

In the Supreme Court of the State of Nevada

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

Appellants, )

-vs- )

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

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

-vs-)

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

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

Electronically Filed  
Jan 10 2019 08:07 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 10**

*Filed by:*

*/s/ Cary Colt Payne, Esq.*

---

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

| <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> |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <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 |

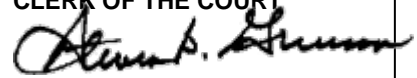
| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                    | <i><b>NUMBERED</b></i> |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <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> |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <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> |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b><i>APPENDIX VOLUME 14a:</i></b> |                                                                                                                                                                                                                                                                                                                          |                        |
| 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      |
| <b><i>APPENDIX VOLUME 14b:</i></b> |                                                                                                                                                                                                                                                                                                                          |                        |
| 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      |
| <b><i>APPENDIX VOLUME 15:</i></b>  |                                                                                                                                                                                                                                                                                                                          |                        |
| 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> |
|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <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      |





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

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In the Matter of the

THE CHRISTIAN FAMILY TRUST

Dated October 11, 2016

Case Number: P-17-092512-T

Dept.: (PC-1) 26

**REPLY TO OPPOSITION TO PETITION TO CONFIRM SUCCESSOR TRUSTEE; AND  
OPPOSITION TO COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS**

COMES NOW, Jacqueline Utkin ("Utkin"), Successor Trustee to the Christian Family Trust, dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby files this Reply to Opposition to Petition to Confirm Successor Trustee; and Opposition to Counter-Petition for Reinstatement of Co-Petitioners ("Reply"). This Reply is made based on the following Memorandum of Points and Authorities, the exhibits thereto, the papers and pleadings already on file herein and any oral argument the Court may permit at a hearing of this matter.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Fundamentally, this is a Court of law and what has been brought before the court is a trust, a document grounded in contractual law. It is a basic tenant of trust law that a court cannot consider parol evidence to alter the clear terms of a trust. The Nevada Supreme Court reiterated this point again within the last year, finding after *de novo* review, that a district court erred in considering parol evidence to determine the parties' intent behind a trust when the language of the trust was unambiguous. Klabacka v. Nelson, 394 P.3d 940, 946 (Nev. 2017). (“Additionally, where a written contract is clear and unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning....Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, since all prior negotiations and agreements are deemed to have been merged therein.”) (Internal citations omitted).

The Contesting Beneficiaries’ opposition and counter-petition (“Opposition”) contains not one iota of legal support for their position, while alleging facts that have no bearing on the clear language of the trust instrument. The unambiguous terms of the Trust have been followed by Trustee Utkin and her predecessors, and the result is Trustee Utkin as the current trustee of the CFT. The remaining allegations in the Opposition are at best inadmissible and at worst frivolous. Trustee Utkin served Contesting Beneficiaries with a Rule 11 letter in hopes that they would withdraw their frivolous Opposition and avoid a waste of CFT resources, but they have refused.<sup>1</sup> As such, Trustee Utkin renews her request to have this court confirm her as successor trustee, and to deny Contesting Beneficiaries’ counter-motion for appointment.

///

///

///

---

<sup>1</sup> Trustee Utkin does not herein seek Rule 11 sanctions as she understands the same must be made by separate motion. Trustee Utkin mentions it herein as she delayed her Reply to allow Contesting Beneficiaries as much time as was possible to withdraw the Opposition under the safe harbor, but they have filed to do so.

## II. ARGUMENT

### A. **CONTESTING BENEFICIARIES FAIL TO MAKE EVEN A PRIMA FACIE ARGUMENT FOR THEIR APPOINTMENT.**

Contesting Beneficiaries' Opposition does not identify a single provision of the CFT which is ambiguous, enjoins of the appointment of Trustee Utkin, or requires their own reappointment. Instead, Contesting Beneficiaries' make the boldly unsupported position that Monte Reason's original appointment was somehow invalid:

- " While only 'nominated', given the court involvement at the time, Monte was never confirmed as trustee by the court" Pg. 3, Ln 2-3.
- "The problem is that Monte was never confirmed to be the trustee, therefore never having the authority to bind the trust, and his "nomination" of Ms. Utkin is worthless." Pg. 3, Ln. 5-7
- "He was never confirmed as trustee by the court, and therefore had no court approved authority to even act. If he had no authority to act, by virtue of the court never confirming him as trustee, his nomination of Jacqueline Utkin is equally improper, and her petition should be denied." Pg. 3, Ln. 24-28
- "It has been suggested that as Monte Reason was never confirmed as trustee, (the court initially had a problem with his ability to serve), he had no authority to act, and therefore could not legally nominate Ms. Utkin" Pg. 8, Ln. 13-16

To be clear, Monte Reason became the trustee on June 21, 2017. (*see*, Mot. Pg. 3, Ln. 3-22), while this action was not initiated by Contesting Beneficiaries until July 31, 2017, *i.e.* he was a trustee before this action was filed. There is no prerequisite under Nevada law for a Court to confirm a change in trustee for a trust or confirm appointment of a successor trustee, nor do the Contesting Beneficiaries cite any authority for this position. In fact, a trust can go through multiple changes to trustees without ever involving a court, indeed that is often the main point of a trust.

Even if a Court takes jurisdiction over a trust, there is no legal bar to a trustee exercising his power to appoint a successor trustee absent some injunctive relief. Once again, Contesting Beneficiaries cite no authority for the proposition that Monte Reason's powers as trustee were enjoined merely by them petitioning this Court. Moreover, a cursory review of the record for this

1 action will show that no injunction has been asked for or granted. The position has no basis in law  
2 or fact.

3 On the other hand, Trustee Utkin provides a clear line of succession leading to her  
4 appointment pursuant to the unambiguous terms of the trust, while the Contesting Beneficiaries  
5 cannot point to a single term of the CFE or applicable law which prevents Trustee Utkin from  
6 being confirmed as successor trustee. The choice for the Court is clear, Trustee Utkin must be  
7 confirmed as the successor trustee.

8 **B. THERE IS NO CONFLICT OF INTEREST PREVENING APPOINTMENT**

9 Contesting Beneficiaries' assertion that Trustee Utkin's "personal opinions" conflict with  
10 her trustee duties is speculative and is not disqualifying in the least. A trustee is not required to like  
11 every beneficiary, they only need to abide by the terms of the trust and their fiduciary duties.  
12 There is no requirement in the CFE for a trustee to be happy with every beneficiary, so once again  
13 Contesting Beneficiaries are reaching outside for parol evidence. Furthermore, they cite no legal  
14 authority which would cause a disqualification of Trustee Utkin as a trustee; the argument is a  
15 whole cloth fabrication built upon speculation of what "could happen" not an actual event  
16 demonstrating a violation of a fiduciary duty. A beneficiary does not get to rewrite a trust merely  
17 because they have a personal dispute with the trustee. Trustee Utkin is ready, willing and able to  
18 perform her duties as trustee and will not overwrite the terms of the trust for her will.

19 The claim that Trustee Utkin is attempting to extort an agreement is absurd. She is entitled  
20 to the EIN as the trustee and needs it to cash the \$5,000.00 check sent by Contesting Beneficiaries  
21 to "Trustee Utkin" which is supposed to be used to preserve trust assets. She will not mix the trust  
22 funds with her personal funds to avoid an intermingling allegation, especially when the matter is a  
23 contentious as this one. Such precautions should be lauded by Contesting Beneficiaries, but  
24 instead they claim the request for an EIN is an extortion and refuse to turn it over.

25 Contesting Beneficiaries have also requested that she fight the Barney Firm's fees, but have  
26 not identified a factual or legal predicate for doing so. Trustor Nancy Christian incurred a  
27 substantial amount of debt *fighting Contesting Beneficiaries' attempts to invalidate her*  
28

1 *modification of the CFT.* The CFT is not an asset protection trust, and the Barney Firm is fully  
2 within its rights to pursue creditor claims against Nancy Christian's assets and those of the CFT.  
3 Nancy Christian's contractual debt to the Barney firm is not subject to a *Brunzell* factor analysis,  
4 which significantly limits the grounds for objections. The debt is only subject to those defenses  
5 one would assert to defeat contractual enforcement. Thus, Contesting Beneficiaries are asking  
6 Trustee Utkin to pick a losing fight while simultaneously arguing the Trust is incurring too much in  
7 attorney's fees.

8 There is no illicit agreement to avoid contesting the Barney Firm's fees, and in fact the  
9 communications cited by Contesting Beneficiaries *were disclosed by the Barney Firm as part of its*  
10 *petition for fees.* Trustee Utkin has reviewed the billings, and consulted with counsel about the  
11 same. The conclusion is that it is a valid debt that can reach assets of the CFT and that fighting  
12 payment would result in significant legal fees and a reduced distribution to all CFT beneficiaries.  
13 The rationale has legal and factual support, and also keeps the focus on maximizing CFT assets  
14 available for distribution. This should be any trustee's goal, not grounds to malign Trustee Utkin.

15 Moreover, Trustee Utkin has never even hinted that she was conditioning a fight against the  
16 Barney Firm on Contesting Beneficiaries' acquiescing to her appointment as trustee. She is trustee  
17 based on the unambiguous terms of the CFT and after proper appointment under its terms, there is  
18 no need to negotiate for that. The point in asking for Contesting Beneficiaries' support was to keep  
19 legal costs down by avoiding needless filings and battles before the court. Contesting Beneficiaries  
20 refused, which has now generated this motion-work.

21 **C. THERE IS NOTHING IMPROPER ABOUT TRUSTEE UTKIN'S COUNSEL**  
22 **HAVING PREVIOUSLY WORKED WITH THE BARNEY FIRM ON A SEPARATE**  
23 **MATTER.**

24 Trustee Utkin can only guess as to what point the Contesting Beneficiaries are attempting to  
25 make about her counsel since they cite no fact or legal authority which acts to disqualify them.  
26 Trustee Utkin's counsel has previously co-counseled, *and also litigated against*, the Barney Firm  
27 in different matters; Trustee Utkin's counsel has also litigated against Contesting Beneficiaries'  
28 counsel in the past. There is nothing disqualifying about these facts.

Monte Reason elected to appoint Trustee Utkin as the successor trustee on January 4, 2018 (See, Mtn. Pg. 4, Ln. 17-24, *see also* Exhibit 6). Since Trustee Utkin is not allowed to represent the trustee pro se, she needed counsel. *See, Salman v. Newell*, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (1994) (“no rule or statute permits a [non-lawyer] to represent any other person, a company, a trust or any other entity” in either the district court or the Nevada Supreme Court.) (emphasis added). Trustee Utkin thus retained the undersigned, which she had every right to do. There is nothing improper about that representation, and Contesting Beneficiaries do not articulate any legal rationale for disqualification.

Next, Contesting Beneficiaries’ suggestion of a “litigation train” is absurd and attempts to cast burden on Nancy Christian for protecting her rights under the CFT. The court will recall the petition challenging her amendment, which was based on inadmissible extrinsic evidence, was made by Contesting Beneficiaries. It was the Contesting Beneficiaries’ refusal to turn over trust funds or properly account for them that generated motions to compel. It was Contesting Beneficiaries’ repeated challenges to the authority of the prior trustee which generated additional fees. If there is a “litigation train” then Contesting Beneficiaries are its conductor taking everyone else on an unwanted ride through the courts.

