as previously briefed, “[i]f the language of the trust  
18 instrument is plain and capable of legal construction, that language determines the force and  
19 effect of the instrument . . . [and] extrinsic evidence will not be admitted to alter the plain  
20 language of the instrument.”<sup>43</sup> In dealing with the terms of a contract, which is analogous to the  
21 terms of a Trust, the Nevada Supreme Court has held that the terms of a contract are ambiguous  
22 only “if it is reasonably susceptible to more than one interpretation.”<sup>44</sup> The Former Trustees  
23 have failed to promulgate a reasonable alternative interpretation which would demonstrate  
24 ambiguity in Article 9.3, because there is no reasonable alternative interpretation. Therefore,  
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<sup>43</sup> *Frei v. Goodsell*, 305 P.3d 70, 74, 2013 Nev. LEXIS 53, \*12-13, 129 Nev. Adv. Rep. 43, 2013 WL 3366670  
(Emphasis added.)

1 the Former Trustees have failed to overcome even the threshold question which might allow  
2 them to claim a scrivener's error – they have failed to show any ambiguity in Article 9.3.

3  
4 Second, the inclusion of an entire paragraph which specifically reserves important rights  
5 to the Trustor is not a scrivener's error. Even if the Former Trustees overcome the threshold  
6 question and demonstrate ambiguity as to Article 9.3 of the Trust, the inclusion of the power to  
7 remove trustees is not a scrivener's error. A scrivener's error is "an error resulting from a minor  
8 mistake or inadvertence, esp. in writing or copying something on the record."<sup>45</sup> Black's Law  
9 Dictionary also provides several examples of what might be considered a scrivener's error  
10 including "typing an incorrect number, mistranscribing a word, or failing to log a call."<sup>46</sup> While  
11 many courts have grappled with the types of errors which may be deemed scrivener's errors,  
12 Virginia and Illinois Court have provided a workable benchmark for the term, which is in line  
13 with *Frei v. Goodsell* in Nevada. Scrivener's errors are only "those [errors which are] evidenced  
14 in the writing that can be proven without parol evidence."<sup>47</sup> Under Virginia and Illinois law, the  
15 Former Trustees' allegation of a scrivener's error again fails to clear the threshold question, in  
16 that it cannot considered a scrivener's error because it cannot be proven without parol evidence.

17  
18 Furthermore, among the states that provide a broader interpretation of a scrivener's  
19 error, specifically California and Kentucky, parol evidence is available to prove a scrivener's  
20 error; however, relief may only be granted if the error and the proper intent of the Trustor(s) or  
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26 <sup>44</sup> *Margrave v. Dermody Props.*, 110 Nev. 824, 827, 878 P.2d 291, 293, 1994 Nev. LEXIS 104, \*5

27 <sup>45</sup> See Black's Law Dictionary, seventh edition at page 563, scrivener's error provides no definition but refers the  
28 reader to the definition for clerical errors.

<sup>46</sup> *Id.*

<sup>47</sup> *Westgate at Williamsburg Condo. Ass'n v. Philip Richardson Co.*, 270 Va. 566, 576, 621 S.E.2d 114, 119, 2005  
Va. LEXIS 104, \*15, citing *Estate of Blakely v. Federal Kemper Life Assurance Co.*, 267 Ill. App. 3d 100, 640  
N.E.2d 961, 966, 203 Ill. Dec. 811 (Ill. Ct. App. 1994)

1 contracting party(s) can be shown by clear and convincing evidence.<sup>48</sup> The Kentucky Supreme  
2 court has held:

3       The remedy of reformation is appropriate where, by reason of an unintentional mistake  
4 by a scrivener or draftsman, the written agreement does not accurately reflect the intent  
5 of the parties. However, before the reformation of a written contract is warranted, it must  
6 be shown that the scrivener's product reflects something other than what was understood  
7 by both parties. Under the "doctrine of scrivener's error," the mistake of a scrivener in  
8 drafting a document may be reformed based upon parol evidence, provided the evidence  
is clear, precise, convincing and of most satisfactory character that the mistake has  
occurred and that the mistake does not reflect the intent of the parties.<sup>49</sup>

9       Here, even if the court were to diverge from the holding in *Frei v. Goodsell*, and the  
10 similar holdings in other jurisdictions and follow California and Kentucky's line of reasoning,  
11 reformation of the Trust based on a scrivener's error is not available unless the error itself and  
12 the true intent of the parties can be established by evidence which is clear, precise, convincing  
13 and of most satisfactory character. The un-verified statements made by the Former Trustees and  
14 the in-court representations made by their attorney Mr. Payne, provide strong evidence that the  
15 Section 9.3 of the Trust is not an error or a mistake. At the October 19, 2017 hearing, the  
16 Former Trustees indicated that they "sat at the table and negotiated the terms of the Trust."  
17 They have also referred to David Grant as their attorney and to the Trust as their trust.<sup>50</sup>

18       Additionally, the Former Trustees have placed an inordinate amount of emphasis upon  
19 their "Acceptance by Trustees," signed and notarized on the same day as the Trust and attached  
20 thereto. The "Acceptance by Trustees" indicates the following:

21       We certify that we have read the foregoing Declaration of Trust and understand the  
22 terms and conditions upon which the Trust estate is to be held, managed, and disposed of  
23

24  
25  
26  
27 <sup>48</sup> *Estate of Duke*, 61 Cal. 4th 871, 874, 352 P.3d 863, 865, 190 Cal. Rptr. 3d 295, 297, 2015 Cal. LEXIS 5119, \*2,  
stating that a document may be reformed based on error only "if clear and convincing evidence establishes that the  
will contains a mistake in the expression of the testator's intent at the time the will was drafted and also establishes  
the testator's actual specific intent at the time the will was drafted."

28 <sup>49</sup> *Diversicare Leasing Corp. v. Adams*, 2017 Ky. App. LEXIS 3, \*17

<sup>50</sup> See Exhibit A of Former Trustees' opposition to the motion to dismiss filed September 15, 2017.

1 by us as Trustees. We accept the Declaration of Trust in all particulars and acknowledge  
2 receipt of the Trust property.<sup>51</sup>

3 With this language, the Former Trustees certified that they read and understood the terms of the  
4 Trust and accepted those terms. Among the drafting attorney, the two Trustors, and the Three  
5 Former Trustees, who all allegedly took part in formulating the terms of the Trust, six people  
6 reviewed the terms of the Trust and signed the document. Not a single person of those six  
7 individuals, including the Former Trustees or the drafting attorney raised an issue with Article  
8 9.3 of the Trust until the Former Trustees lost their strangle hold on the Trust. This provides  
9 strong evidence that the inclusion of Article 9.3 of the Trust represents the intent of the  
10 Trustor's, whose intent is the only intent which has any relevance regarding the terms of the  
11 Trust.  
12

13  
14 Additionally, the Former Trustees must be estopped from making claim a scrivener's  
15 error in a Trust of which the Former Trustees materially participated, which the Former Trustees  
16 read and understood, and which was executed with Section 9.3 while they sat at the table  
17 overseeing the negotiations and Trust terms.<sup>52</sup> The Former Trustees were, according to their  
18 attorney's representation in open court, intimately aware of the Trust terms that they negotiated,  
19 read and understood. The Former Trustees formally accepted the terms of the Trust "in all  
20 particulars," which provided Nancy a reasonable expectation that the Former Trustees would  
21 abide by the Terms as written. Nancy and Raymond were unaware that the Former Trustees  
22 intended to challenge the terms of the Trust if the document could be used later to remove them  
23  
24

25  
26 <sup>51</sup> See Acceptance of Trustees attached to the Trust at Exhibit C.

27 <sup>52</sup> Estoppel acts to prevent a party from taking altering their previous position if the following elements are  
28 applicable: "(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall  
be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the  
party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on  
the conduct of the party to be estopped. See *Chequer, Inc. v. Painters & Decorators Joint Comm.*, 98 Nev. 609, 614,  
655 P.2d 996, 999, 1982 Nev. LEXIS 534, \*8



1 as Trustees of the Trust. Finally, Nancy exercised her rights under the Trust with the belief that  
2 the Former Trustees would abide by the terms, but the Former Trustees have initiated costly  
3 litigation to the detriment of Nancy. All the elements of estoppel are met and the Former  
4 Trustees should be prevented from taking any position contrary to their signed "Acceptance by  
5 Trustees."  
6

7 Lastly, there is strong evidence that the Trustors, and specifically Raymond Sr., intended  
8 to include the provisions of Article 9.3. Raymond, Sr. expressed concerns to his sister Jackie  
9 Utkin, that the Former Trustees would harm Nancy and expressed his concern that he and  
10 Nancy were being cheated by the Former Trustees. This expressed concern is entirely  
11 inconsistent with the Former Trustees claim that the Trustors desired to provide the Former  
12 Trustees the sole power to dictate Nancy's living conditions and financial conditions, without  
13 any kind of a check on their discretion.  
14

15 Likewise, Nancy has affirmed that Article 9.3 of the Trust as drafted is consistent with  
16 her intent both at the time she signed the document and now. Based on the stated desires of the  
17 Trustor's, any suggestion that no power to remove trustees be reserved could have only come  
18 from the Former Trustees when they were negotiating the terms of the Trust with whomever  
19 they negotiated.<sup>53</sup> Therefore, even if the Former Trustees could provide sufficient evidence that  
20 the attorney did not intend to include the provision of Article 9.3, as written, the Former  
21 Trustees will be unable to provide sufficient evidence that the exclusion of the removal power  
22 was the intent of the Trustors.  
23  
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28 <sup>53</sup> It should be noted that the Former Trustees conduct in negotiating the terms of the trust and participating in the creation and execution of the Trust is deeply concerning; thus, prompting the claims that are being pled in the counterpetition.

1       *D. Monte Reason has been prevented from acting in his capacity as Trustee because*  
2       *of the interference of the Former Trustees in attempting to fulfill his fiduciary*  
3       *duties.*

4       Interestingly, the Former Trustees bring a removal action against Monte Reason, when  
5       he has not even been able to act in his capacity as Trustee or fulfill any fiduciary duties because  
6       of the interference of the Former Trustees. For the requested relief to have any teeth, they  
7       would need to show the circumstances warranting removal. There are none pled.

8       The possible reason for his removal is that Nancy didn't have the ability to change  
9       trustees due to a scrivener's error. This is false and Nancy hereby incorporates her argument  
10      regarding the alleged scrivener's error in Section B above as if set forth fully herein. Because  
11      there is absolutely no basis for removing Mr. Reason and no circumstances alleged warranting  
12      removal, this request should be denied.