#### **D. THERE IS NOTHING FURTHER DISQUALIFYING TRUSTEE UTKIN**

Contesting Beneficiaries can point to no violation of a fiduciary duty by Trustee Utkin, instead engaging in circular logic and a Gish gallop which they hope will confuse the court. For example, Contesting Beneficiaries state “[i]t has been suggested that as Monte Reason was never confirmed as trustee, (the court initially had a problem with his ability to serve),” but the only parties suggesting this were themselves, not the court. In fact, they challenged the former trustee’s position without any support under the law or the trust itself, *i.e.* the Contesting Beneficiaries are citing themselves as an authority. Going further, there has no requirement to obtain court approval of Monte Reason as the prior trustee, nor any “backdoor agreement” to pay the Barney Firm. Naked allegations insinuate misconduct are improper, unsupported, and are tantamount to conspiracy theories.



1 Finally, demands that Trustee Utkin submit to a physical are absurd and once again  
2 unsupported by any fact based in reality. Being older does not disqualify someone from being a  
3 trustee, and there is no law or equitable right which allows them to require a physical as a pre-  
4 condition to becoming trustee. If Contesting Beneficiaries are so concerned, they can take Trustee  
5 Utkin's deposition, which they are entitled to do as part of discovery. This most recent salvo is as  
6 frivolous and vexatious as the rest of their arguments in this matter. As such, it must be denied.

7 **III. CONCLUSION**

8 Utkin asks this court for an Order confirming that she is the sole trustee of the CFT.

9 DATED this 12<sup>th</sup> day of March, 2018.

10 JERIMY KIRSCHNER & ASSOCIATES, PLLC

11 /s/ Jerimiy L. Kirschner, Esq.

12 JERIMY L. KIRSCHNER, ESQ.

13 Nevada Bar No. 12012

14 5550 Painted Mirage Rd., Suite 320

15 Las Vegas, NV 89149

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

18 **VERIFICATION OF JACQUELINE UTKIN FOR PETITION TO CONFIRM**

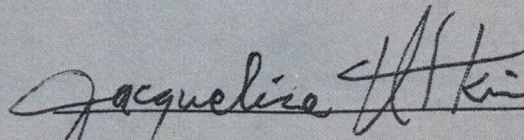
19 **SUCCESSOR TRUSTEE**

20 I, JACQUELINE UTKIN, declare that:

- 21 1. I am submitting a" REPLY TO OPPOSITION TO PETITION TO CONFIRM  
22 SUCCESSOR TRUSTEE; AND OPPOSITION TO COUNTER-PETITION FOR  
REINSTATEMENT OF CO-PETITIONERS"
- 23 2. I know the contents of the Reply, which I know to be true of my own knowledge, except for  
24 those matters stated on information and belief.

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

27 3/12/2018  
28 Date

  
Jacqueline Utkin



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Jeremy Kirschner & Associates, PLLC, and on March 12, 2018, I caused a copy of the foregoing REPLY TO OPPOSITION TO PETITION TO CONFIRM SUCCESSOR TRUSTEE; AND OPPOSITION TO COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS to be served through the electronic court filing system or via first class, US mail, postage prepaid upon the following persons/entities:

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

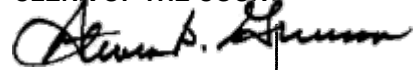
*Attorney for Susan Christian-Payne,  
Rosemary Keach and Raymond Christian, Jr.*

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

/s/ Sarah Mintz

An Employee of JERIMY KIRSCHNER & ASSOCIATES, PLLC





**RSPN**

JOSEPH J. POWELL  
State Bar No. 8875  
RUSHFORTH LEE & KIEFER LLP  
1707 Village Center Circle, Suite 150  
Las Vegas, NV 89134-0597  
Telephone: (702) 255-4552  
Fax: (702) 255-4677  
Email: probate@rlklegal.com  
*Attorneys for Monte B. Reason*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of

THE CHRISTIAN FAMILY  
TRUST u.a.d. 10/11/16

Case No. P- 17-092512-T  
Department S/Judge Ochoa  
(Probate) Clark District  
Family Domestic

Hearing date: March 15, 2018  
Hearing time: 2 p.m.

**RESPONSE TO OPPOSITION TO MONTE REASON'S APPLICATION FOR  
REIMBURSEMENT OF ADMINISTRATIVE EXPENSES**

Monte B. Reason ("Monte"), by and through his counsel of record, Joseph J. Powell, Esq. of Rushforth Lee & Kiefer LLP, hereby submits his Response to the Opposition to his Application for reimbursement of the legal fees and costs he incurred while serving as trustee of the "Christian Family Trust", dated October 11, 2016 (the "Trust"), which is set for hearing on March 15, 2018. On March 9, 2018, Susan Christian-Payne, Rosemary Keach, and Raymond Christian (collectively referred to herein as the "Objectors"), by and through their counsel, Cary Colt Payne, Esq., of Cary Colt Payne, Chtd., filed their "Combined Opposition to (1) Barney Firm Petition for Fees, Etc. (2) Monte Reason's Application for Reimbursement" ("Opposition"). Monte responds to the Opposition as follows:

**I. BLATANTLY FALSE STATEMENT AND INTENTIONAL MISREPRESENTATIONS**

Unfortunately, the Objectors, through their attorney, continue to make knowingly false statements to this Court in a clear attempt to deceive this Court and manipulate facts that disrupt their contrived, manipulated narrative. It is necessary to analyze all of the misstatements from this outset, as the Opposition is replete with them.

The following is a list of the false and intentionally deceptive statements made by the Objectors, which are made with a clear disregard for the ethical duty of candor required to be submitted to this Court:

1. Nancy Christian is *merely* a “deceased income beneficiary”. **FALSE.** Nancy Christian was a co-settlor of the Christian Family Trust (the “Trust”). She co-created the Trust with her late husband, Raymond Christian, Sr. The Trust was just as much her trust as it was her husband’s. The Trust was to be administered for her benefit, and her benefit only, during her lifetime, as the surviving co-settlor.
2. “When Nancy died her rights in the trust were divested”. **FALSE.** A settlor, and then their Estate after death, always has rights and involvement in a trust, through their representative, that they participated in creating. Again, Nancy co-created the Trust. It was *her* trust. Nancy’s rights and remedies regarding *her* trust and the actions of the Objectors do not suddenly disappear because of her death. The actions taken by the Objectors which deprived her of the use and enjoyment of *her* trust do not suddenly get swept under the rug because of Nancy’s passing, despite how desperately the Objectors wish it were true.
3. “Monte Reason was not confirmed by the [Court] as trustee of the trust. Because someone was nominated, it does not, with a pending court matter, make them a bona fide fiduciary. If so, anyone could simply

claim they are a trustee”. **FALSE REPRESENTATION.** Monte Reason served as trustee of the Trust based on a nomination for him to serve which was made by Nancy Christian, a co-creator of the Trust, who under the *express* terms of the Trust had the power and authority to choose any trustee that she wished to serve<sup>1</sup>. The nomination and acceptance occurred well before there was any pending court proceeding. Monte was able to serve and did serve as trustee without any requirement that this Court, or any court for that matter, first approve his ability to serve. It is a blatant lie to this Court, and a complete violation of the duty of candor to this Court under the Nevada Rules of Professional Conduct, pursuant to Rule 3.3<sup>2</sup>, to state that a trustee must be confirmed by a court order before they can serve as a trustee. Further, if this blatantly false “requirement” was necessary, then apparently the Objectors were never able to serve as trustees of the Trust, a trust co-created by Nancy Christian, either because no court order was ever signed which approved them to serve as trustee.

4. Monte never undertook an affirmative act to serve as trustee. **FALSE.** Monte signed a Certificate of Incumbency on June 21, 2017, in which he affirmatively accepted the nomination of Nancy Christian to serve as trustee of the Trust.

5. “The court had issues with Monte’s ability to serve in its Decision and Order, filed 10/31/17, and did not confirm his as trustee”. **FALSE.** The

---

<sup>1</sup> "After the Death of the first Trustor to die, the surviving Trustor shall have the power to change the Trustee or Successor Trustee of the Trust by an instrument in writing signed by the surviving Trustor and delivered to the Trustee." See Article 9.3 of the Trust.

<sup>2</sup> Rule 3.3. Candor Toward the Tribunal.  
(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Objectors and their counsel know that the Court never voiced any “issues” about Monte in its Decision and Order. Rather, the Court simply included the claims of the Objectors to acknowledge that the Objectors made assertions about Monte being the Trustee. In fact, at the hearing, the Court specifically acknowledged that Monte was the current serving trustee.

6. “Nancy did not contribute a single penny or separate property to the trust corpus, . . .”. **FALSE.** The real property located at 1060 Dancing Vines Avenue, Las Vegas, Nevada 89123, with an APN of 177-27-611-254, was purchased by Raymond Christian *and* Nancy Christian, “as husband and wife as joint tenants” on or about June 11, 2009. A copy of the “Grant, Bargain and Sale Deed” is attached hereto as **Exhibit 1**. The Dancing Vines Avenue Property was held in joint tenancy until approximately October 19, 2016, a time frame of over 7 years and 3 months, at which point the Property was then *jointly* transferred to the Trust by settlors of the Trust, Nancy and Raymond. Knowing this stone cold fact, the Objectors, and their counsel, still knowingly made this blatant false statement to this Court in violation of Rule 3.3 of the Nevada Professional Rules of Conduct.

7. “When Nancy died, her interest[s] in the trust were divested”. **FALSE.** Nancy *co-created* the Trust. The Trust was *her* trust and remains her trust. Her requirements and the obligations contained within her trust remain in full force and effect, despite her passing. Further, mistreatment of Nancy and her rights by the Objectors acts do not miraculously vanish and become irrelevant because of her death. Lawsuits and claims simply do not become extinguished because of a plaintiff’s death. The same applies for a settlor and a beneficiary. To use

the absurd, unfounded logic of the Objectors if Nancy had a pending lawsuit against a defendant for actions in violation of her rights, would the lawsuit suddenly disappear and be unable to be further prosecuted by her representative? Of course not! Just like the Objectors' actions remain subject to scrutiny after Nancy's passing do as well.

8. "When Nancy passed, so did her power to appoint or select a different trustee." "Upon Nancy's death, Monte had no legal right to select a new trustee". **FALSE**. These two statements, taken together, are intentional misrepresentations of the powers found under the Trust. First, Nancy's right to determine the successor trustees and the plan of succession remain in full force even after her passing. Therefore, to state that her power to decide how succession of trustees would work after her passing is a blatantly false, deceptive statement. Second, the Trust expressly provides that Monte had the power to choose his successor once Wells Fargo chose to decline to serve. Section 8.1 of the Trust expressly provides, in pertinent part, as follows:

*8.1 Successor Trustee. In the event of the death or incapacity of any current Trustee, the remaining Trustees shall act as Co-Trustees or sole Trustee, as the case may be. In determining the incapacity of any Trustee serving hereunder, the guidelines set forth in Section 3.1 may be followed. If no Successor Trustee is designated to act in the event of the death, incapacity or resignation of the Trustee then acting, **or no Successor Trustee accepts the office, the Trustee then acting may appoint a Successor Trustee.** [Emphasis Added]*

## II. FURTHER ANALYSIS OF BLATANTLY FALSE STATEMENTS AND INTENTIONAL MISREPRESENTATIONS MADE TO THE COURT

A trustee serves upon nomination and acceptance. In typical fashion the Objectors, via their counsel, have falsely claimed to this Court that a trustee cannot legally serve in the office of trustee until they have been confirmed in a court proceeding. Noticeably absent from this claim is even a shred of support for this laughably false claim, that they know is being made to deceive.

1 As this Court well knows, pursuant to Nevada law, an inter vivos trust does not  
2 require any court approval to be created, nor during any part of its administration.  
3 Further, any changes to a trust, including the removal and replacement of a trustee, are  
4 not statutorily required to be confirmed by a court, at any time. Additionally, a trustee  
5 is not required to be confirmed by a court proceeding prior to their service as trustee.  
6 Succinctly put, a Nevada court has no jurisdiction over a trust until jurisdiction is first  
7 assumed.

8 For the Objectors to claim that Monte was not able to accept to the nomination  
9 of Nancy Christian to serve as trustee of the Trust until after he was confirmed by a  
10 Nevada court is a complete lie and an intentionally false statement to this Court, being  
11 made with an intent to deceive, in violation of Rule 3.3 of the Nevada Professional Rules  
12 of Conduct. To reiterate, the Objectors provide no support whatsoever for this blatantly  
13 false proposition that Monte, or any other trustee, for that matter, cannot assume the  
14 position of trustee until they have first been confirmed by a court action. If this was a  
15 requirement, certainly the Objectors could cite to a Nevada statute to support this. They  
16 do not, and they cannot, because there is no such legal requirement found under Nevada  
17 law. However, instead of being honest and upfront with this Court, they continue their  
18 pattern of making deceitful statements that they know cannot be legally supported.  
19 Accordingly, this type of conduct must be sanctioned by this Court.

20 As previously stated, if the lie asserted by the Objectors was truthful, then the  
21 logical question is "Why was there no legal proceeding to confirm the Objectors prior to  
22 their becoming trustees?". If such was the requirement prior to the Objectors becoming  
23 trustees of the Trust, then by an extension of their logic, they too could not have legally  
24 served as trustees until there was a court order which allowed them to serve.  
25 Clearly, the Objectors did not obtain such court authority so by their same rationale,  
26 they were never legally the trustees of the Trust.  
27  
28

1 Unlike the Objectors, Monte can conclusively establish for this Court that no  
2 Nevada court has jurisdiction over a trust until a court accepts jurisdiction over a trust  
3 and that decision is not made until a party seeks to have a court accept jurisdiction over  
4 a trust that they have some recognizable interest/standing in.

5 NRS 164.010, which is partially titled "Petition for Assumption of Jurisdiction"  
6 provides, in pertinent part, as follows:

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

13 *2. If the court grants the petition, the court:*

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

15 [Emphasis Added]

16 As stated, a inter vivos trust is not required to have any part or portion of it  
17 monitored by a Nevada court, be it the creation, administration, or distribution.  
18 Jurisdiction over a trust is *only* created by the issuance of an express order made by a  
19 Nevada court. Therefore, to reiterate, for the Objectors to falsely state that a trustee,  
20 including Monte, is only able to serve as a trustee after a court has confirmed such is a  
21 willful attempt to deceive this Court and a flagrant violation of Rule 3.3 of the Nevada  
22 Rules of Professional Conduct.

23 Monte affirmatively accepted the nomination of his mother and served as  
24 trustee

25 Monte was nominated by a co-settlor/creator of the Trust to serve as trustee of  
26 the Trust. This was done in the "Modification and Designation of Trustee and Successor  
27 Trustee" which was executed by Nancy Christian on June 12, 2017 ("Modification and  
28 Designation"). Prior to execution by Nancy Christian, the Modification and Designation  
was independently review by Attorney Sean Tanko and a certificate of independent  
review was issued by Attorney Tanko on June 6, 2017. Both of those documents have  
previously been filed multiple times in this matter.

Acting on the nomination for him to serve as trustee of the Trust made under the Modification and Designation, Monte accepted such nomination and confirmed such acceptance in writing, as required under the Modification and Designation, by executing a Certificate of Incumbency on June 21, 2017 ("Certificate of Incumbency"). The Certificate of Incumbency was promptly recorded with the Clark County Recorder and the Objector's attorney was sent a copy on June 27, 2017 of Certificate of Incumbency by Attorney Powell notifying him of the acceptance of the nomination by Monte. Therefore, not only did Monte affirmatively accept the nomination of the co-settlor, who expressly had the right to do so under the explicit terms of the Trust, the Objectors', and their counsel, were also promptly notified that Monte had become the trustee. The fact that the Objectors did not want to be removed is irrelevant. It was not their choice to make. It was not their trust. Further, as they have repeatedly tried to misrepresent, it was not *only* their father's trust. It was a *co-created* trust. Additionally, this Court should sanction the Objectors, along with their counsel, each and every time that they falsely claim that Monte was expressly prohibited, or more aptly that Nancy Christian was prohibited from nominating Monte, to serve as trustee of the Trust. The express terms of the Trust contain no such limitation, nor any insinuation whatsoever.

As this Court well knows, Nevada law follows the "four corners of the document" principle, meaning that the Court must apply the terms of the Trust as the words are written. See *Jones v. First Nat. Bank*, 72 Nev. 121, 123 (1956)<sup>3</sup>

---

<sup>3</sup> "A court may not vary the terms of a will to conform to the court's views at to the trust testamentary intent. The question before us is not what the testatrix actually intended or what she meant to write. Rather it is confined to a determination of the meaning of the words used by her. As stated by Wigam, (*Extrinsic Evidence in Aid of The Determination of Wills*, Second American Edition, pages 53 and 54) any evidence is admissible which, in its nature and effect, simply explains what the testator has written; but no evidence can be admissible which, in its nature or effect, is applicable to the purpose of showing merely what he intended to have written. In other words, the question in expounding a will is not-What the testator meant? As distinguished from-What his words express? but simply-What is the meaning of his words? . . . ." *Jones v. First Nat. Bank*, 72 Nev. 121, 123 (1956)



1 and *Frei ex rel. Litem v. Goodsell*, 129 Nev. 403, 409 (2013)<sup>4</sup>.

2 Not only was Monte able to serve as trustee, but he served as trustee. And, most  
3 importantly, during the time that he served as trustee, he had the right to hire counsel  
4 to represent him, which he did when he hired Rushforth Lee & Kiefer LLP ("RLK").  
5 Further, Monte had the right to pay RLK with funds from the Trust, and would have  
6 already done so during his tenure at trustee, but for the willful and intentional  
7 conversion of the Trust's funds by the Objectors which prevented him from having  
8 access to the Trust's funds. Hence, despite the Objectors' claim, RLK does not need, as  
9 it is not required, to make any showing under *Brunzell*, as RLK is not applying, and does  
10 not need to apply, for the approval of its fees by this Court. The Application is made by  
11 Monte for access, via the current trustee, Ms. Utkin, to have RLK paid from the Trust's  
12 funds which this Court has locked up and for which Monte had not access to during his  
13 tenure as trustee because of the Objectors' wrongful actions.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 \_\_\_\_\_

25 <sup>4</sup>

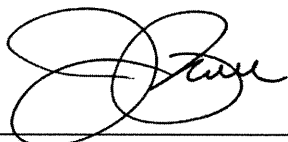
26 "Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written  
instrument, " 'since all prior negotiations and agreements are deemed to have been merged therein.'" *Frei ex*  
*rel. Litem v. Goodsell*, 129 Nev. 403, 409 (2013)

27 ("If the language of the trust instrument is plain and capable of legal construction, that language determines  
28 the force and effect of the instrument ... [and] extrinsic evidence will not be admitted to alter the plain language  
of the instrument.") *Id.*

#### IV. CONCLUSION/PRAYER

Monte Reason hereby requests that this Application be granted and approved in its entirety. Further, all additional legal fees and costs incurred in having to file this Response should also be paid from the Trust by Ms. Utkin, the current trustee of the Trust.

Respectfully submitted by:



MAR 13 2018

Joseph J. Powell  
State Bar. No. 8875  
1707 Village Center Circle, Suite 150  
Las Vegas, NV 89134-0597

Date

*Attorneys for Monte B. Reason*

# **EXHIBIT 1**

# **EXHIBIT 1**



20090611-0004162

Fee: \$16.00 RPTT: \$566.10

N/C Fee: \$0.00

06/11/2009 16:20:35

T20090205216

Requestor:

OLD REPUBLIC TITLE COMPANY O

Debbie Conway JAU

Clark County Recorder Pgs: 4

R.P.T.T.: \$566.10  
APN: 177-27-611-254

Title Order No. 5115012770  
Escrow No. 5115012770-JC

**WHEN RECORDED MAIL TO:**

Raymond Christian and Nancy I. Christian  
1060 Dancing Vines Avenue  
Las Vegas, NV 89123

**MAIL TAX STATEMENTS TO:**

Grantee at address above

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT, BARGAIN AND SALE DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HarborView Mortgage Loan Trust 2004-6

hereby GRANT(S), BARGAIN(S), SELL(S) AND CONVEY(S) to

Raymond Christian and Nancy I. Christian, husband and wife as  
, joint tenants

that property in Clark County, Nevada, described as:

\*\*\* See "Exhibit A" attached hereto and made a part hereof \*\*\*

Dated May 26, 2009

HarborView Mortgage Loan Trust 2004-6, by Greenpoint Mortgage Funding, as  
its attorney-in-fact

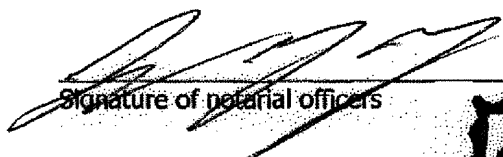
By:

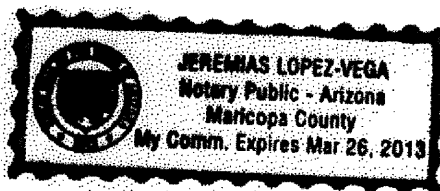
Title:

*Becky Donnelly*  
Assistant Secretary

State of Arizona  
County of Maricopa

This instrument was acknowledged before me on 06.02.09  
by Bethy Manally  
as Asst Sec of Greenpoint Mtg Funding

  
Signature of notarial officers



Jeremias Lopez-Vega  
Exp. Mar. 26, 2013

ASSESSOR'S COPY

**EXHIBIT A**

The land referred to is situated in the County of Clark, City of Las Vegas, State of Nevada, and is described as follows:

**Parcel I:**

Lot Three Hundred Fifteen (315) in Block One (1) of Silverado South Unit 2, as shown by map thereof on file in Book 84 of Plats, Page 64, in the office of the County Recorder of Clark County, Nevada and amended by Certificate of Amendment recorded June 22, 1998 in Book 980622 as Document No. 01333 and by Certificate of Amendment recorded August 5, 1998 in Book 980805 as Document No. 00558, both of Official Records.