14      *E. The Trust does not provide for a distribution before Nancy's death.*

15      The Former Trustees have argued that the Trust allows them to make a distribution of  
16      the proceeds of the sale of the Dancing Vines home during the lifetime of Nancy. The Former  
17      Trustees rely solely on Article 6.1(g) of the Trust to make such a request. However, Article  
18      6.1(g) at best allows for the proceeds of the sale of the Dancing Vines Property to be held until  
19      the death of the Surviving Trustor and distributed only after the survivor's death. This is  
20      confirmed by the reference in Article 6.1(g) to distribution under Article 6.1. Article 6.1  
21      specifically provides for distribution "[u]pon the death of both Trustors." Furthermore, Article  
22      4.4 requires, without discretion in the Trustee, that the proceeds from the sale of a trust owned  
23      residence be used at the direction of the survivor to purchase or build a new residence for the  
24      sole use of the Survivor. The purchase of a new residence with the proceeds of the sale of a  
25      26      27      28



1 trust owned residence would be impossible if the Trust required immediate distribution during  
2 the lifetime of the Survivor as the Former Trustees allege.

3 Most importantly, the Former Trustees' position would create a taxable gift exposing  
4 Nancy to tax liability. The proceeds of the sale of the Dancing Vines home was approximately  
5 \$194,000.00, and if Nancy were forced to make a distribution, Nancy would be making several  
6 lifetime gifts greater than the \$14,000.00 annual gift tax exclusion amount. All three of the  
7 Former Trustees would receive approximately \$40,000.00, which the IRS would treat as a  
8 taxable gift from Nancy. Nancy would be liable for several thousand dollars in gift taxes,  
9 during a time when, due to the Former Trustees' bad faith sequestration of the Trust assets,  
10 neither Nancy nor the proper Trustee of the Trust have access to the Trust funds to satisfy such a  
11 tax burden.  
12

13  
14 The Former Trustees' position to force a present distribution also subjects Nancy to  
15 mandatory filings of a Form 709 tax return. The failure to timely file such forms subjects a  
16 party to penalties from the IRS. The Former Trustees' willingness to expose Nancy to tax  
17 liability and IRS penalties in favor of their own interests supports a finding that they have  
18 breached their fiduciary duties under the terms of the Trust, because they administered the Trust  
19 for their own benefit to the detriment of Nancy, which will be discussed further below.  
20

21  
22 *F. A protective order is warranted against the Former Trustees but not warranted*  
23 *against the successor trustee approved and appointed by the Trustor.*

24 Interestingly, the Former Trustees request the court issue a temporary restraining order  
25 until the court adjudicates their petition.<sup>54</sup> Since all funds are currently in the Former Trustees'  
26 possession and have been wrongfully sequestered by them, Nancy and Mr. Reason are not  
27 opposed to a protective order against their use of the Trust funds pursuant to NRS 155.123.  
28

1 However, there should not be a protective order against the approved and appointed trustee of  
2 the Trust so that the trust terms can be followed and provide for the health, maintenance and  
3 support of the surviving Trustor, Nancy.

4  
5 **MEMORANDUM OF POINTS AND AUTHORITIES**  
6 **ON COUNTERPETITIONS**

7 **I. Facts Presented**

8 Counter-Petitioners Nancy Christian and Monte Reason incorporate the Facts Presented  
9 section above in their Objection as if fully set forth herein.

10 **II. Legal Authority and Argument**

11 **A. IN REM JURISDICTION: The Court can take in rem jurisdiction over the Trust**  
12 **and Confirm the Trustee.**

13 Pursuant to NRS 164.010, this Court can obtain jurisdiction over the Trust as a  
14 proceeding in rem, where the Trustee resides or where the Trust has been domiciled.<sup>54</sup>  
15 Additionally, the Court may consider at the same time the appointment of the trustee.<sup>56</sup> Herein,  
16 the Trust is a Nevada trust which owns property in this state and the current trustee is a resident  
17  
18  
19

20 <sup>54</sup> See Page 9, lines 6-12 of Former Trustees' Initial Petition.

21 <sup>55</sup> NRS 164.010 Petition for assumption of jurisdiction; powers of court; petition for removal of trust from  
22 jurisdiction of court; determination of where trust is domiciled.

23 1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a  
24 will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which the trustee  
25 resides or conducts business, or in which the trust has been domiciled, shall consider the application to assume  
26 jurisdiction of the trust as a proceeding in rem.

27 2. If the court grants the petition, the court:

(a) Has jurisdiction of the trust as a proceeding in rem;

(b) Shall be deemed to have personal jurisdiction over any person pursuant to NRS 164.045;

(c) May confirm at the same time the appointment of the trustee and specify the manner in which the trustee  
must qualify; and

(d) May consider at the same time granting orders on other matters relating to the trust, including, without  
limitation, matters that might be addressed in a declaratory judgment relating to the trust under subsection 2 of NRS  
30.040 or petitions filed pursuant to NRS 153.031 or 164.015 whether such matters are raised in the petition to  
assume jurisdiction pursuant to this section or in one or more separate petitions that are filed concurrently with the  
petition to assume jurisdiction.

<sup>56</sup> NRS 164.010(2)(c)

1 of the state of Nevada.<sup>57</sup> Before this trust proceeding, the Trustor exercised her right under  
2 Section 9.3 of the Trust to change her trustee and she did so.

3 Being free from undue influence, duress and menace, she appointed Monte Brian Reason  
4 as the Successor Trustee of her Trust and delivered the requisite documents to the Former  
5 Trustees. These documents included the Modification and Designation of Trustee and  
6 Successor Trustee and the Certificate of Incumbency.<sup>58</sup> The Modification and Designation of  
7 Trustee and Successor Trustee was independently reviewed by another attorney who provided a  
8 certificate of independent review certifying that the document was Nancy's intent and was not  
9 the product of fraud, undue influence, or duress.<sup>59</sup>

10 Therefore, Nancy requests that the Court take in rem jurisdiction over her Trust and  
11 appoint Monte Brian Reason as the Trustee of the Trust. She has properly executed the requisite  
12 documents to allow this change in trustee to take place pursuant to the terms of the Trust.

13 **B. BREACH OF FIDUCIARY DUTY: This Court should find that the Former**  
14 **Trustees breached their fiduciary duty to Nancy and Raymond Sr., Trustors of the**  
15 **Trust.**

16 Under Nevada law, a fiduciary relationship exists when one has the right to expect trust  
17 and confidence in the integrity and fidelity of another.<sup>60</sup> Herein, the Former Trustees were  
18 named Trustees of the Trust and accepted their roles as trustees. Therefore, they were tasked  
19 with fiduciary duties toward the Trust and its beneficiary, Nancy. However, they breached this  
20 duty when they engaged in acts that breached the duty of loyalty and engaged in self-dealing.  
21  
22  
23  
24  
25

26 <sup>57</sup> See Exhibit C, and Assessor's printout of Bluff Point Drive property attached hereto and incorporated herein as  
27 Exhibit O.

28 <sup>58</sup> See Exhibit G and K.

<sup>59</sup> See Exhibit H.

<sup>60</sup> *Lopez v. Corral*, 2010 Nev. LEXIS 69 (Nev. 2010) citing *Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690, 700, 962 P.2d 596, 602 (1998) (Under Nevada law, "[a] fiduciary relationship exists when one has the right to expect trust and confidence in the integrity and fidelity of another."); See also BLACK'S LAW DICTIONARY PG. 640.

1           i. Former Trustees owed Nancy fiduciary duties including the duty of loyalty

2           Based on their confidential fiduciary relationships of Trustees, attorney's in fact, and  
3 caregivers with Nancy and Raymond Sr., the Former Trustees owed several common law duties  
4 to Nancy. One of the most basic duties imposed upon a fiduciary is the duty of good faith, also  
5 referred to as the duty of loyalty.  
6

7           The Nevada Supreme Court indicated that a fiduciary, "should do everything in his  
8 power to avoid a conflict of interest."<sup>61</sup> Nevada's statutory fiduciary duties described in NRS  
9 163 and 164 are applicable by analogy to other types of fiduciary relationships such as that of  
10 caretaker or attorney in fact. NRS 164.715 requires a trustee to manage Trust property solely in  
11 the interest of the beneficiaries. Herein, the Former Trustees failed to do so.  
12

13           Instead, all of the Former Trustees' actions have been to maximize or benefit their  
14 contingent interest in the Trust. They have sought to obtain distributions from the Trust  
15 prematurely before Nancy's death and to the detriment of Nancy by exposing her to tax liability  
16 and IRS penalties as discussed above. They refused to provide any distributions to Nancy,  
17 although she had made a reasonable request for payment to provide for her basic needs and  
18 additional expenditures. They have spent Trust funds for vacations and other personal expenses.  
19 They have removed money from the reach of the present Trustee.  
20

21           They have failed to avoid a conflict of interest between their contingent beneficial  
22 interest and the needs of the Trustor. They have even been brazen enough to call the Trust "our  
23 trust" (referring to the Former Trustees") and calling the former attorney for Nancy and  
24  
25  
26  
27

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28 "Fiduciary" (7<sup>th</sup> ed. 1999) (A fiduciary is "one who owes to another the duties of good faith, trust, confidence, and candor" or "one who must exercise a high standard of care in managing another's money or property.")

<sup>61</sup> *Riley v. Rockwell*, 103 Nev. 698, 701 (1987).

1 Raymond Sr. "our attorney".<sup>62</sup> All actions have been for their best interest in retaining as much  
2 of the Trust property as they can so they can receive the distributions therefrom while failing to  
3 provide for the health support and maintenance of the surviving Trustor and abide by the terms  
4 of the Trust.

6 *ii. The Former Trustees breached their fiduciary duties to Nancy by engaging in self-*  
7 *dealing.*

8 Beyond attempting to maximize their contingent benefit from the Trust by refusing to  
9 make distributions to Nancy as the only current beneficiary of the Trust, The Former Trustees  
10 have actually gone one step further and made distributions to themselves in direct violation of  
11 the Terms of the Trust and their fiduciary duties thereunder. This is known as self-dealing.

12 The Former Trustees wrote checks to themselves, purchased groceries, and other items  
13 for themselves and otherwise converted Trust money for their own benefit,<sup>63</sup> while at the same  
14 time failing to provide for Nancy's health, support and maintenance pursuant to the terms of the  
15 Trust.<sup>64</sup> They also spent Trust money on a "memorial trip", which was not authorized by the  
16 terms of the Trust or by Nancy.

18 Additionally, upon information and belief, Former Trustees gained access to Raymond  
19 Sr.'s retirement accounts through fraud, undue influence, and/or duress. They caused Nancy to  
20 unknowingly sign away her right to obtain the money contained in her husband's retirement  
21 accounts. Raymond Christian Jr., received at least \$19,633.49 as part of his distributive share  
22  
23  
24  
25

26 <sup>62</sup> Exhibit A of Former Trustees' opposition to the motion to dismiss filed September 15, 2017.