**Parcel II:**

An easement for ingress and egress over the private streets as delineated on the plat of the final map of Silverado South Unit 2.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)  
177-27-611-254

2. Type of Property
- |                                          |                                                         |
|------------------------------------------|---------------------------------------------------------|
| a) <input type="checkbox"/> Vacant Land  | b) <input checked="" type="checkbox"/> Single Fam. Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex                    |
| e) <input type="checkbox"/> Apt. Bldg    | f) <input type="checkbox"/> Comm'l/Ind'l                |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home                 |
| <input type="checkbox"/> Other _____     |                                                         |

FOR RECORDER'S OPTIONAL USE ONLY  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. Total Value/Sales Price of Property \$111,000.00  
Deed in Lieu of Foreclosure Only (value of property) ( )  
Transfer Tax Value \$111,000.00  
Real Property Transfer Tax Due \$566.10

**4. If Exemption Claimed:**

- a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: \_\_\_\_\_%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature \_\_\_\_\_ Capacity: Grantor

Signature \_\_\_\_\_ Capacity: Grantee

**SELLER (GRANTOR) INFORMATION  
(REQUIRED)**

HarborView Mortgage Loan Trust 2004-6  
2300 Brookstone Centre Parkway  
Columbus, GA 31904

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Raymond Christian and Nancy I. Christian  
1060 Dancing Vines Avenue  
Las Vegas, NV 89123

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Old Republic Title Company of Nevada  
8861 W. Sahara Ave. Suite 290  
Las Vegas, NV 89117

Escrow #: 5115012770-JC

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



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

10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the

Case Number: P-17-092512-T

13 THE CHRISTIAN FAMILY TRUST

Dept.: S

14 Dated October 11, 2016

15  
16  
17 **REPLY TO PETITIONER'S COMBINED OPPOSITION TO 1) BARNEY FIRM**  
18 **PETITION FOR FEES, ETC., (2) MONTE REASON'S APPLICATION FOR**  
19 **REIMBURSEMENT**

20 Anthony L. Barney, Ltd., creditor of The Christian Family Trust dated October 11, 2016  
21 ("Trust"), who were the attorneys for the late Nancy Christian ("Nancy" or "Trustor"), hereby  
22 files their reply to Susan-Christian Payne, Rosemary Keach, and Raymond Christian's  
23 Combined Opposition to Anthony L. Barney, Ltd.'s petition for fees and costs pursuant to the  
24 terms of the Trust. This Reply is based upon the pleadings and papers on file herein, the  
25 memorandum of points and authorities and exhibits attached hereto, and any oral arguments  
26 presented at the time of the hearing.  
27

28 ////



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9

9  
10  
11

12  
13  
14  
15  
16

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Law Firm was forced to petition the court for fees and costs to release the fees and costs that are  
2 currently frozen pursuant to this Court's order.

3 Furthermore, Payne's opposition must be rejected because it was severely untimely.  
4 ALB Law Firm filed its petition on February 8, 2018 and served petition on Mr. Payne on  
5 February 9, 2018. A notice of hearing on the petition was also filed on February 8, 2018 and  
6 served on February 9, 2018. Mr. Payne waited 29 days, until March 9, 2018, to file his  
7 opposition, thereby limiting the ALB Law Firm's time to respond to less than five (5) judicial  
8 days.  
9

10  
11 EDCR 2.20(e) provides:

12 Within 10 days after the service of the motion, and 5 days after service of any joinder to  
13 the motion, the opposing party must serve and file written notice of nonopposition or  
14 opposition thereto, together with a memorandum of points and authorities and  
15 supporting affidavits, if any, stating facts showing why the motion and/or joinder should  
16 be denied. Failure of the opposing party to serve and file written opposition may be  
17 construed as an admission that the motion and/or joinder is meritorious and a consent to  
18 granting the same.

19 If the Court treats ALB Law Firm's Petition as a motion, Payne had ten (10) days to file a  
20 response to the Petition, which he also failed to do. However, if the Court treats the Petition as a  
21 complaint under NRCP 12(a), Mr. Payne had twenty (20) days to file a responsive pleading after  
22 service of the Petition.

23 Even under the most generous possible timing calculations and including an additional  
24 three (3) days under NRCP 6, Mr. Payne had until March 5, 2018 to file a responsive pleading  
25 to the Amended Petition. Mr. Payne simply failed to do so. The only way Mr. Payne could have  
26 extended the time for filing his opposition is through Nevada Assembly Bill 314 ("AB 314") at  
27 Section 34 which was adopted into Nevada and which provides:

28 Notwithstanding any provision in this title, if an act is authorized or required to be  
performed at or within a specified period pursuant to this chapter: 1. The period may be  
extended upon the agreement of all interested persons, by written stipulation of counsel

1 filed in the action; or 2. The court, for good cause shown, may at any time: (a)  
2 Regardless of whether there has been a motion, petition or notice, order that the period  
3 be extended if a request for the extension is made before the expiration of the  
4 specified period as originally prescribed or as extended by a previous order; or (b)  
5 Upon a motion made after the expiration of the specified period, authorize a person  
6 to perform the act if the failure to perform the act in a timely manner was the  
7 result of excusable neglect. (Emphasis added)

8 Mr. Payne failed to seek or obtain agreement from the parties for an extension of time to  
9 file. He failed to obtain from the Court an extension of time prior to the expiration of the  
10 deadline. Finally, Mr. Payne has failed to make a motion after the deadline to file explaining the  
11 excusable neglect which would justify his failure to file a timely opposition. Therefore, Payne's  
12 Opposition should be denied in its entirety.

13 If this Court is even inclined to entertain Mr. Payne's Opposition despite its clear  
14 inapplicability and its untimely filing, ALB Law Firm presents the following substantive reply to  
15 Payne's arguments. In response, to Mr. Payne's scattered, spurious, and incorrect arguments, the  
16 ALB Law Firm, will first provide the Court with the incorrect statements Cary Colt Payne, Esq.  
17 (on behalf of his clients) has made in his Combined Opposition and then explain with facts and  
18 law why he is incorrect. The ALB Law Firm is providing this information in such a way as to  
19 simplify the issues for the Judge since Cary Colt Payne, Esq., has attempted to make this issue  
20 much more factually or legally complex than it actually is. Please note that the ALB Law Firm  
21 is only responding to the objections raised toward the ALB Law Firm and not the objections  
22 raised against Monte Reason, whose legal counsel has already responded in this matter.

23  
24 **A. Incorrect Factual and Legal Conclusions by Cary Colt Payne, Esq.**

25 The following statements are incorrect and/or are founded upon incorrect assumptions  
26 made by Cary Colt Payne, Esq. ("Mr. Payne") and his incorrect allegations and incorrect  
27 reading of the Trust, case law and statutory authority in the order that they were presented in  
28

his objection. The sections below that will correct the following sanctionable and false representations made by Mr. Payne to this Court. The following are a list of **Mr. Payne's falsehoods and section denoting its necessary correction:**

1. ALB Law Firm has no legal standing to bring the petition. Correction in Section B(I).
2. There is no contractual right nor statutory authority to award legal fees to the creditors of a dead income beneficiary. Correction in Section B(I)
3. The Christian Family Trust is a "directed (discretionary) trust". Correction in Section B(II)
4. When Nancy died, all of her rights in the trust were "divested". Correction in Section B(III)
5. ALB Law Firm failed to mitigate its damages. Correction in Section B (III)
6. The Christian Family Trust is a "form of directed (discretionary) trust with a spendthrift provision." Correction in Section B(II)
7. The Trust only provided that Petitioners may pay Nancy, who only held a right to income during her life. Correction in Section B(II)
8. The Trust does not hold community property. Correction in Section B(II)
9. ALB Law Firm is not a creditor of the Christian Family Trust. Correction in Section B)(I)
10. Nancy did not contribute a "single penny" or separate property to the trust corpus. Correction in Section B(II)
11. Any purported community property "claim" must first be brought in Nancy's personal estate. Correction in Section B(III)
12. Nancy's assertions are hearsay. Correction in Section B(IV).

- 1 13. Trust property should be distributed prior to Nancy's death. Correction in Section B  
2 (IV).
- 3 14. The Trust has no provision to pay any of Nancy's creditors. Correction in Section B(II).  
4
- 5 15. ALB Law Firm is a nonprobate transferee pursuant to NRS 111.779. Correction in  
6 Section B(III)
- 7 16. The Trust is required to follow the creditor claim process of NRS Title 12 (probate) to be  
8 able to be paid from the Christian Family Trust. Correction in Section B(III).
- 9 17. Mr. Payne provides the incorrect opinion and holding of the *In the Matter of Jane*  
10 *Tiffany Living Trust*. Correction in Section B(III)
- 11 18. Mr. Payne attempts to ignore the Trust provision that evidences that the spendthrift  
12 provision does not apply to the "Trustor's interest in the Trust estate". Correction in  
13 Section B(II)
- 14 19. Nancy only had a mere right to income during her lifetime. Correction in Section B(I)  
15 and B(II)
- 16 20. Nancy did not contribute any of her personal property whatsoever to the trust, and she  
17 had no other "ownership interest". Correction in Section B(II)
- 18 21. Nancy "only had a beneficial right to income, subject to the sole discretion of the  
19 trustees, making this Trust a discretionary trust, and therefore had absolutely no  
20 ownership interest in the Trust for any creditor to reach or be paid." Correction in  
21 Section B(II)
- 22 22. Because Nancy did not transfer any trust assets into her personal name, the assets of the  
23 trust are precluded from the debts or claims of Nancy's creditors. Correction in Section  
24 B(I).
- 25  
26  
27  
28

- 1 23. NRS 163.5559 is applicable in the context that ALB Law Firm cannot seek fees from  
2 settlor (while ignoring the qualifying provision of this statute that allow ALB Law Firm  
3 to seek fees). Corrected in Section B(I).  
4
- 5 24. *Brock v. Premier Trust, Inc.*, applies to Nancy, a Trustor, although the case deals with  
6 beneficiaries. Correction in Section B (III).
- 7 25. After Nancy validly changed her trustee, that ALB Law Firm put up road blocks against  
8 Petitioners obtaining distributions before Nancy's death. Correction in Section B(IV)  
9
- 10 26. There was a scrivener's error in the Christian Family Trust despite his clients being at  
11 the table with Nancy and negotiating the terms of the trust. Correction in Section B(IV)
- 12 27. David Grant, Esq., is an essential witness to prevent the payment of fees. Correction in  
13 Section B(IV).
- 14 28. A Trustor working in conjunction with the newly appointed trustee is suspect or invalid.  
15 Section B(IV).  
16
- 17 29. Following the provisions of the trust in nominating successor trustees for the trust is  
18 invalid. Correction in Section B(IV)
- 19 30. A trustee must be confirmed in court for their actions to be valid, (while failing to reveal  
20 to this Court that his clients were never confirmed as trustees in this Court).  
21
- 22 31. Monte Reason did not have the power to nominate a successor trustee (when the trust  
23 provisions allow for it upon his resignation and the declination of the successor trustee to  
24 serve). Correction in Section B(IV)
- 25 32. There was some sort of informal agreement in advance for the confirmation of a new  
26 trustee. Correction in Section B(IV)  
27  
28

- 1 33. NRS 163.417 prevents the court from requiring payment to creditors. Correction in  
2 Section B (IV)  
3  
4 34. Alleged block billing prevents the ALB Law Firm from obtaining their fee. Correction  
5 in Section B(V).  
6  
7 35. The retainer agreement is a pre-requisite before obtaining fees. Correction in Section  
8 B(V).  
9  
10 36. There is a blurring of lines between attorneys and clients in this matter. Correction in  
11 Section B(V).

12 All of these statements are incorrect statements of law and fact. Thus, Cary Colt Payne  
13 and his clients' Objection is further proof of their continued behavior to divert trust funds to  
14 their own pockets while forcing the Nancy as Trustor of the Trust to retain counsel to be able to  
15 even obtain the assets of the Trust to which she was entitled. Unfortunately, the Petitioners  
16 made sure that Nancy died without enjoying the benefits the Trust or living in an adequate home  
17 to which she was entitled under the terms of the Trust.

18 **B. Corresponding Corrections to the Misrepresentations of Facts and Law**

19 **I. ALB Law Firm has standing in this matter as a creditor of Nancy Christian**  
20 **and has a statutory right to seek fees.**

21 NRS 132.390(c)(8) specifically provides that a creditor of the settlor whose claim has  
22 been accepted by the Trustee is an interested person as to a Trust.<sup>1</sup> Here, ALB Law Firm's  
23 claim has been accepted by both Successor Trustees of the Trust and the only reason the fees  
24 were not previously paid during the life of the Trustor is because Mr. Payne and his clients have  
25  
26  
27

28  

---

<sup>1</sup> For the purposes of this title, a person is an interested person with respect to:... at trust, if the person:... Is a  
creditor of the settlor who has a claim which has been accepted by the trustee.

1 improperly sequestered the Trust funds and have caused the Court to freeze all Trust assets  
2 based upon their frivolous claims.

3 Furthermore, NRS 164.025(3) allows for the following:

4  
5 A person having a claim, due or to become due, against a settlor or the trust must file the  
6 claim with the trustee within 90 days after the mailing, for those required to be mailed,  
7 or 90 days after publication of the first notice to creditors. Any claim against the trust  
8 estate not filed within that time is forever barred. After the expiration of the time, the  
trustee may distribute the assets of the trust to its beneficiaries without personal liability  
to any creditor who has failed to file a claim with the trustee.

9 Herein, the statute allows for ALB Law Firm to file a claim with this Court. This statute also  
10 provides ALB Law Firm with standing to make its claim against the Trust.

11 NRS 163.5559(1) also provides for a creditor of a settlor to seek to satisfy a claim  
12 against the settlor from the assets of a trust, because, herein, Nancy's interest was (1) not solely  
13 the existence of a discretionary power granted to a person other than the settlor by the terms of  
14 the trust or by operation of law or (2) not to reimburse the settlor for any tax on trust income or  
15 principal which is payable by the settlor under the law imposing such tax. Herein, Nancy's  
16 debts were acquired in furtherance of exercising her rights provided under the Trust instrument.  
17 The Trust not only provided for income (which was at the Trustee's discretion) but also gave  
18 her the absolute right (which was not discretionary) to live in the residence. The applicable  
19 Trust provision is as follows:  
20  
21

22 **4.4 Use of Residence.** Until the Survivor's death, the Trustee shall allow the  
23 Survivor to occupy and use any residence used by either or both Trusters as a  
24 residence at the time of the Decedent's death. The Trustee shall, ***at the direction***  
25 ***of the Survivor***, sell any such residence, and if the Survivor so directs, use the  
26 proceeds therefrom to purchase or build another residence for the Survivor. The  
Survivor shall not be required to pay rent or account for the use of any residence.  
(Emphasis added.)

27 Therefore, Nancy directed the Trustee as to the use, sale and building of a residence for her.  
28 She also did not have to pay rent or account for her use of any residence.



1 In other words, ALB Law Firm is Nancy's creditor, has standing pursuant to NRS  
2 132.390(c)(8) and 164.025(3) and does not fall under the two criteria in NRS 165.5559(1). The  
3 services provided by the ALB Law Firm integral to the very exercise of the Trustor's rights  
4 under the Trust which were being denied by the Petitioners. Thus, ALB Law Firm can seek to  
5 satisfy its claims against the settlor from the assets of the trust and has standing in this matter to  
6 do so.

8 **II. The Christian Family Trust is not a directed trust and while, it has a**  
9 **spendthrift provision, it is inapplicable to Nancy, a settlor.**

10 Second, regarding the terms of the Trust, which is Mr. Payne's most "important"  
11 contention, Mr. Payne indicates on at least two occasions the trust is a "directed (discretionary)  
12 trust", which is incorrect. Mr. Payne provides much confusion with his incorporation of a  
13 "directed" with "discretionary" and his whole argument should be aborted, because it is  
14 inherently flawed.

16 A directed trust is a trust in which the trustee is directed by a number of other trust  
17 participants in implementing the execution of trust terms, such as an investment trust adviser  
18 (see NRS 163.5543), distribution trust adviser (NRS 165.5545), or trust protector (NRS  
19 163.5547). Pursuant to NRS 163.5548, the trustee is a "directed fiduciary" with respect to any  
20 action that the fiduciary:

- 22 1. Has no power to take under the terms of the governing instrument;  
23 2. Is mandated by the governing instrument and for which the fiduciary has no  
24 discretion to act otherwise; and  
25 3. Is directed to take or prohibited from taking by a directing trust adviser.

26 The Trustee is then not liable for any losses that result from complying with a direction of a  
27 trust adviser.<sup>2</sup> Herein, the Petitioners admit that they all had discretion in providing for Nancy's

28 \_\_\_\_\_  
<sup>2</sup> NRS 163.5549 Limitations on liability of directed fiduciary.

1 income; therefore, by their own admission, they were not being directed by anyone in refusing  
2 to provide even a penny of trust funds to Nancy. In other words, they were not “directed  
3 fiduciaries” because they were not receiving direction from other fiduciary, including a trust  
4 investment adviser, a distribution trust adviser or a trust protector – they were admittedly  
5 exercising their own discretion in refusing to provide income to Nancy. The Trust was not a  
6 directed trust; and, unfortunately, Mr. Payne attempts to confuse the court with his language.  
7

8 Furthermore, indicating that the trust was purely discretionary is also incorrect. While  
9 the Trust did provide discretion for the trustee in terms of income payments to Nancy, there was  
10 no discretion as it pertained to the residence. See Section 4.4 of the Trust quoted above. Nancy  
11 was to provide direction to the Trustee as to the use and sale of the residence, including the  
12 building of a new residence. Nancy was not required to pay rent or account for her use of any  
13 residence. Therefore, the Trust cannot be classified as a “discretionary trust” as to Nancy’s  
14 interest in the residence.  
15  
16

17 Lastly, while Mr. Payne quotes the language of the spendthrift provision he fails to  
18 highlight the most glaring provision in the Trust document:

19 **14.2 Spendthrift Provision.** No interest in the principal or income of any trust  
20 created under this Trust Instrument shall be anticipated, assigned, encumbered or  
21 subjected to creditors' claims or legal process before actual receipt by a beneficiary.  
22 ***This provision shall not apply to a Trustor's interest in the Trust estate.*** The  
23 income and principal of this Trust shall be paid over to the beneficiary at the time  
24 and in the manner provided by the terms of this Trust, and not upon any written or  
oral order, nor upon any assignment or transfer by the beneficiary, nor by operation  
of law. (Emphasis added.)

- 25 1. A directed fiduciary is not liable, individually or as a fiduciary for any loss which results from:  
26 (a) Complying with a direction of a directing trust adviser, whether the direction is to act or to not act; or  
27 (b) Failing to take any action proposed by a directed fiduciary if the action:  
(1) Required the approval, consent or authorization of a person who did not provide the approval, consent  
or authorization; or  
(2) Was contingent upon a condition that was not met or satisfied.  
28 2. A directed fiduciary is not liable for any obligation to perform an investment or suitability review, inquiry  
or investigation or to make any recommendation or evaluation with respect to any investment, to the extent that the  
investment is made by a directing trust adviser.

1 Of course, because of this provision, Mr. Payne attempts to improperly indicate that the Trust  
2 does not own community property or Nancy did not contribute a "single penny" or separate  
3 property to the trust corpus. As Mr. Payne typically recycles his misrepresentative arguments,  
4 this particular argument was foreseen by ALB Law Firm (see discussion in Petition regarding  
5 nature of trust property), and the ALB Law Firm previously reminded the Court of the preamble  
6 to the Trust which states as follows:  
7

8  
9 The property comprising the original Trust estate, during the joint lives of the  
10 Trustors, shall retain its character as their community property or separate  
11 property, as designated on the document of transfer or conveyance. Property  
12 subsequently received by the Trustees during the joint lives of the Trustors shall  
have the separate or community character designated on the document of  
transfer or conveyance. (Emphasis added).

13 As can be seen by the Dancing Vines Property alone, this asset was held in joint tenancy  
14 between Nancy and Raymond Christian, Sr., before it was put into the Trust.<sup>3</sup> Also, the  
15 personal property located in the Dancing Vines Property was community property.  
16 Furthermore, under NRS 123.220 all property acquired during the marriage is considered  
17 community property. Mr. Payne and his clients have provided no evidence to rebut this  
18 presumption for the community property, notwithstanding the wholesale failure to address  
19 Nancy's separate property interests in the Trust. Therefore, Mr. Payne and his client's assertions  
20 that Nancy did not contribute to the Trust is a blatant misrepresentation and fails to even address  
21 the time-honored rebuttable presumption in Nevada of a spouse's right to community property.  
22 Mr. Payne is simply attempting to get around the spendthrift provision by bulldozing his way  
23 through public policy, Nevada community property rights, and Nancy's separate property rights  
24  
25  
26  
27  
28

---

<sup>3</sup> See Grant Bargain and Sale Deed attached hereto and incorporated herein as Exhibit 1.

1 in the Trust. The spendthrift provision, by its own terms, is inapplicable to Nancy's interest in  
2 the Trust estate.

3       Additionally, under the provisions of Section 4.3 to 4.4 of the Trust, all property not  
4 used for "the administrative expenses, the expenses of the last illness and funeral of the  
5 Decedent and any debt owed by the Decedent" after the Decedent's death, was transferred to the  
6 Survivor's share of the Trust. Therefore, upon the death of the Decedent, all property became  
7 Nancy's property for purpose of Section 14.2 of the Trust. Contrary to Mr. Payne's assertion,  
8 all of the assets of the Trust are subject to approved claims of the creditors of Nancy, the last  
9 settlor to die.  
10

11       Furthermore, ALB Law Firm is not required file in Nancy's probate estate before  
12 obtaining relief in the trust matter because the Dancing Vines Property was a combination of  
13 community property and Nancy's separate property. This Court can take judicial notice of this  
14 fact pursuant to NRS 47.130 that the Dancing Vines property was jointly owned by Nancy and  
15 Raymond Christian from the filing of the Grant Bargain and Sale Deed recorded as  
16 Instrument#20161019-0000692 on October 19, 2016.<sup>4</sup> Therefore, Mr. Payne's incorrect and  
17 sanctionable assertions that Nancy did not contribute property to the trust is easily refuted by  
18 public record and such a finding does not need to be made in the probate estate.  
19  
20

21       Nancy had a separate property interest in the Dancing Vines property, which upon its  
22 sale, the proceeds were used to purchase the Bluffpoint Property and/or segregated from the  
23 other Trust property. Nancy gave directions prior to her death regarding the Bluffpoint Property  
24 and her wish to obtain another residence, which was far from the Petitioners (the Petitioners live  
25  
26  
27  
28

---

<sup>4</sup> *Id.*

1 in close proximity to the Bluffpoint Property). Nancy and the Trust were attempting to realize  
2 Nancy's wishes pursuant to the terms of the Trust when she died.