27 <sup>63</sup> See select Chase bank checks and withdrawals attached hereto and incorporated herein as Exhibit P, showing  
28 checks written to the Former Trustees, and Withdrawals taken by the Former Trustees from Trust money that was  
not authorized by Nancy and was not for Nancy's benefit, to the tune of nearly \$300,000.00.

<sup>64</sup> Former Trustees refused to provide Nancy even one dime of Trust money although she was kicked out of her  
own home by Raymond Christian, Jr.

1 from this fraudulent transaction.<sup>65</sup> It is believed that Raymond Jr. and the other Former Trustees  
2 received additional amounts from Raymond Sr.'s accounts through undue influence, fraud, or  
3 duress.

4  
5 The Former Trustees have removed Nancy from the Trust owned home, which is not  
6 within the discretion granted to any trustee under the terms of the Trust. The Former Trustees  
7 then allowed Raymond Jr. to squat, rent free in the Trust owned home. Raymond Jr. has paid no  
8 rent to the Trust, he has not paid the bills to maintain the property and even now refuses to  
9 vacate the premises. Susan and Rosemary have encouraged Raymond to remain in the home  
10 without payment of rent or expenses to the Trust. Meanwhile, Nancy has been prevented from  
11 her use of the property as required under the terms of the Trust. This is a glaring example of the  
12 Former Trustees eagerness to benefit themselves to the detriment of Nancy.

13  
14 **C. CONVERSION: The Court should find that the Former Trustees have wrongfully**  
15 **converted Trust funds.**

16 In Nevada, conversion is defined "as a distinct act of dominion wrongfully exerted over  
17 another's personal property in denial of, or inconsistent with his title or rights therein or in  
18 derogation, exclusion, or defiance of such title or rights."<sup>66</sup> "All conversions may be divided  
19 into four distinct classes: (1) By a wrongful taking; (2) by an alleged assumption of ownership;  
20 (3) by an illegal user or misuser; and (4) by a wrongful detention. In the three first named  
21 classes, there is no necessity for a demand and refusal, as the evidence arising from the acts of  
22 the defendant, is sufficient to prove the conversion."<sup>67</sup> Herein, the Former Trustees engaged in  
23 a wrongful taking or alleged assumption of ownership of Nancy's property.  
24  
25  
26

27  
28 <sup>65</sup> See Wells Fargo Advisors statement and check to Raymond Christian Jr. attached hereto and incorporated herein  
as Exhibit Q.

<sup>66</sup> *Ferreira v. P.C.H., Inc.*, 105 Nev. 305, 308, 774 P.2d 1041, 1043, 1989 Nev. LEXIS 60, \*6 (Nev. 1989)

<sup>67</sup> *Robinson Mining Co. v. Riepe*, 40 Nev. 121, 129, 161 P. 304, 305, 1916 Nev. LEXIS 42, \*14 (Nev. 1916)

1 The Former Trustees took approximately \$267,902.53 from the Trust account after they  
2 had notice that they were removed as trustees. They took additional sums from other accounts  
3 belonging to the Trust or the Decedent.<sup>68</sup> They admittedly sequestered the money away from  
4 the current Trustee or the Trust beneficiary.<sup>69</sup> Trust funds are allegedly in a "blocked account";  
5 however, the Former Trustees neither had the authority to transfer this money or sequester it  
6 away from the Trust.  
7

8 It is also strongly believed that the Former Trustees either forged or manipulated Nancy  
9 into signing transfer documents to obtain Raymond Sr.'s retirement accounts and life insurance  
10 accounts. It is known that Raymond Jr., has received part of Raymond Sr.'s IRA policy.<sup>70</sup> It is  
11 unclear whether Susan Christian-Payne or Rosemary Keach received any checks from the IRA.  
12 To the extent that they did, they have wrongfully and assumed unlawful detention over these  
13 assets.  
14

15 Nancy intends to present further evidence regarding Former Trustees wrongful taking of  
16 Nancy's assets and their assumption of ownership over Nancy's assets when it becomes  
17 available. However, from the court pleadings we are aware that the Former Trustees have  
18 wrongfully converted Trust funds from the current Trustee to the detriment of Nancy as well as  
19 funds intended for Nancy either from Raymond Sr.'s retirement accounts or life insurance  
20 accounts. The Trust has been wrongfully deprived of funds to pay Nancy's necessary expenses,  
21 which is detrimental to her. Therefore, Nancy asks that this Court find that the Former Trustees  
22 have wrongfully converted Trust funds and funds intended for Nancy.  
23

24  
25 ///

26  
27  
28 <sup>68</sup> See Footnote 31 Supra.

<sup>69</sup> See Footnote 31 Supra.

<sup>70</sup> See Exhibit Q.



1       **D. FRAUDULENT TRANSFERS: The Former Trustees have committed fraudulent**  
2       **transfers in removing and sequestering funds from the Trust account.**

3       The Former Trustees have committed a fraudulent transfer as defined by the Uniform  
4       Fraudulent Transfer Act. NRS 112.180(1) states that "a transfer made or obligation incurred by  
5       a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the  
6       transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the  
7       obligation; (a) with actual intent to hinder, delay or defraud any creditor of the debtor." A  
8       creditor is defined as "a person who has a claim."<sup>71</sup> A Trust is defined as a "person".<sup>72</sup> A claim  
9       is defined as "a right to payment, whether or not the right is reduced to judgment, liquidated,  
10      unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,  
11      secured or unsecured."<sup>73</sup>

12  
13  
14      The Former Trustees were aware of the change in Trustee before they removed funds  
15      from the Trust account.<sup>74</sup> Their removal of Trust funds was nothing more than an attempt to  
16      hinder delay, or defraud the Trust by preventing access to such funds.

17      Furthermore, counsel for the Former Trustees was put on notice regarding his duty to  
18      inquire into the source of the funds provided to pay his attorney's fees.<sup>75</sup> Other jurisdictions  
19      have indicated the following

20  
21      Lawyers who receive a conveyance under circumstances that should cause them to  
22      inquire into the reasons behind the conveyance must diligently do so, lest they be  
23      charged with knowledge of any intent on the part of transferor to hinder, delay, or  
24      defraud. A lawyer who blindly accepts fees from a client under circumstances that would  
25      cause a reasonable lawyer to question the client's intent in paying the fees accepts the  
26      fees at his peril."<sup>76</sup>

26      <sup>71</sup> See NRS 112.150(4)

27      <sup>72</sup> See NRS 0.039

27      <sup>73</sup> See NRS 112.150(3)

27      <sup>74</sup> See Exhibit I.

28      <sup>75</sup> See Exhibit M.

28      <sup>76</sup> *In re Parklex Assocs., Inc.*, 2010 Bankr. LEXIS 2664, 435 B.R. 195, 53 Bankr. Ct. Dec. 179 (Bankr. S.D.N.Y. 2010), citing *S.E.C. v. Princeton Economic Int'l Ltd.*, 84 F. Supp. 2d 443, 446-47 (S.D.N.Y. 2000)



1  
2 Counsel was requested that neither he nor his clients use or otherwise dispose of Trust property  
3 until it is returned to the rightful trustee. However, this was not done.

4 The Court has frozen this money so that no further damages can be done by the  
5 fraudulent transfer.<sup>77</sup> However, there was damage from June 30, 2017 until October 31, 2017  
6 for the withholding of funds from Trust for Nancy's health, support and maintenance and there  
7 is ongoing damage until the Trustee is able to receive the funds make distributions pursuant to  
8 the terms of the Trust.  
9

10 Additionally, part of the transfers wrongfully placed into Mr. Payne's account and  
11 sequestered away from Nancy, were from accounts which were intended for Nancy through a  
12 beneficiary designation.<sup>78</sup> Therefore, these funds which could have passed outside the Trust are  
13 now included in the funds that have been blocked by the Court. Therefore, Nancy continues to  
14 be damaged by being unable to receive funds to pay for her health, support and maintenance as  
15 a result of the fraudulent transfers effectuated by the Former Trustees with Mr. Payne's aid.  
16

17 **E. UNDUE INFLUENCE: The Former Trustees are presumed to have procured all**  
18 **transfers to themselves through fraud, duress, or undue influence.**

19 The Nevada Supreme Court has stated the following  
20

21 The doctrine of equity concerning undue influence is very broad, and is based upon  
22 principles of the highest morality. It reaches every case, and grants relief 'where  
23 influence is acquired and abused, or where confidence is reposed and betrayed.' **It is**  
**specially active and searching in dealing with gifts, but is applied, when necessary,**  
**to conveyances, contracts executory and executed, and wills.**<sup>79</sup>

24 NRS 155.097(2) provides for the different bases for applying a presumption of undue influence  
25 and states:  
26  
27  
28

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<sup>77</sup> See Court Order filed on October 31, 2017.

<sup>78</sup> See Inventory filed on October 25, 2017.

- 1 2. Except as otherwise provided in subsection 4 and NRS 155.0975, a transfer is  
2 **presumed to be void** if the transfer is to a transferee who is:  
3 (a) The person who drafted the transfer instrument;  
4 (b) A caregiver of the transferor; who is a dependent adult;  
5 (c) A person who materially participated in formulating the dispositive provisions of the  
6 transfer instrument or paid for the drafting of the transfer instrument; or  
7 (d) A person who is related to, affiliated with or subordinate to any person described in  
8 paragraph (a), (b) or (c). (emphasis added)

9 This statute applies to transfers made:

10 [F]or less than fair market value, whether such transfer becomes effective during the life  
11 of the transferor or on or after the transferor's death and includes, without limitation:

- 12 1. A will;  
13 2. **A trust;**  
14 3. A deed; and  
15 4. **Any form, contract or other document which:**  
16 (a) Creates, conveys or transfers any interest in property;  
17 (b) Creates any type of joint ownership;  
18 (c) Establishes a right of survivorship;  
19 (d) **Designates a beneficiary;**  
20 (e) **Adds an authorized signer on any bank or brokerage account;**  
21 (f) **Creates or attempts to effectuate a nonprobate transfer to be effective**  
22 **upon the death of the transferor; or**  
23 (g) **Is intended to amend, modify, eliminate, supersede or revoke any other**  
24 **transfer instrument.**<sup>80</sup>

25 Herein, the statutory presumption applies to the Former Trustees based upon their roles  
26 as caregivers, their material participation in the Trust, and their other fiduciary relationships  
27 with the Trustors. Each presumption is discussed below. Nancy and Mr. Reason request that  
28 this court invalidate any and all transfers to the Former Trustees as a product of undue influence.

29 *i. The Former Trustees have the presumption of undue influence against them as*  
30 *caregivers.*

31 Under NRS 155.097 a transfer is presumed to be void if the transfer is made to a  
32 caregiver. Such a presumption does not apply if the presumed undue influencer receives no  
33

34 <sup>79</sup> *Peardon v. Peardon*, 65 Nev. 717, 767, 201 P.2d 309, 333, 1948 Nev. LEXIS 79, \*79 (Nev. 1948). Emphasis  
35 added.

36 <sup>80</sup> See NRS 155.0955 (emphasis added).

1 more than they would have received under intestacy, or if the transfer is reviewed by an  
2 independent attorney who certifies that the transfer is not the product of undue influence.<sup>81</sup> Once  
3 a showing is made that the presumption of undue influence is applicable, the presumed undue  
4 influencer must prove by clear and convincing evidence that the transfer was not the product of  
5 fraud, duress, or undue influence.<sup>82</sup>

7 Here the Former Trustees were caregivers to Nancy and Raymond at the time the Trust  
8 was drafted. As Raymond Sr.'s sister, Jackie Utkin, has indicated, the Former Trustees took  
9 control of the trustors' physical and financial affairs shortly before the drafting of the Trust.<sup>83</sup>  
10 The Former Trustees provided this care and received compensation for such actions.<sup>84</sup>  
11 Therefore, the Former Trustees have the presumption of undue influence against them while  
12 being caregivers to the Trustors. The Former Trustees must provide clear and convincing  
13 evidence that all transfers to them, including any testamentary transfers or transfers which  
14 become effective at the death of either or both Trustor, drafted during their reign as caregivers  
15 were not the product of undue influence, fraud, or duress.

18 ii. The Former Trustees' admission on the court record that they negotiated the terms  
19 of the Trust gives rise to a presumption of undue influence and the Former Trustees  
20 should be judicially estopped from taking a contrary position.

21 More concerning their status as caregivers at the drafting of the Trust, is the Former  
22 Trustees' admission, through their counsel, that they "sat at the table and negotiated the terms of  
23 the Trust."<sup>85</sup> Such admission is identical in substance to the phrase provided in the statute, that  
24 a person "materially participated in formulating the dispositive provisions of the transfer  
25

26  
27 <sup>81</sup> See NRS 155.0975.

28 <sup>82</sup> See NRS 155.097(3).

<sup>83</sup> See Exhibit A at page 3:6-7.

<sup>84</sup> See checks to Lee Keach, who is Rosemary's husband, Susan Payne, and Ray Christian Jr. in and around the end of 2016 attached hereto and incorporated herein as Exhibit R.

1 instrument."<sup>86</sup> The Former Trustees' admission in this regard undeniably triggers the  
2 presumption of undue influence under NRS 155.097.

3  
4 The Former Trustees may try to distance themselves from the representations made by  
5 their counsel in court wherein it was represented that they sat at the table and negotiated the  
6 provisions of the Trust; however, they are unable to do so. The Nevada Supreme Court held  
7 that, "[t]he implied power of an attorney to make admissions of fact on behalf of his client  
8 within the scope of his authority in conducting litigation, is beyond question. Admissions when  
9 so made by an attorney bind the client and dispense with the necessity of proof."<sup>87</sup> *Gottwals v.*  
10 *Hanshue* further provides that "a litigant party shall not be permitted to deny the authority of his  
11 attorney of record, whilst he stands as such on the docket. He may revoke his attorney's  
12 authority, and give notice of it to the court and to the adverse party; but whilst he so stands, the  
13 party must be bound by the acts of the attorney."<sup>88</sup> Finally, an attorney of record has ample  
14 power to do on behalf of his client all acts, in or out of court, necessary or incidental to the  
15 prosecution, management or defense of the action."<sup>89</sup> Mr. Payne's statement in open court  
16 regarding his clients' negotiation of the terms of the Trust conclusively establishes this fact. The  
17 Former Trustees may not depart from this admission, unless they allege that Mr. Payne violated  
18 his duty of candor to the court.  
19  
20  
21

22 Secondly, judicial estoppel prevents the Former Trustees from taking an inconsistent  
23 position. Judicial estoppel applies where "(1) the same party has taken two positions; (2) the  
24 positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was  
25

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26 <sup>85</sup> See Footnote 35 Supra. see also Supplement filed by Former Trustees on September 15 and exhibit attached  
27 thereto referring to David Grant as the Former Trustees' attorney and to the Trust as "our trust."

28 <sup>86</sup> See NRS 155.097 above.

<sup>87</sup> See *Gottwals v. Rencher*, 60 Nev. 47, 52, 98 P.2d 481, 484, 1940 Nev. LEXIS 8, \*6, 126 A.L.R. 1262.

<sup>88</sup> *Id.*

<sup>89</sup> *Garrett v. Hanshue*, 53 Ohio St. 482, 496, 42 N.E. 256, 260, 1895 Ohio LEXIS 96, \*21

1 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as  
2 true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a  
3 result of ignorance, fraud, or mistake.”<sup>90</sup> In the event that the Former Trustees claim that Mr.  
4 Payne’s representation to the court was perjurally offered, in an attempt to promulgate some  
5 alternative fact pattern which does not include their “negotiation of the terms of the Trust,”  
6 Judicial estoppel would prevent such a change in position.  
7

8 Presenting any other scenario than that admitted by Mr. Payne, would mean that the  
9 Former Trustees will have taken two positions, thereby satisfying the first element of judicial  
10 estoppel. These differing positions are taken in judicial proceedings, thereby satisfying the  
11 second element. The Former Trustees were successful in asserting the position that they  
12 negotiated the terms of the agreement as they avoided dismissal of their petition based in part on  
13 their claims to be parties to the agreement based on “[sitting] at the table and [negotiating] the  
14 terms of the Trust, which satisfies the third element. If the Former Trustees attempt to say they  
15 did not negotiate the terms of the Trust, it will satisfy the fourth element because it is  
16 completely opposite to their first position. One of the Former Trustees was present at the  
17 October 19, 2017 hearing on behalf of all other trustees and did not correct Mr. Payne, therefore  
18 the first position was not taken as a result of ignorance, fraud, or mistake, satisfying the fifth  
19 element. Therefore, judicial estoppel would prevent a change in their position from the one  
20 asserted at the October 19, 2017 hearing.  
21  
22  
23

24 The Former Trustees even identified David Grant as “their attorney” and the Trust as  
25 “our Trust.”<sup>91</sup> Furthermore, it has been discovered that the Former Trustees caused Nancy to  
26  
27

28 <sup>90</sup> Brock v. Premier Trust, Inc. (In re Frei Irrevocable Trust), 390 P.3d 646, 652, 2017 Nev. LEXIS 14, \*10-11, 133  
Nev. 8, 133 Nev. Adv. Rep. 8

<sup>91</sup> See Exhibit A of Former Trustees’ opposition to motion to dismiss filed September 15, 2017.

1 unknowingly sign a document giving away her right to her husband's retirement proceeds.<sup>92</sup>  
2 Nancy and Mr. Reason have discovered sufficient evidence that the presumption of undue  
3 influence applies to Former Trustees regarding alleged the creation of the Trust and inter-vivos  
4 transfers to them from Nancy. Therefore, Nancy and Mr. Reason assert their claim of undue  
5 influence with the Former Trustees having the presumption of undue influence against them.  
6

7 *iii. The Former Trustees had a fiduciary relationship with the Trustors such that the*  
8 *common-law presumption of undue influence is against them*

9 Under Nevada common law, a presumption of undue influence applies "when a  
10 confidential fiduciary relationship exists and such fiduciary benefits from the questioned  
11 transaction."<sup>93</sup> This is summarized by the Nevada Supreme court which stated:

12  
13 It is a rule of almost general acceptance that, where confidential relations between  
14 parent and child are shown to have existed and where a conveyance of property is made  
15 by the weaker to the dominant party, a presumption arises that the conveyance was  
16 obtained through the undue influence of the dominant party, and the burden is on the  
17 person claiming, under such a conveyance, to show that the transaction was bona fide. \*  
18 \* \*

19 And particularly should the presumption be indulged in in this case, where the  
20 conveyances were without consideration and where their effect was to deprive the other  
21 children of Robert O. Walters [the decedent] of their equal share in their father's estate.<sup>94</sup>  
22

23 In addition to being caregivers, the Former Trustees maintained a confidential fiduciary  
24 relationship with Nancy based on their access to and control of Nancy's financial accounts. The  
25 Former Trustees were given access to Nancy's account for the limited purpose of helping Nancy  
26  
27

28 <sup>92</sup> See Beneficiary Change attached hereto and incorporated herein as Exhibit S.

<sup>93</sup> *Id.*

<sup>94</sup> *Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993-994, 1966 Nev. LEXIS 264, \*5-6 (Nev. 1966)

1 pay her bills.<sup>95</sup> This placed Former Trustees in a position of trust and imposed fiduciary duties  
2 upon them.<sup>96</sup>

3 They were also provided with the authority to make decisions on both the Trustors'  
4 behalf under powers of attorney executed on the same day as the Trust. Nancy was unaware  
5 that the Former Trustees were attempting to take her husband's life insurance proceeds and  
6 retirement funds thereby excluding her from receiving the same. Raymond Jr. has already taken  
7 a portion of Raymond Sr.'s life insurance money.<sup>97</sup> It is unknown whether Susan or Rosemary  
8 have done the same.

9  
10  
11 Notably, the power of attorney specifically and explicitly prevents them from taking  
12 actions against the Trustors. The language in the Power of Attorney for Financial Decisions  
13 specifically states:

14 An agent that is not my spouse MAY NOT use my property to benefit the agent or a  
15 person to whom the person owes an obligation of support unless I have include that  
16 authority in the Special Instructions<sup>98</sup>

17 During the time that the Former Trustees were acting as the attorney in fact of the Trustors,  
18 which is a fiduciary relationship, the Former Trustees benefited from several transactions. This  
19 triggers the presumption of undue influence under common law.

20 The Former Trustees have benefited from their actions in defiance of Nancy's rights and  
21 the plain language of the Power of Attorney for Financial Decisions. The Former Trustees  
22 frequently took money from Nancy's bank account for their personal benefit and thereafter,  
23

24  
25  
26 <sup>95</sup> Nancy is currently in the process of obtaining her bank records to show the joint ownership on her accounts with  
the Former Trustees and the emptying of her account after Raymond Sr. died.

27 <sup>96</sup> *Lopez v. Corral*, 2010 Nev. LEXIS 69 (Nev. 2010) citing *Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690,  
700, 962 P.2d 596, 602 (1998) (Under Nevada law, "[a] fiduciary relationship exists when one has the right to  
28 expect trust and confidence in the integrity and fidelity of another.")