3           **III. ALB Law Firm's claims are appropriate in the trust matter and not solely to**  
4           **the probate estate.**

5           Because of Nancy's death, Mr. Payne believes that claims against the Trust magically  
6 disappear and must be brought and settled in her probate estate. His feigned logic and argument  
7 are completely contrary to Nevada law and are vexatious. For just one example, NRS  
8 164.025(1) is specifically used "after the death of the settlor of the trust". It requires the trustee  
9 of a nontestamentary trust (which the Christian Family Trust is) to publish notice to creditors  
10 after the death of the settlor of the trust and requires creditors to make their claims within ninety  
11 (90) days.<sup>5</sup> The Nevada Legislature contemplated settling the claims of creditors of a trust and  
12 its settlor(s) after the death of a settlor. This is basic trust law in the state of Nevada.  
13

14           Secondly, Mr. Payne's assumption that Nancy's rights are divested from the trust upon  
15 her death are misplaced given the fact that Nevada law specifically allows for the creditor's  
16 claims. Nancy's rights or claims are not extinguished solely because of her death and, notably,  
17 Nancy has asserted claims of undue influence and fraud against Petitioners which claims survive  
18 her death.  
19

20           Additionally, Mr. Payne's cited case law and statutes are inapplicable. First, his citation  
21 to *In the Matter of the Jane Tiffany Living Trust*, 177 P. 3d 1060 (Nev. 2008) and his quote is  
22 completely inaccurate. The "creditor" of the estate was barred from seeking her claim in  
23 another case because she did not seek her claim in the trust proceeding. Herein, ALB Law  
24 Firm is seeking its relief in the trust proceeding, therefore, Mr. Payne's direction that ALB Law  
25 Firm must seek relief in the Nevada estate from this case is completely misguided or calculated  
26  
27  
28

1 as a fraud upon this Court. ALB Law Firm would be faced with the same creditor dismissal in  
2 that case if it were to bring its Trust claims in another action when they are appropriately before  
3 the Court in the Trust proceeding.

4  
5 Furthermore, Mr. Payne's citation to *Brock v. Premier Trust, Inc.*, 390 P.3d 646 (Nev.  
6 2017), deals with beneficiaries and their creditors – not the Settlor's creditors. Therefore, the  
7 case is inapplicable to Nancy who was a settlor or Trustor of the Trust.

8 Third, his citation to NRS 111.779 is inapplicable because ALB Law Firm is not a  
9 nonprobate transferee. It is clear that Mr. Payne is attempting to inundate this Court with red  
10 herrings and inapplicable case law and statutes to confuse and mislead the Court.

11  
12 Fourth, Mr. Payne's allegation that NRS 163.417 does not allow the court to order  
13 payment to creditors is a blatant misrepresentation of the law. NRS 163.417 actually states:

14 A creditor may not exercise, and a court may not order the exercise of:

- 15 (a) A power of appointment or any other power concerning a trust that is held by a  
16 beneficiary;  
17 (b) Any power listed in NRS 163.5553 that is held by a trust protector as defined in  
18 NRS 163.5547 or any other person;  
19 (c) A trustee's discretion to:  
20 (1) Distribute any discretionary interest;  
21 (2) Distribute any mandatory interest which is past due directly to a creditor; or  
22 (3) Take any other authorized action in a specific way; or  
23 (d) A power to distribute a beneficial interest of a trustee solely because the beneficiary  
24 is a trustee.

25 Nothing in NRS 163.417 prevents a court from requiring payment of otherwise valid  
26 claims against the Trust or the Settlor(s) of the Trust. Rather the statute limits the court's ability  
27 to force a beneficiary or trustee to exercise powers granted them under the terms of the Trust.  
28 However, even if NRS 163.417 means what Mr. Payne alleges (which it clearly does not), the  
Successor Trustee has already approved the amounts due and owing to ALB Law Firm based on

---

<sup>5</sup> See NRS 164.025(3).

1 the broad discretion granted her under the terms of the Trust. Therefore, rather than ordering  
2 the exercise of a power or discretion, the Court is merely respecting the conclusive decision of  
3 the Trustee made pursuant to Section 11.1 of the Trust.  
4

5 Curiously, Mr. Payne indicates that because Nancy did not transfer any Trust assets into  
6 her personal name, the assets of the Trust are precluded from the debts or claims of Nancy's  
7 creditors. However, ALB Law Firm is performing work on behalf of Nancy as Settlor/Trustor  
8 of her Trust, therefore, Mr. Payne's own legal conclusion is not applicable. Furthermore, Mr.  
9 Payne is wrongfully attempting to negate the provisions of NRS 164.025 with such a conclusion  
10 when ALB Law Firm was performing work on behalf of Nancy in furtherance of the provisions  
11 of the Trust.  
12

13 Mr. Payne is no stranger to such misrepresentation and vexatious behavior, and the ALB  
14 Law Firm is available to provide this Court upon request with prior written reports and  
15 recommendations which have recommended extreme monetary sanctions against Mr. Payne  
16 personally under the Nevada Rules of Civil Procedure for similar prior misconduct in other  
17 Trust matters.<sup>6</sup>  
18

19 Simply put, ALB Law Firm is a creditor and is seeking to assert its claim in this matter  
20 against the Trust because of its actions on behalf of Nancy in furtherance of the terms of the  
21

---

22  
23 <sup>6</sup> NRS 155.165 (1) The court may find that a person, including, without limitation, a personal representative or  
24 trustee, is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without  
25 merit, intended to harass or annoy the personal representative or a trustee or intended to unreasonably oppose or  
26 frustrate the efforts of an interested person who is acting in good faith to enforce his or her rights. The court may  
27 find that a personal representative or trustee is a vexatious litigant if the personal representative or trustee has  
28 expended the funds of the estate or trust to unreasonably oppose the good faith efforts of an interested person to  
enforce his or her rights. In determining whether the person is a vexatious litigant, the court may take into  
consideration whether the person has previously filed pleadings in a proceeding that were without merit,  
intended to harass or annoy a fiduciary or intended to unreasonably oppose or frustrate the efforts of an  
interested person who is acting in good faith to enforce his or her rights. (2) If a court finds that a person is a  
vexatious litigant pursuant to subsection 1, the court may impose sanctions on the person in an amount sufficient to  
reimburse the estate or trust for all or part of the expenses, including, without limitation, reasonable attorney's fees,

1 Trust. The acting Trustees have all approved the fees and costs herein, which they have the  
2 discretion to do pursuant to the terms of the Trust, and thus ALB Law Firm is a proper creditor  
3 for purposes of payment.  
4

5 **IV. The Trust Terms do not provide for distributions to beneficiaries before**  
6 **Nancy's death, but do provide for the power to change trustee or**  
7 **nominations of successor trustees.**

8 Before Nancy's death, Nancy without undue influence and of her own free will, changed  
9 her Trustee due to Petitioners' mistreatment of her.<sup>7</sup> Her verified statements are not hearsay as  
10 Mr. Payne would like this Court to conclude. Nancy's facts and statements were verified by her  
11 in every petition she filed. Furthermore, because she has now passed away, her verified  
12 statements would fall under the hearsay exception because she is no longer available as a  
13 witness.<sup>8</sup> As noted many times before, Nancy was given the power to change her trustee and  
14 did so. Thereafter, Petitioners engaged in a course of action which would thwart Nancy's ability  
15 to obtain funds from her Trust and prevented her from living in a home to which she had been  
16 accustomed to living.  
17

18 Furthermore, the Petitioners purposefully misread the Trust terms in an attempt to have  
19 this Court refuse to provide relief to the appropriate parties. Basically, the Petitioners sought to  
20 have this Court to rewrite the terms of the Trust to benefit them or continue to use this Court's  
21 resources to delay beneficial use of the Trust to Nancy. They were successful in delaying these  
22 proceedings to the point that Nancy died before receiving her requested relief. Unfortunately,  
23 they now continue to argue their various tortured interpretations of the Trust in purported pre-  
24  
25

26  
27 incurred by the estate or trust to respond to the petition, objection, motion or other pleading and for any other  
28 pecuniary losses which are associated with the actions of the vexatious litigant. (Emphasis added).

<sup>7</sup> See Certificate of Independent Review attached as Exhibit H to Joint Objection and Joint Counterpetition filed on  
November 13, 2017.

<sup>8</sup> See NRS 51.075.



1 death distributions to them from the Trust owned real property and in Nancy's power to change  
2 trustee.

3 The Former Trustees requested that they receive distributions under the Trust, when  
4 there is no distribution authorized under the terms of the Trust to any person other than Nancy  
5 until after her death. Trust provision 6.1 indicates as follows (without including the distributive  
6 provisions):  
7

8 **6.1 Specific Bequest Upon the death of both Trustors**, the Trustee shall first  
9 sell the Trustors' primary residence located at 1060 Dancing Vines, Ave., Las  
10 Vegas, Nevada, and the proceeds from the sale of such home shall be distributed  
as follows: (Emphasis added).

11 In requesting that this Court distribute the proceeds from the Dancing Vines property, the  
12 Petitioners were willing to create a taxable event to Nancy, although trusts, including this Trust,  
13 are created to reduce or eliminate taxes. Petitioners alleged that ALB Law Firm put up "road  
14 blocks" against obtaining distributions when it is the Trust provision itself that would prevent  
15 the distributions to Petitioners before Nancy's death. The ALB Law Firm was and has been  
16 simply attempting to obtain compliance with the terms of the Trust, while Petitioners have only  
17 done what is in their own best interest resulting in a breach their duty of loyalty under the terms  
18 of the Trust.  
19  
20

21 Even if there was a right to pre-death distributions to the Petitioners, which there clearly  
22 is not, it should also be noted that in Section 7.1, there is a Delay of Distribution provision  
23 which allows the delay of distribution to any beneficiary who is:  
24

25 (b) If said causes for delayed distribution are never removed, then the Trust share of  
26 that beneficiary shall continue until the death of the beneficiary and then be  
distributed as provided in this Trust Instrument. The causes of such delay in the  
distribution shall be limited to any of the following:

27 (1) The current involvement of the beneficiary in a divorce proceeding or a  
28 bankruptcy or other insolvency proceedings.

1 Herein, Susan Christian-Payne is currently going through a divorce (Case #D-17-561332-D)  
2 wherein her husband has stated that the “the only recent (within the last two years) contentious  
3 disagreement between the parties arose as a result of issues related to MYLES’ [Susan  
4 Christian-Payne’s son’s] interest in SUSAN’s parents estate.”<sup>9</sup> Notably, Susan Christian-Payne  
5 caused Myles, her own son, to be removed from beneficiary designations and included herself  
6 as Trustee of the Trust because she would be a potential beneficiary after the death of the  
7 Trustors. Such a dispute would warrant a delay in distribution to the beneficiaries – or at least  
8 Susan Christian-Payne.  
9

10  
11 Lastly, as stated many times before, Section 9.3 provides Nancy the absolute power to  
12 change the trustee of the Trust as follows:

13 **9.3 Power to Change Trustee.** During the joint lifetime of the Trustors, Trustors  
14 may change the Trustee or Successor Trustee of this Trust by an instrument in  
15 writing, signed by both Trustors, and delivered to the Trustee. In the event that  
16 either Trustor should become incapacitated, the other Trustor shall retain the power  
17 to change the Trustee or Successor Trustee of this Trust by an instrument in writing,  
18 signed by such Trustor and delivered to the Trustee. **After the death of the first  
Trustor to die, the surviving Trustor shall have the power to change the  
Trustee or Successor Trustee of the Trust by an instrument in writing signed  
by the surviving Trustor and delivered to the Trustee.** (Emphasis added).