<sup>97</sup> See Exhibit P.

<sup>98</sup> See Page 4, paragraph 6 of Power of Attorney for Financial Decisions, attached hereto and incorporated herein as  
Exhibit T.



1 from the Trust account or Raymond Sr's life insurance or retirement accounts for their own  
2 personal benefit.

3 In summary, the Former Trustees had two separate confidential, fiduciary relationships  
4 with Nancy, namely that of agent and attorney in fact. They used these dominant positions to  
5 exert undue influence over the weaker parties, Nancy and Raymond Sr. Therefore, the  
6 presumption of undue influence is against them.  
7

8 iv. The Former Trustees must show by clear and convincing evidence that undue  
9 influence did not exist.

10 Under both statute and common law, when a party makes a prima facie showing that the  
11 presumption applies, the burden shifts to the defendant to show by clear and convincing  
12 evidence that there was no actual undue influence applied to the devise.<sup>99</sup> As briefed above,  
13 there are several separate ways to apply a presumption of undue influence against the Former  
14 Trustees.  
15

16 Under statute, the Former Trustees caregiving relationship to the Trustors triggers the  
17 presumption. There is also a presumption because the Former Trustees admittedly participated  
18 in the formulation of the material terms of the Trust. They also participated in the procurement  
19 and drafting of the change in beneficiary on Nancy's husband's retirement accounts. Lastly,  
20 there is also another presumption against the Former Trustees because of the confidential and  
21 fiduciary relationship they had with the Trustor and they benefited from the questioned  
22 transactions. Therefore, the Former Trustees must show by clear and convincing evidence that  
23 there was no actual undue influence applied to the testamentary dispositions in the Trust. The  
24 Former Trustees will be unable to provide clear and convincing evidence, sufficient to rebut this  
25  
26  
27

28 <sup>99</sup> *Caraveo v. Perez (In re Estate of Bethurem)*, 313 P.3d 237, 241, (Nev. 2013). See also NRS 155.0975(3) See also NRS 155.097(3).



1 from the Trust account or Raymond Sr's life insurance or retirement accounts for their own  
2 personal benefit.

3 In summary, the Former Trustees had two separate confidential, fiduciary relationships  
4 with Nancy, namely that of agent and attorney in fact. They used these dominant positions to  
5 exert undue influence over the weaker parties, Nancy and Raymond Sr. Therefore, the  
6 presumption of undue influence is against them.  
7

8 iv. The Former Trustees must show by clear and convincing evidence that undue  
9 influence did not exist.

10 Under both statute and common law, when a party makes a prima facie showing that the  
11 presumption applies, the burden shifts to the defendant to show by clear and convincing  
12 evidence that there was no actual undue influence applied to the devise.<sup>99</sup> As briefed above,  
13 there are several separate ways to apply a presumption of undue influence against the Former  
14 Trustees.  
15

16 Under statute, the Former Trustees caregiving relationship to the Trustors triggers the  
17 presumption. There is also a presumption because the Former Trustees admittedly participated  
18 in the formulation of the material terms of the Trust. They also participated in the procurement  
19 and drafting of the change in beneficiary on Nancy's husband's retirement accounts. Lastly,  
20 there is also another presumption against the Former Trustees because of the confidential and  
21 fiduciary relationship they had with the Trustor and they benefited from the questioned  
22 transactions. Therefore, the Former Trustees must show by clear and convincing evidence that  
23 there was no actual undue influence applied to the testamentary dispositions in the Trust. The  
24 Former Trustees will be unable to provide clear and convincing evidence, sufficient to rebut this  
25  
26  
27

28 <sup>99</sup> *Caraveo v. Perez (In re Estate of Bethurem)*, 313 P.3d 237, 241, (Nev. 2013). See also NRS 155.0975(3) See also NRS 155.097(3).

1 presumption, therefore, Nancy and Mr. Reason request this Court invalidate all transfers to the  
2 Former Trustees as the product of undue influence.

3 **F. IMMEDIATE DELIVERY OF TRUST ASSETS: The Former Trustees should be**  
4 **ordered to immediately deliver all Trust assets to the new Trustee, Monte Reason.**

5 By order dated October 31, 2017 the court froze all trust assets.<sup>100</sup> While this is helpful  
6 to prevent the continued, unauthorized disposal of Trust assets by the Former Trustees, it also  
7 prevents the proper and authorized control and administration of the Trust by the Trustee of the  
8 Trust. The Former Trustees have provided no legal or factual basis to justify their retention of  
9 the Trust assets nor have they provided any legal or factual basis to justify an order preventing  
10 the new Trustee to control and administer the Trust pursuant to its terms. Therefore, Nancy and  
11 Mr. Reason respectfully request an order from this court for the immediate delivery of any and  
12 all Trust assets to Mr. Reason as Trustee of the Trust, and for an order unfreezing the assets  
13 upon as to Mr. Reason so that the Trust can be administered appropriately during the pendency  
14 of this litigation.  
15  
16

17 **G. CONSTRUCTIVE TRUST: The remedy of a constructive trust should be provided**  
18 **for any and all funds taken or received by the Former Trustees which funds were**  
19 **derived from the Trust, or any account or asset owned by either Trustor or jointly**  
20 **by both Trustors**

21 The Nevada Supreme Court has held that a "constructive trust will arise whenever the  
22 circumstances under which property was acquired makes it inequitable that it should be retained  
23 by him who holds the legal title, as against another, provided some confidential relationship  
24 exists between the two and provided the raising of the trust is necessary to prevent a failure of  
25 justice."<sup>101</sup> A constructive trust is appropriate where: 1) there existed a confidential relationship  
26 between the parties; 2) the circumstances under which property was acquired make retention by  
27

28 \_\_\_\_\_  
<sup>100</sup> See Court order filed October 31, 2017.

1 the party holding legal title inequitable; and 3) the constructive trust is necessary to prevent a  
2 failure of justice.

3 As stated above, the Trustees have properly demonstrated that Former Trustees had a  
4 confidential fiduciary relationship towards Nancy based on their role as caregiver, their access  
5 to Nancy's financial accounts and their actions under a power of attorney. Therefore, the proper  
6 remedy to preserve Nancy's assets is to impose a constructive trust over the retirement account  
7 proceeds that were wrongfully taken from Nancy as set forth below:  
8

9  
10 i. Former Trustees' retention of Trust property and personal property would be inequitable.

11 As detailed above, the Former Trustees have breached their duties as fiduciaries to  
12 Nancy and converted Trust property and Nancy's property through forgery, fraud, undue  
13 influence, and/or duress. They caused Nancy to sign a document which effectively eliminated  
14 her as beneficiary under Raymond Sr.'s retirement accounts through fraud, undue influence,  
15 duress, and possibly the use of a power of attorney. From the accounting provided on October  
16 25, 2017, at least \$160,926.40 was taken from the Oxford Life Insurance Account. In short,  
17 Nancy is currently the legal owner of the funds taken from Raymond Sr.'s retirement accounts  
18 or insurance policies. The circumstances whereby Former Trustees obtained these funds make  
19 their retention of such funds inequitable.  
20  
21

22 ii. The constructive trust is necessary to prevent a failure of justice.

23 Essentially, without the imposition of a constructive trust, Former Trustees will be able  
24 to avoid paying restitution for the conversion and fraudulent transfers of Trust assets and  
25 Nancy's assets. Allowing Former Trustees to retain the funds he has converted would constitute  
26 a failure of justice. Therefore, the Trustees respectfully request that this court impose a  
27  
28

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<sup>101</sup> *Schmidt v. Merriweather*, 82 Nev. 372, 375, 418 P.2d 991, 993, 1966 Nev. LEXIS 264, \*4 (Nev. 1966)

1 constructive trust on the retirement account and life insurance proceeds received from Raymond  
2 Sr., and any other account or asset shown to have been purchased with the money from Nancy's  
3 assets. Nancy requests that the court impose a constructive trust on any bank account wherein  
4 Former Trustees deposited any amount of money belonging to her.  
5

6  
7 **III. Conclusion and Requested Relief:**


8 Based on the foregoing points and authorities, Nancy and Mr. Reason request the Court  
9 do the following:  
10


- 11 A. Deny the Former Trustees' Petition in its entirety;
- 12 B. Find that Former Trustees breached their fiduciary duties to Nancy during their tenures  
13 as trustees;
- 14 C. Find that Former Trustees converted Trust assets, Trust funds and Nancy's funds;
- 15 D. Find that Former Trustees engaged in fraudulent transfers of Trust assets, Trust funds,  
16 and Nancy's funds;
- 17 E. Allow the Trustees to present further evidence regarding other amounts believed to have  
18 been converted by Former Trustees;
- 19 F. Allow the Trustees to amend their claim to include other causes of action including but  
20 not limited to forgery, fraud, and larceny;
- 21 G. Find that Former Trustees are subject to the presumption of undue influence and must  
22 provide clear and convincing evidence that all transfer instruments transferring asset or  
23 beneficial interests to them was not procured through undue influence or that any alleged  
24 *inter-vivos* transfer was not the product of undue influence;  
25  
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28

- 1 H. Invalidate all transfers to the Former Trustees as a product of undue influence;  
2 I. Order the immediate delivery of all Trust assets to Monte Reason as Trustee of the Trust  
3 to be administered under the terms of the Trust;  
4 J. Impose a constructive trust on Nancy's funds from Raymond Sr.'s retirement accounts  
5 and life insurance policies; and  
6 K. Award any other relief in Nancy or the Trust's favor as this court deems necessary and  
7 proper.  
8

9 DATED this 9th day of November, 2017.  
10

11 Respectfully Submitted,  
12 ANTHONY L. BARNEY, LTD.

13   
14 Anthony L. Barney, Esq.  
15 NV State Bar No. 8366  
16 3317 Charleston Boulevard, Suite B  
17 Las Vegas, NV 89102-1835  
18 Telephone: (702) 438-7878  
19 Facsimile: (702) 259-1116  
20 Attorney for Nancy Christian, Trustor

21   
22 JOSEPH J. POWELL, ESQ.  
23 1707 Village Center Circle, Suite 150  
24 Las Vegas, NV 89134  
25 Telephone: (702) 255-4552  
26 joey@rlklegal.com  
27 Attorneys for Monte Reason, Trustee  
28

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DATED this 7<sup>th</sup> day of November, 2017.

Nancy Christian

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Cary Colt Payne, Esq.  
Cary Colt Payne, Chtd.  
700 S. 8<sup>th</sup> St.  
Las Vegas, NV 89101  
*Attorney for Susan Christian-Payne,  
Rosemary Keach and Raymond Christian, Jr.*

21  
22  
23  
24  
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27  
28



# **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.  
5 3317 W. Charleston Boulevard, Suite B  
6 Las Vegas, NV 89102-1835  
Telephone: (702) 438-7878  
7 Facsimile: (702) 259-1116  
E-Mail: office@anthonybarney.com  
8 Attorneys for Nancy Christian

9  
10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the

13 THE CHRISTIAN FAMILY TRUST

Case Number: P-17-092512-T  
Dept.: (PC-1) S

14 Dated October 11, 2016

15  
16 DECLARATION OF JACQUELINE UTKIN

17 I, Jacqueline Utkin under penalty of perjury, declare as follows:

- 18 1. I am a resident of the State of Hawaii and over the age of eighteen.  
19 2. I am a retired Principal with the Miami Dade School District.  
20 3. This Declaration is made and based on my own personal knowledge, except that  
21 which is stated on information and belief; and, if called to testify, I could  
22 competently do so.  
23 4. I am Nancy Christian's ("Nancy") sister-in-law; Raymond T. Cristian, Sr.,  
24 ("Tyrone") is my brother.  
25 5. Susan Christian-Payne ("Susan"), and Rosemary Keach ("Rosemary") are my nieces  
26 and Raymond Christian, Jr., ("Raymond, Jr.") is my nephew.  
27  
28

- 1 6. I have known Nancy ever since she married my brother, Tyrone the first time,  
2 approximately 55 years ago.
- 3 7. Even after Nancy and Tyrone divorced, I stayed in contact with Nancy.
- 4 8. I spoke to Nancy frequently during the events described herein and I continue to  
5 speak to her frequently.
- 6 9. I have personal knowledge that both Nancy and Tyrone were diabetic, but that  
7 Nancy was very careful to prepare only diabetic friendly meals for herself and her  
8 husband.
- 9 10. I spoke to Tyrone frequently before his last months of life, and as often as I could  
10 during his last months of life.
- 11 11. I have always admired Nancy as a wonderful human being, and an amazing wife and  
12 mother.
- 13 12. I have always known Nancy to be honest and have found her to have unimpeachable  
14 integrity.
- 15 13. I noticed that as Tyrone and Nancy aged, Susan, Rosemary, and Raymond Jr.,  
16 (collectively referred to as the "Siblings") became estranged from them, through no  
17 fault of Nancy or Tyrone.
- 18 14. I am personally aware that for nearly three years prior to Tyrone's last hospital stay,  
19 the Siblings had virtually no contact with Nancy or Tyrone.
- 20 15. During this three-year period, only Nancy's son Monte would check on Nancy and  
21 Tyrone and help them with their needs.
- 22 16. Shortly before October 2016, Tyrone was admitted to the ICU with serious health  
23 problems.
- 24  
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17. After his release, Tyrone was bedridden and sometimes barely conscious.
18. Nancy was also physically weakened by the whole ordeal.
19. Sensing their opportunity to seize control of Nancy and Tyrone's assets, the Siblings  
roared back into Nancy and Tyrone's life.
20. The Siblings quickly wrested control of Tyrone's care away from Nancy, and  
secured control of Nancy and Tyrone's finances.
21. The Siblings took Nancy's driver's license and sold her car.
22. They also began isolating Nancy and Tyrone from family and friends.
23. Specifically, I was frequently prevented from speaking to Nancy and Tyrone during  
the Siblings reign as caregivers.
24. During the occasions when I was able to speak with Nancy, I would frequently hear  
the Siblings, usually Susan screaming at Tyrone or Nancy.
25. The Siblings would frequently curse at their parents and demand information about  
"the money."
26. I was very alarmed at this because I believed it to be abusive, I expressed my alarm  
to Tyrone, who seemed embarrassed and told me that he felt helpless.
27. I know of other family members who were also prevented from speaking to Nancy  
and Tyrone during this period.
28. I know that the Siblings excluded Nancy in much of the decision making regarding  
Tyrone's daily care as well as other decision.
29. I am also aware that during the time that the Siblings were supposed to be caring for  
Nancy and Tyrone, their health deteriorated.
30. I believe this was due to the poor treatment provided by the Siblings.

- 1 31. I know that Nancy's hearing aid was taken from her and that her medication was  
2 frequently withheld or unfilled by the Siblings.
- 3 32. I also know that the Siblings did not provide diabetic friendly food to either Tyrone  
4 or Nancy.
- 5 33. Nancy expressed to me that she was depressed and heart-sick over the way the  
6 Siblings were treating her and Tyrone.
- 7 34. Nancy relayed an instance to me when she was forced, by the Siblings, to take an  
8 unknown pill which made her sleep all day long.
- 9 35. I know of other instances when the Siblings tried to feed Nancy food which would  
10 have been very detrimental for her to eat as a diabetic.
- 11 36. The Siblings would yell at Nancy and curse at her for refusing to eat the unhealthy  
12 food they were trying to force upon her.
- 13 37. One such instance led to Nancy being kicked out of the home by the Siblings.
- 14 38. Around Christmas time, Nancy refused to eat the rich Italian food purchased by the  
15 siblings, this led to verbal abuse and eventually the Siblings physically removed  
16 Nancy from her Home.
- 17 39. They dropped her off at the Condo where Monte lives and left her there.
- 18 40. Sometime later, the siblings removed Nancy from the Condo where Monte lives only  
19 to kick her out of the home shortly before Tyrone's death.
- 20 41. Nancy was not invited to or even made aware of any funeral services for her  
21 husband.
- 22 42. The Siblings spent Trust money to travel to California, to rent an extravagant beach  
23 house, and to even enjoy a cruise when Tyrone passed away.
- 24  
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- 1 43. I know this because Tommy Christian, posted a tour of the beach house on Facebook  
2 and indicated that the Siblings were celebrating their Father's passing.
- 3 44. Although the Trust is for her benefit, I am aware that the Siblings have refused to  
4 provide Nancy with any money from the Trust, yet they have spent Trust money  
5 extravagantly for their own benefit.
- 6  
7 45. When Nancy was kicked out of the home by the Siblings, for the first time, Raymond  
8 Jr. expressed his desire that she go and die already and told her that he will "piss on  
9 her grave."
- 10  
11 46. I was appalled by this particular event, but I was also relieved that Nancy was away  
12 from the Siblings and their abusive behavior.
- 13 47. I know that Nancy's health has improved dramatically since moving in with her son  
14 Monte.
- 15  
16 48. I know that Monte is caring and kind to Nancy and that she is much happier with him  
17 than with the Siblings.
- 18 49. I also know from my conversations with Nancy that she does not Trust the Siblings  
19 and believes that they hastened Tyrone's death and that they were attempting to  
20 hasten her death as well.
- 21  
22 50. In the weeks leading up to his death, Tyrone expressed to me his fear that the  
23 Siblings were "cheating" him and Nancy.
- 24 51. He relayed to me a specific story about a large sum of money being taken from his  
25 pockets by Susan while he was in bed.
- 26  
27 52. He further expressed fear that the Siblings would harm Nancy, emotionally,  
28 financially, or physically, and that he was too weak to do anything to help her.

1 53. Based on my conversations with Tyrone, I am concerned that Tyrone was  
2 manipulated or threatened to put the Siblings in charge of the Trust.  
3  
4 54. Tyrone made me promise to help Nancy after his death and to try to prevent the  
5 abuse and exploitation of Nancy by the Siblings.  
6  
7 55. Based on these concerns expressed by my brother, I severed all ties to the Siblings,  
8 and told Nancy to contact her Attorney at the time, David Grant.  
9  
10 56. I understand that Nancy contacted Mr. Grant who spoke to Susan.  
11  
12 57. Shortly thereafter, Nancy informed me that Mr. Grant had refused to represent  
13 Nancy going forward.  
14  
15 58. This was deeply concerning to me.  
16  
17 59. Nancy hired Tiffany Barney, Esq., who has been helping to protect her from the  
18 abuse and harassment perpetrated by the Siblings.  
19  
20 60. I know that Nancy asked for a monthly stipend from the Trust because her current  
21 income outside the Trust is below the poverty level.  
22  
23 61. I also know that the Siblings refused to provide Nancy with a single cent from the  
24 Trust.  
25  
26 62. I know that the Siblings showed up to Nancy's condo and took her away from the  
27 home.  
28  
63. They tried to force her to fire her new attorney and move into an assisted living  
facility.  
64. Thankfully, Nancy's health was dramatically better than when she was previously  
under the Sibling's care, and she had the mental and physical strength to refuse the  
Sibling's demands.

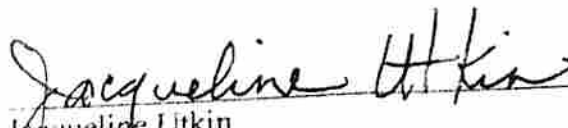
1 65. Nancy told me that the Siblings explained that they would not provide her a monthly  
2 stipend because it would diminish their shares when she passed away.  
3  
4 66. After Nancy escaped the Siblings attempt to force her into an assisted living facility,  
5 I know that Nancy exercised her right to remove the Siblings from the Trust on or  
6 around June 2017.  
7  
8 67. I know that, despite his past mistakes, Nancy made Monte the new Trustee because  
9 she trusts Monte and has been completely devastated by the Siblings and their  
10 actions.  
11  
12 68. I also know that Nancy spoke to another attorney about this change in trustee.  
13  
14 69. I know that Raymond Jr. is currently residing in the Trust owned home without  
15 paying rent to the Trust.  
16  
17 70. I also know that the Siblings have refused to turn over the assets belonging to the  
18 Trust despite their removal as Trustees.  
19  
20 71. I have tried to avoid making public much of the information contained herein  
21 because I know that Nancy is embarrassed by the actions of her children – the  
22 Siblings – and what they have done to her and Tyrone.  
23  
24 72. However, given the abuse detailed herein and the continued abuse by the Siblings  
25 through the litigation they are now pursuing, and in order to keep the promise I made  
26 to my brother, I am providing this declaration to ensure that Nancy is not subject to  
27 continued abuse and exploitation.  
28  
73. Much of my knowledge is based on my conversations with Nancy and Tyrone which  
took place contemporaneously to the events described therein.