19 Herein, Nancy was following the provisions of the Trust when she designated another trustee.  
20 She had the power to do so under the Trust instrument. In an attempt to undermine this Trust  
21 provision, Petitioners falsely claim there was a scrivener’s error in the Trust, although  
22 Petitioners “sat at the table and negotiated the terms of the Trust.”<sup>10</sup> David Grant’s testimony is  
23 unnecessary given the unambiguousness of the Trust document itself and the facts presented to  
24 this Court, including Petitioners own revelations that they, themselves negotiated the terms of  
25 the Trust. Most importantly, David Grant is not an essential witness to prevent the payment of  
26  
27  
28

---

<sup>9</sup> See Page 4, lines 9-11 of Opposition to Plaintiff’s Motion for Child Custody and Child Support and

1 fees and costs to ALB Law Firm. This issue has nothing to do with the present petition, but  
2 again Mr. Payne attempts to misuse this Court's resources to create an issue where there is none.

3 Additionally, Mr. Payne attempts to claim that a trustor working in conjunction with a  
4 trustee is suspect or invalid. Most trustors and trustees communicate or have a relationship –  
5 this does not mean that the trustee fails to fulfill his or her fiduciary duties. Mr. Payne's  
6 connotation is simply improper innuendo.

7  
8 Most importantly, Mr. Payne believes that for a trustee's actions to be valid, they must  
9 be nominated or confirmed by a court. **Petitioners themselves were never confirmed by this**  
10 **Court to act on behalf of the Trust; therefore, pursuant to Mr. Payne's argument, all of**  
11 **the Petitioner's actions were unauthorized from October 2016 to June 2017.** They should  
12 not have sold the Dancing Vines Property, they shouldn't have purchased the Bluffpoint Drive  
13 Property, they shouldn't have changed beneficiary designations from Nancy to the Trust, they  
14 should not have sequestered trust funds to Mr. Payne's IOLTA account, they should not have  
15 prevented the successor trustee from obtaining trust funds, etc. Mr. Payne's logic is simply  
16 unfounded and should be ignored.

17  
18  
19 Just as Nancy Christian had the ability to change her trustee pursuant to the Trust terms,  
20 Monte Reason had the power to nominate a successor trustee pursuant to Section 8.1 of the  
21 Trust and under the instrument executed by Nancy to appoint him.<sup>11</sup> Therefore, Monte Reason  
22 was simply following the testamentary documents created by Nancy Christian. In particular, the  
23 Modification and Designation of Successor Trustee was and is valid and Nancy was not under  
24 any undue influence when she created this instrument.

25  
26  
27  
28  

---

Countermotion for Temporary Orders filed January 18, 2018 in Case #D-17-561322-D.

<sup>10</sup> See Video Transcript of October 19, 2017 hearing at 2:33 p.m.

1 Without any factual basis, Mr. Payne engages in a conspiracy type theory to allege that  
2 the attorneys and clients in this matter had some behind-the-scenes agreement. This is false and  
3 Mr. Payne has absolutely no facts to support his conspiracy theory.  
4

5 Mr. Payne and his clients tortured interpretations of the Trust should be ignored. As is  
6 characteristic of Mr. Payne, he is simply attempting to distract this Court from allowing fees and  
7 costs to be distributed from the Trust despite the conclusive determination that the Successor  
8 Trustees have both approved the fees and costs. The terms of the Trust and our cited Nevada  
9 statutes allow for payment of the (Nancy's) settlor's creditors.  
10

11 **V. Mr. Payne and Petitioners do not dispute the Brunzell Factors; therefore,**  
12 **fees and costs should be paid.**

13 Although inapplicable to the payment of a creditor's claim under a trust, or even for the  
14 payment of attorney's fees from a trust, the ALB Law Firm provided a *Brunzell* and *Cadle*  
15 analysis. Notably, Mr. Payne and the Petitioners do not argue the *Brunzell* factors<sup>12</sup> or that ALB  
16 Law Firm has failed to meet the requirements of *Cadle*.<sup>13</sup> They simply object to the payment  
17 because of alleged block billing, of not being able to see the retainer agreement and of the  
18 alleged "blurring of lines" between attorneys and clients in this matter. However, none of these  
19 "concerns" have legal or factual basis nor do they prevent ALB Law Firm from seeking its fees  
20 and costs from the Trust.  
21

22 Unlike the recent changes in guardianship court with AB130, there is no requirement for  
23 ALB Law Firm to provide a Notice of Intent to Seek Fees outlining the costs of its attorneys, the  
24 billing arrangement, and necessity of services. Furthermore, the trust statutes do not require a  
25  
26

---

27 <sup>11</sup> See Section 8.1 of the Trust and Modification and Designation of Trustee and Successor Trustee attached and  
28 incorporated as Exhibit G to Joint Objection and Joint Counterpetition filed on November 13, 2017.

<sup>12</sup> See *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (Nev. 1969).

<sup>13</sup> *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1051, 2015 Nev. LEXIS 19, \*1, 131 Nev. Adv. Rep. 15.

1 one-tenth breakdown of fees on billing statements. Notably, even with the Notice of Intent to  
2 Seek Fees required by AB130, a law firm is not required to include a retainer agreement to be  
3 able to be paid from the guardianship estate.

4         Such requirements are unnecessary in a trust proceeding. ALB Law Firm is not required  
5 to provide the heightened requirements as in a guardianship proceeding. Therefore, it can be  
6 paid on the reasonable fees and costs that have been provided and to which Mr. Payne and  
7 Petitioners did not object based upon *Brunzell* or *Cadle*. Most importantly, both successor  
8 trustees have approved the payment to ALB Law Firm and pursuant to Provision 11.1 of the  
9 Trust, the Trustee's decision is conclusive and binding upon Petitioners.

10         Interestingly, Mr. Payne complains that he is unable to obtain the client file from ALB  
11 Law Firm. It should be noted that in addition to the privilege issues and confidentiality issues  
12 associated with this complaint, ALB Law Firm also has a retaining lien on the entire client file  
13 pursuant to NRS 18.015. This prevents any party including a client or the client's successor or  
14 representative from obtaining the file. If, as Mr. Payne alleges, Nancy's file is necessary to the  
15 underlying case, the objection to fees necessarily prevents any party from obtaining the file from  
16 ALB Law Firm.

17         Lastly, there is absolutely no blurring of lines between attorneys and clients in this  
18 matter. Nancy Christian was always the client of ALB Law Firm and Monte Reason was not.  
19 Joseph Powell, Esq., was consulted on all matters relating to Trust issues and it is the  
20 understanding of the ALB Law Firm that Monte Reason always spoke with his counsel in  
21 regarding Trust decisions and related administrative or litigation matters. Jacqueline Utkin was  
22 voluntarily contacted before she was represented and provided her declaration in support of  
23 Nancy; however, all person-to-person contact ceased when she retained counsel. After  
24  
25  
26  
27  
28

1 Jacqueline Utkin obtained counsel, ALB Law Firm dealt directly with her counsel as necessary  
2 to address outstanding issues.

3 Mr. Payne's objections are merely illegitimate concerns to distract this Court. ALB Law  
4 Firm had its fees and costs approved by the Trustees and Mr. Payne does not substantively  
5 oppose these fees and costs. As such, ALB Law Firm should be awarded its fees and cost in this  
6 matter.  
7

8 **VI. Mr. Payne's actions in this matter are sanctionable under NRS 7.085 and**  
9 **NRCP Rule 11.**

10 NRS 7.085 provides:

11 1. If a court finds that an attorney has:

12 (a) Filed, maintained or defended a civil action or proceeding in any court in this  
13 State and such action or defense is not well-grounded in fact or is not warranted  
14 by existing law or by an argument for changing the existing law that is made in  
good faith; or

15 (b) Unreasonably and vexatiously extended a civil action or proceeding before  
16 any court in this State, the court shall require the attorney personally to pay the  
additional costs, expenses and attorney's fees reasonably incurred because of  
such conduct.

17 2. The court shall liberally construe the provisions of this section in favor of awarding  
18 costs, expenses and attorney's fees in all appropriate situations. It is the intent of the  
19 Legislature that the court award costs, expenses and attorney's fees pursuant to this  
20 section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
21 Procedure in all appropriate situations to punish for and deter frivolous or vexatious  
claims and defenses because such claims and defenses overburden limited judicial  
resources, hinder the timely resolution of meritorious claims and increase the costs of  
engaging in business and providing professional services to the public.

22  
23 Furthermore, NRCP 11 provides that upon signing a pleading, or advocating a position, an  
24 attorney certifies that the pleading or position is not presented for any improper purpose, that the  
25 claims etc., are warranted by existing case law, and that the factual allegations or denials of  
26 factual allegations have evidentiary support.  
27  
28

1           Unfortunately, Mr. Payne's opposition was severely untimely and therefore prevented  
2 the ALB Law Firm from provide him with a safe harbor letter under NRCP 11. However, the  
3 court may issue an order to show cause to Mr. Payne under NRCP 11(c)(1)(b) and issue  
4 sanctions sua sponte. Additionally, NRS 7.085 does not require a safe harbor letter and must be  
5 liberally construed to as necessary to punish for and deter vexatious claims.<sup>14</sup>  
6

7           Here, ALB Law Firm has identified for the court at least 36 blatant misrepresentations of  
8 law and/or fact by Mr. Payne. Additionally, it appears that other parties have identified  
9 misrepresentations by Mr. Payne in other pleadings set for hearing on March 15, 2018. In  
10 several instances Mr. Payne's assertions are contradicted by the very citations provided by him.  
11 It is clear that Mr. Payne's opposition is not well-grounded in fact and is not warranted by  
12 existing case law. Furthermore, Mr. Payne's opposition appears to be for the sole purpose of  
13 extending the frivolous litigation initiated by his clients to prevent Nancy from receiving any  
14 benefit from the Trust and their continued attempts to prevent the Successor Trustees from  
15 acting on behalf of the Trust and fulfill their fiduciary duties. Therefore, this court should  
16 require Mr. Payne personally to pay the additional costs, expenses and attorney's fees incurred  
17 by ALB Law Firm in responding to his opposition, such costs, fees, and expenses are estimated  
18 to be approximately \$2,800.00.  
19  
20

21  
22           **C. Conclusion**

23           As legal counsel for the Trustor of the Trust, the ALB Law Firm sought relief based  
24

---

25           <sup>14</sup> *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228, 232, 2015 Nev. LEXIS 89, \*10, 131 Nev.  
26 Adv. Rep. 79. "The simplest way to reconcile NRCP 11 and NRS 7.085 is to do what federal courts have done with  
27 FRCP 11 and § 1927; treat the rule and statute as independent methods for district courts to award attorney fees for  
28 misconduct. Therefore, we conclude NRCP 11 does not supersede NRS 7.085."