1 74 I have no reason to doubt the truthfulness of either Nancy's or Tyrone's statements  
2 to me

3 75 I request that I be able to testify by telephonic or video conference at any hearing  
4 where my testimony may be needed

5 Executed on this 17 day of October 2017

6  
7  
8   
9 Jacqueline Utkin

# **EXHIBIT B**

RAYMOND T CHRISTIAN  
1060 DANCING VINES AVE  
LAS VEGAS, NV 89183-6320

1469

94-7074/3212 7128  
2417028780

10-16-2016 Date

Pay to the  
Order of

Grant Morris Dodds \$2,200.00  
Two Thousand And Two hundred dollars and <sup>00</sup>/<sub>100</sub> Dollars

WELLS  
FARGO

Wells Fargo Bank, N.A.  
Nevada  
wellsfargo.com

For

Attorney

Raymond Christian

⑆321270742⑆ 2417028780⑆ 01469

520713000112 10/07/16 ABA >122

PAY TO THE ORDER OF  
BANK OF NEVADA  
122481778  
FOR DEPOSIT ONLY  
GRANT MORRIS DODDS, PLLC  
7031835554 OPERATING

REQUEST 00006989910000000 2200.00  
ROLL ECIA 20161007 000008314526083  
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REQUESTOR U540701  
18774282 10/12/2017 Research 18774621

Summons and Subpoenas Department  
S4001-01F  
Phoenix AZ 85038

# EXHIBIT C

SUBMITTED IN CAMERA

# EXHIBIT D

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

14  
15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 In the Matter of the

Case Number: P-17-092512-T

18 THE CHRISTIAN FAMILY TRUST

Dept.: (PC-1) S

19 Dated October 11, 2016

20 **DECLARATION OF RAYMOND IOKIA**

21 I, Raymond Iokia under penalty of perjury, declare as follows:

- 22 1. I am a Nevada Resident and over the age of eighteen.
- 23 2. This Declaration is made and based on my own personal knowledge, except that
- 24 which is stated on information and belief; and, if called to testify, I could
- 25 competently do so.
- 26 3. I am Nancy Christian's ("Nancy") nephew.
- 27 4. Susan Christian-Payne ("Susan"), Rosemary Keach ("Rosemary"), Raymond
- 28 Christian, Jr., ("Raymond, Jr."), and Monte Reason ("Monte") are my cousins.
5. I lived in the home located at 2848 Bluff Point Dr., Las Vegas, NV 89134
- ("Residence").

- 1 6. I was later informed that the Residence is an asset of the Christian Family Trust  
2 dated October 11, 2016 ("Trust").
- 3 7. At the time I lived in the Residence, I was unaware that it was an asset of the Trust  
4 because Raymond Jr., always referred to the Residence as "his home."
- 5 8. During the time I lived with Raymond Jr. I frequently overheard Susan, Rosemary,  
6 and Raymond yell at Nancy.
- 7 9. I am aware that Nancy was in poor health during the time Susan, Rosemary, and  
8 Raymond Jr. were taking care of her and my uncle Raymond T. Christian, Sr.  
9 ("Raymond Sr.").
- 10 10. I witnessed Susan, Rosemary, and Raymond Jr. kick Nancy, who was still in poor  
11 health, out of the Residence.
- 12 11. Specifically, I remember hearing Raymond Jr. tell his mother that "I wish you were  
13 dead already," and tell her to "just go and die."
- 14 12. I am aware that Susan, Rosemary, and Raymond Jr. isolated Nancy and her husband  
15 from much of their family by preventing personal visits and telephone calls.
- 16 13. At one point after Nancy's husband died, Susan, Rosemary, and Raymond Jr.  
17 attempted to force Nancy to live in an assisted living facility, which Nancy  
18 adamantly refused to do.
- 19 14. After Nancy was kicked out of the Residence and sent to live with Monte Reason,  
20 her health dramatically improved, which I believe is a result of the care and attention  
21 provided to her by Monte, which care and attention was denied her under the care of  
22 Susan, Rosemary, and Raymond Jr.
- 23  
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- 1 15. I am aware, based on conversations I overheard, and statements made to me, that  
2 Susan, Rosemary, and Raymond Jr. did not want to give Nancy any money from the  
3 Trust because they wanted to save it for themselves.  
4
- 5 16. I am also aware that Susan, Rosemary, and Raymond Jr. received substantial  
6 amounts of money from the Trust, and used Trust money to take at least one  
7 extravagant vacation where they rented a beach house, which I understand cost  
8 \$5,000.00 per week.  
9
- 10 17. I have heard rumors that Susan, Rosemary, and/or Raymond Jr. contributed to the  
11 death of Nancy's husband.  
12
- 13 18. Although I have no physical evidence to support these rumors, I believe they may be  
14 true.  
15
- 16 19. Nancy's husband was immediately cremated after his death, and before Nancy was  
17 informed that he had passed.  
18
- 19 20. The location of the remains of Raymond Sr. are unknown to any person other than  
20 Susan, Rosemary, and Raymond, Jr.  
21
- 22 21. I visit Nancy as often as I can; during nearly every visit, she expresses her belief that  
23 Susan, Rosemary, and/or Raymond Jr. purposely fed Raymond Sr. foods which he  
24 was prohibited from eating as a diabetic.  
25
- 26 22. Nancy believes Susan, Rosemary and Raymond Jr. did this to speed up Raymond  
27 Sr.'s passing.  
28
- 29 23. I have always known Nancy to be an honest woman, and a good mother and wife.  
30
- 31 24. She has been a great aunt to me.

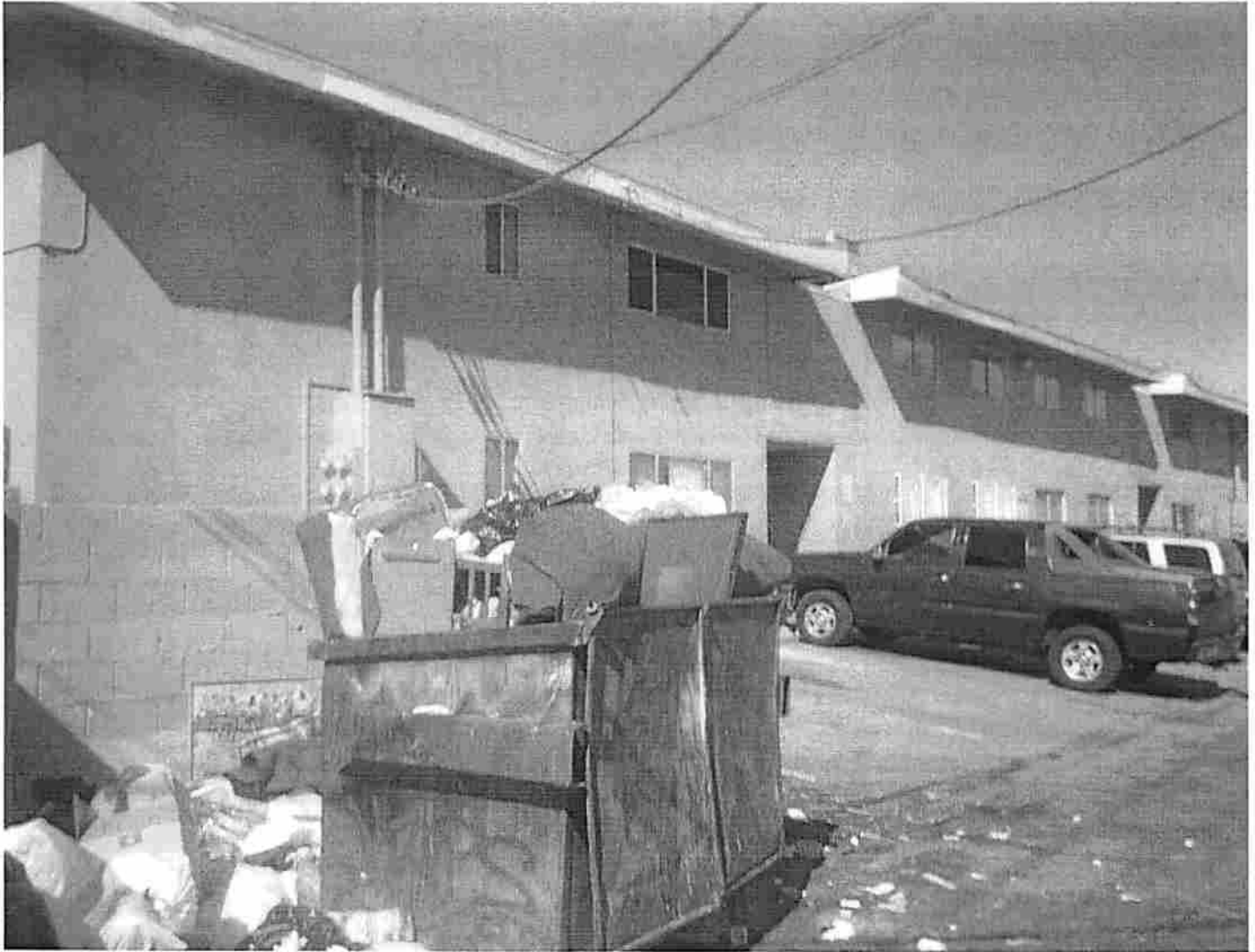
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25. I have no reason to doubt any of statements Nancy has made to me regarding the treatment that she or Raymond Sr. received from Susan, Rosemary and Raymond Jr.

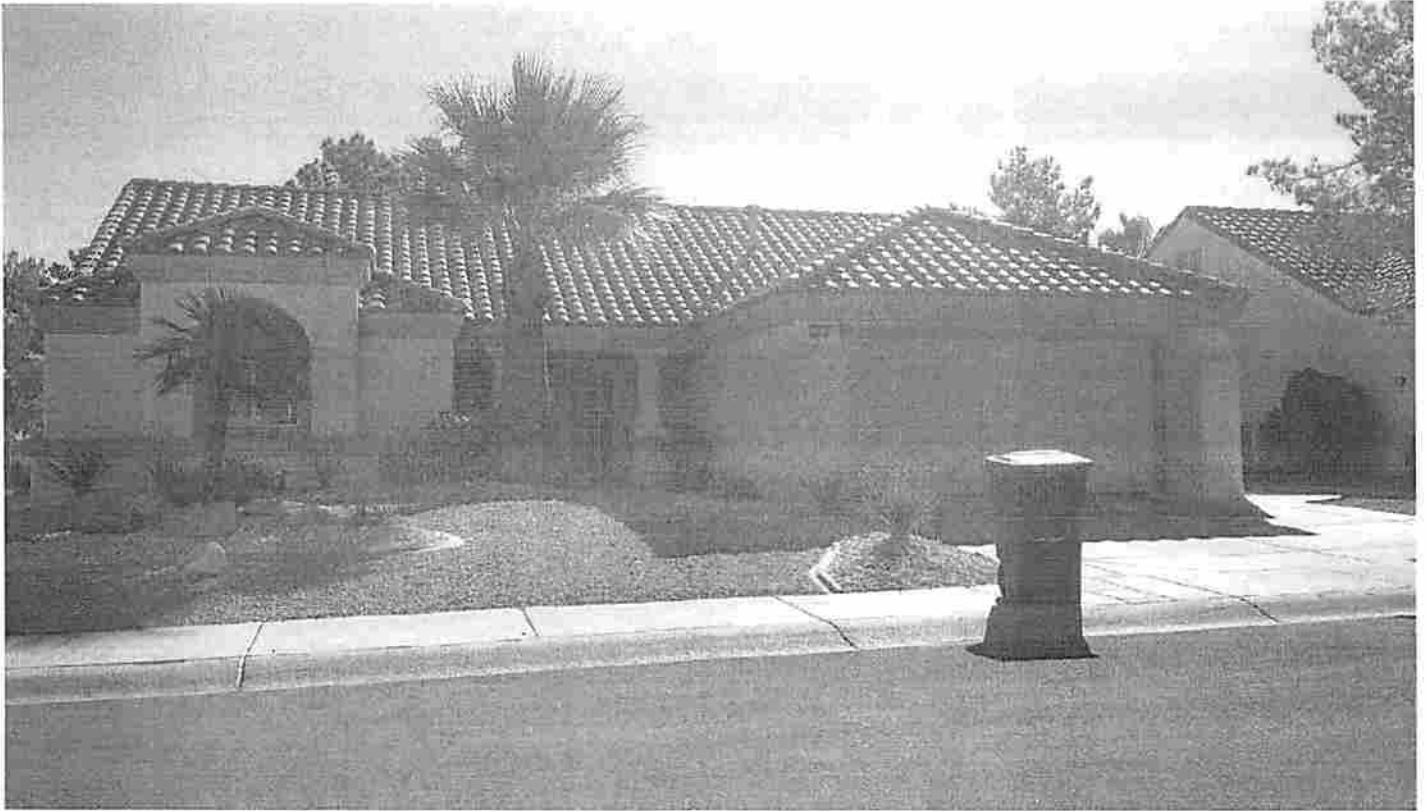
Executed on this \_\_\_\_ day of October 2017

  
Raymond Iokia

# EXHIBIT E



# **EXHIBIT F**



# EXHIBIT G

2

Inst #: 20170612-0001212  
Fees: \$18.00  
N/C Fee: \$0.00  
06/12/2017 11:47:46 AM  
Receipt #: 3109688  
Requestor:  
ANTHONY BARNEY LTD  
Recorded By: DROY Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:**

Anthony L. Barney, Ltd.  
3317 W. Charleston Blvd, Suite B  
Las Vegas, NV 89102

**Mail recorded declaration to:**

Nancy Christian, Trustor of the Christian Family Trust  
dated October 11, 2016  
304 Orland St., #39  
Las Vegas, NV 89107

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MODIFICATION AND DESIGNATION OF TRUSTEE AND  
SUCCESSOR TRUSTEE**

**LET IT BE KNOWN THAT:**

I, Nancy Christian, Trustor of the Christian Family Trust dated October 11, 2016 (hereinafter "Trustor"), do hereby certify, designate, and declare as follows:

1. I am the Trustor of the Christian Family Trust dated October 11, 2016 ("Trust") as stated in Declaration of the Trust Agreement.

2. Pursuant to Section 9.3 of the Trust, the Trustor has 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.

3. I hereby revoke all of my prior designations of Trustees of the Trust that were created, filed, recorded and/or executed prior to this date in whatever form they may exist (e.g. written, oral, by affidavit, by declaration or otherwise).

4. In accordance with Section 9.3 of the Trust, I now hereby designate the following individual(s) to serve as current Trustee and/or Successor Trustee of the Trust in the following order:

- 1) MONTE BRIAN REASON; otherwise.
- 2) WELLS FARGO BANK.

5. MONTE BRIAN REASON, as designated 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 by law.

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 by law.

7. The "Certificate of Incumbency" may be titled something else (such as "Affidavit of Successor Trustee" or "Certificate of Acceptance of Trusteeship") and may be in such form as is appropriate under the circumstances and in the jurisdiction or jurisdictions in which it may be used. It shall reference this Modification and Designation of Trustee and Successor Trustee.

8. Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

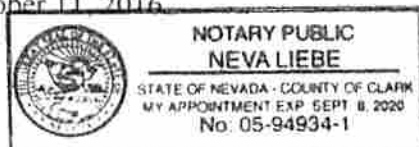
Executed this 6+2+7 day of June, 2017.

Lawry Christian

Nancy Christian, Trustor of the Christian Family Trust dated October 11, 2016

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

This instrument was subscribed to, sworn to, and acknowledged before me on the 12th of June, 2017 by Nancy Christian, Trustor of the Christian Family Trust dated October 11, 2016.



Nava (aka)

NOTARY PUBLIC

# EXHIBIT H

CERTIFICATE OF INDEPENDENT REVIEW

I, Sean M. Tanko, Esq., have reviewed the Modification and Designation of Trustee and Successor Trustee ("Instrument") and have counseled my client, Nancy Christian, on the nature and consequences of the change in Trustee to Monte Brian Reason and, thereafter, Wells Fargo Bank contained in the Instrument. I am disassociated from the interests of Nancy Christian to the extent that I am in a position to advise my client independently, impartially and confidentially as to the consequences and effect of the Instrument. On the basis of this counsel, I conclude that the Instrument that others might deem invalid pursuant to NRS 155.097 are valid because the Instrument is not the product of fraud, duress or undue influence.

DATED this 6<sup>th</sup> day of June, 2017.



Sean M. Tanko, Esq.  
Nevada State Bar No. 8904

# **EXHIBIT I**

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 Holvosh, J.D.  
Attorney at Law  
Licensed in Nevada

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

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Neva Liebe  
Administrative Assistant

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[office@anthonbarney.com](mailto:office@anthonbarney.com)

June 13, 2017

Cary Colt Payne, Esq.  
CARY COLT PAYNE, CHTD.  
700 S. Eighth Street  
Las Vegas, NV 89101

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

VIA US FIRST CLASS MAIL AND EMAIL

Dear Mr. Payne,

We are in receipt of the documents provided by the former trustees of the Trust. My client hereby reserves her right to address and/or object to what appears to be the inappropriate use of Trust funds for the former trustees' personal expenses and vacations.

Please be on notice that our client has exercised her right under Provision 9.3 of the Trust to change the trustee of her trust. Please find enclosed the Modification and Designation of Trustee and Successor Trustee of the Trust ("Modification and Designation"), which makes this change. The recorded Modification and Designation of Trustee and Successor Trustee of the Trust is attached hereto as Attachment 1. Please be on further notice that she has also obtained an independent attorney review of the Modification and Designation to certify that she was not under any undue influence when the document was executed.

Therefore, we are putting your clients on notice that they are to immediately safeguard and retain all trust property, cease any further use of Trust funds for any purposes, and promptly turn over the Trust funds to the newly designated trustee. A Certificate of Incumbency will shortly follow. If such funds are not provided, our client will request that the court take jurisdiction over the trust and the newly designated trustee, and request that your client turn over the trust funds by court order.

Please be further advised that we reserve the right to bring all remedies under law that are available to our client for any malfeasance or bad acts by the former trustees.

This includes all past and present actions, as well as future actions taken by the former trustees after the date of this correspondence.

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: Modification and Designation of Trustee and Successor Trustee

# Attachment 1

2

Inst #: 20170612-0001212  
Fees: \$18.00  
N/C Fee: \$0.00  
06/12/2017 11:47:46 AM  
Receipt #: 3109688  
Requestor:  
ANTHONY BARNEY LTD  
Recorded By: DROY Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:**

Anthony L. Barney, Ltd.  
3317 W. Charleston Blvd, Suite B  
Las Vegas, NV 89102

**Mail recorded declaration to:**

Nancy Christian, Trustor of the Christian Family Trust  
dated October 11, 2016  
304 Orland St., #39  
Las Vegas, NV 89107

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MODIFICATION AND DESIGNATION OF TRUSTEE AND  
SUCCESSOR TRUSTEE**

**LET IT BE KNOWN THAT:**

I, Nancy Christian, Trustor of the Christian Family Trust dated October 11, 2016 (hereinafter "Trustor"), do hereby certify, designate, and declare as follows:

1. I am the Trustor of the Christian Family Trust dated October 11, 2016 ("Trust") as stated in Declaration of the Trust Agreement.
2. Pursuant to Section 9.3 of the Trust, the Trustor has 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.
3. I hereby revoke all of my prior designations of Trustees of the Trust that were created, filed, recorded and/or executed prior to this date in whatever form they may exist (e.g. written, oral, by affidavit, by declaration or otherwise).
4. In accordance with Section 9.3 of the Trust, I now hereby designate the following individual(s) to serve as current Trustee and/or Successor Trustee of the Trust in the following order:
  - 1) MONTE BRIAN REASON; otherwise,
  - 2) WELLS FARGO BANK.
5. MONTE BRIAN REASON, as designated 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

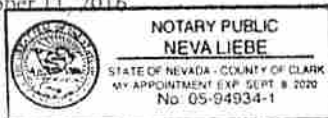


6. In the event that MONTE BRIAN REASON is unable or unwilling to serve as the designated Trustee, then WELLS FARGO BANK, as designated Successor Trustee shall be empowered to act pursuant to the Trust provisions and, if appropriate, filing with the Recorder of each county in which Trust real property 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 by law.

8. Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

*Nancy Christian*  
Nancy Christian, Trustor of the Christian  
Family Trust dated October 11, 2016

This instrument was subscribed to, sworn to, and acknowledged before me on the 12th of June, 2017 by Nancy Christian, Trustor of the Christian Family Trust dated October 11, 2016.



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# EXHIBIT J

## Anthony L. Barney

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**From:** Tiffany Barney <tiffany@anthonybarney.com>  
**Sent:** Thursday, November 9, 2017 4:53 PM  
**To:** 'Zachary Holyoak'  
**Subject:** FW: Christian Family Trust

**From:** Tiffany Barney [mailto:tiffany@anthonybarney.com]  
**Sent:** Wednesday, June 21, 2017 9:42 AM  
**To:** 'Cary Colt Payne, Esq.'  
**Cc:** Anthony Barney; Secretary  
**Subject:** Christian Family Trust

Dear Mr. Payne –

As a follow up to my letter dated June 13, 2017, I wanted to alert you that Monte Reason has hired the Rushforth Firm to represent him as successor trustee of the Christian Family Trust. I was recently contacted by Joey Powell who indicated that they will be providing me with a Certificate of Incumbency shortly.

Again, please have your client's safeguard the trust funds and assets until such event occurs. I will provide you with the Certificate of Incumbency as soon as it is received.

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](mailto:tiffany@anthonybarney.com)

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

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# EXHIBIT K