1 upon Nancy's requests in conjunction with the terms of the Trust prior to her passing. Because  
2 of the benefit provided to Nancy as Trustor of the Trust in furtherance of the Trust's terms, the  
3 Successor Trustees approved the request for payment of fees and costs from the Trust. Pursuant  
4 to Trust Provision 11.1 their decision is conclusive and binding upon the Petitioners.  
5

6 Because the Court required this petition because the trust funds are currently frozen as a  
7 result of the Petitioners' sequestration of funds from the Successor Trustees, ALB Law Firm  
8 also provided documentation that its work was performed in accordance with the *Brunzell*  
9 Factors and the costs were actually incurred pursuant to *Cadle*, which were unopposed. Most  
10 importantly, the Trust's terms and Nevada law allow for the payment of Nancy's debts.  
11

12 Therefore, the law office of Anthony L. Barney, Ltd., respectfully requests that its fees  
13 and costs be paid from the Trust, because it is Nancy's (Trustor's) debt. As such, the ALB Law  
14 Firm requests this Court make the findings and orders as requested in its petition and unfreeze  
15 Nancy's assets in the amount of \$62,105.64 for payment of its fees and costs and order that they  
16 be paid from the blocked account. It also requests payment of fees and costs from Cary Colt  
17 Payne, Esq., in the approximate amount of \$2,800.00 for the false representations contained in  
18 his frivolous and vexatious objection.  
19

20 DATED this 13<sup>th</sup> day of March 2018.  
21

22 Respectfully Submitted,  
23 ANTHONY L. BARNEY, LTD.

24 

25 Tiffany S. Barney, Esq.  
26 NV State Bar No. 9754  
27 3317 W. Charleston Boulevard, Suite B  
28 Las Vegas, NV 89102-1835  
(702) 438-7878  
*Creditors of the Nancy Christian Trust*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Anthony L. Barney, Ltd. and not a party to the above-entitled action. I further certify that on March 13, 2018 I served the foregoing **REPLY TO PETITIONER'S COMBINED OPPOSITION TO 1) BARNEY FIRM PETITION FOR FEES, ETC., (2) MONTE REASON'S APPLICATION FOR REIMBURSEMENT** on the following parties via electronic service through the Eighth Judicial District Court filing system, addressed as follows:

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.*

Jerimy L. Kirschner, Esq.  
Jerimy Kirschner & Associates, Ltd. Office  
5550 Painted Mirage Rd, #320  
Las Vegas, NV 89149  
*Attorney for Jacqueline Utkin, Successor  
Trustee*

Joseph J. Powell, Esq.  
Rushforth Lee & Kiefer, LLP  
1707 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
*Attorney for Monte Reason, Trustee of the  
Nancy Christian Trust and Personal  
Representative of the Estate of Nancy  
Christian*

/s/Zachary D. Holyoak  
An employee of Anthony L. Barney, Ltd.

# **EXHIBIT 1**

4-1

**APN: 177-27-611-254**

**When Recorded, Mail to:**  
Grant Morris Dodds  
2520 St. Rose Pkwy, Suite 319  
Henderson, NV 89074

**Mail Tax Statements to:**  
Raymond T. Christian  
Nancy I. Christian  
1060 Dancing Vines Avenue  
Las Vegas, NV 89183

Inst #: 20161019-0000692  
Fees: \$19.00 N/C Fee: \$0.00  
RPTT: \$0.00 Ex: #007  
10/19/2016 09:18:20 AM  
Receipt #: 2905989  
Requestor:  
GRANT MORRIS DODD (LEGAL  
WI  
Recorded By: TAH Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

## **GRANT, BARGAIN AND SALE DEED**

THIS INDENTURE WITNESSETH: That Raymond Christian and Nancy I. Christian, husband and wife as joint tenants, for good and other valuable consideration, do hereby Grant, Bargain, Sell and Convey to ROSEMARY K. CHRISTIAN-KEACH, RAYMOND T. CHRISTIAN, JR. and SUSAN G. CHRISTIAN-PAYNE, Trustees of the CHRISTIAN FAMILY TRUST, dated October 11, 2016, all of their right, title and interest in that real property situated in the County of CLARK, State of NEVADA, bounded and described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART  
HEREOF FOR COMPLETE LEGAL DESCRIPTION.**

Commonly known as: 1060 Dancing Vines Avenue, Las Vegas, NV  
0358

GRANTEE'S ADDRESS: 1060 Dancing Vines Avenue  
Las Vegas, NV 89183

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness their hands this 11<sup>th</sup> day of October, 2016.



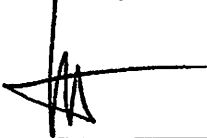
RAYMOND CHRISTIAN

  
NANCY I. CHRISTIAN

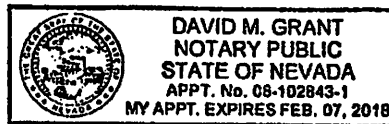
STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK     )

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

WITNESS my hand and official seal.



NOTARY PUBLIC



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

The land referred to is situated in the County of Clark, City of Las Vegas, State of Nevada, and is described as follows:

**Parcel I:**

Lot Three Hundred Fifteen (315) in Block One (1) of Silverado South Unit 2, as shown by map thereof on file in Book 84 of Plats, Page 64, in the Office of the County Recorder of Clark County, Nevada and amended by Certificate of Amendment recorded June 22, 1998 in Book 980622 as Document No. 01333 and by Certificate of Amendment recorded August 5, 1998 in Book 980805 as Document No. 00558, both of Official Records.

**Parcel II:**

An easement for ingress and egress over the private streets delineated on the plat of the final map of Silverado South Unit 2.

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a) 177-27-611-254  
b) \_\_\_\_\_  
c) \_\_\_\_\_

**2. Type of Property:**

- a) ☐ Vacant Land      b) ☒ Single Fam. Res.  
c) ☐ Condo/Twnhse      d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg      f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural      h) ☐ Mobile Home  
☐ Other

**FOR RECORDER'S OPTION USE ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

**3. Total Value/Sales Price of Property**

\$ 0.00

Deed in Lieu of Foreclosure Only (value of property)

( \_\_\_\_\_ )

Transfer Tax Value

\$ 0.00

Real Property Transfer Tax Due

\$ 0.00

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 07

b. Explain Reason for Exemption: Transfer without consideration to or from a trust.

**5. Partial Interest: Percentage being transferred: \_\_\_\_\_**

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature 

Capacity Attorney for Grantor

Signature \_\_\_\_\_

Capacity \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION  
(REQUIRED)**

Print Name: RAYMOND CHRISTIAN  
NANCY I. CHRISTIAN  
Address: 1060 Dancing Vines Avenue  
City: Las Vegas  
State: NV Zip: 89183

**BUYER (GRANTEE) INFORMATION  
(REQUIRED)**

Print Name: CHRISTIAN FAMILY  
TRUST  
Address: 1060 Dancing Vines Avenue  
City: Las Vegas  
State: NV Zip: 89183

**COMPANY/PERSON REQUESTING RECORDING (required if not seller of buyer)**

Print Name: Grant Morris Dodds, PLLC Escrow #: \_\_\_\_\_  
Address: 2520 St. Rose Pkwy. #319  
City: Henderson State: Nevada Zip: 89074

**AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILED**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Probate - Trust/Conservatorships

# COURT MINUTES

March 15, 2018

P-17-092512-T                      In the Matter of the Trust of:  
The Christian Family Trust u.a.d. 10/11/16

**March 15, 2018                      2:00 PM                      All Pending Motions**

**HEARD BY:** Ochoa, Vincent

**COURTROOM:** RJC Courtroom 10A

**COURT CLERK:** Yvette Clayton

**PARTIES:**

|                                                                   |                                       |
|-------------------------------------------------------------------|---------------------------------------|
| Jacqueline Utkin, Trustee, not present                            | Jeremy Kirschner, Attorney, present   |
| Monte Reason, Objector, not present                               |                                       |
| Monte Reason, Objector, not present                               |                                       |
| Nancy Christian, Other, not present                               | Tiffany Barney, Attorney, not present |
| Raymond Christian, Petitioner, not present                        | Cary Payne, Attorney, present         |
| Rosemary Keach, Petitioner, not present                           | Cary Payne, Attorney, present         |
| Susan Christian Payne, Petitioner, not present                    | Cary Payne, Attorney, present         |
| The Christian Family Trust u.a.d. 10/11/16,<br>Trust, not present | Cary Payne, Attorney, present         |

## JOURNAL ENTRIES

- PETITION TO CONFIRM SUCCESSOR TRUSTEE...OPPOSITION TO PETITION TO CONFIRM SUCCESSOR TRUSTEE; COUNTER PETITION FOR REINSTATEMENT OF CO-PETITIONERS...MONTE REASON'S APPLICATION FOR REIMBURSEMENT OF ADMINISTRATIVE EXPENSES ON OST

Anthony Barney bar # 8366 present  
Joseph Powell appeared for Monte Reason.  
Atty Zachary Holyoak, Bar #14217.

|             |            |             |               |                |
|-------------|------------|-------------|---------------|----------------|
| PRINT DATE: | 03/19/2018 | Page 1 of 3 | Minutes Date: | March 15, 2018 |
|-------------|------------|-------------|---------------|----------------|

**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

Mr. Kirshner stated this hearing was to confirm Jacqueline Utkin as successor Trustee and fees.

Arguments by Mr. Kirschner and Mr. Payne regarding the Successor Trustee.

Mr. Payne presented documents that Mr. Barney prepared.

Arguments by Mr. Payne regarding the Ein #.

Mr. Payne addressed the key to the house.

COURT ORDERED, as follows:

The Petition to confirm the Successor Trustee Jacqueline Utkin is GRANTED.

Ein # shall be provided within SEVEN (7) days.

The accounting still has to be provided to Mr. Kirshner.

Prior Order is still in effect regarding the blocked trust account.

No Attorney fees shall be awarded until the final decision on whether Monti Reason was the trustee.

Settlement Conference STANDS on 4/3/18 at 10.00 AM.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

*Canceled: March 28, 2018 2:00 PM Petition*

*Canceled: March 28, 2018 2:00 PM Opposition & Countermotion*

April 03, 2018 10:00 AM Settlement Conference

April 04, 2018 2:00 PM Petition  
RJC Courtroom 10A  
Ochoa, Vincent  
Barry-Singer, Frances

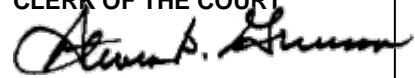
|             |            |             |               |                |
|-------------|------------|-------------|---------------|----------------|
| PRINT DATE: | 03/19/2018 | Page 2 of 3 | Minutes Date: | March 15, 2018 |
|-------------|------------|-------------|---------------|----------------|

**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**



|             |            |             |               |                |
|-------------|------------|-------------|---------------|----------------|
| PRINT DATE: | 03/19/2018 | Page 3 of 3 | Minutes Date: | March 15, 2018 |
|-------------|------------|-------------|---------------|----------------|

**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**



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

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In the Matter of the

THE CHRISTIAN FAMILY TRUST

Dated October 11, 2016

Case Number: P-17-092512-T

Dept.: S

**MOTION (1) TO EXPUNGE LIS PENDENS AND/OR STRIKE PLEADING; AND (2) FOR  
PRELIMINARY INJUNCTION**

COMES NOW, Jacqueline Utkin ("Trustee Utkin"), Successor Trustee to the Christian Family Trust, Dated October 11, 2016 ("CFT"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby files this MOTION (1) TO EXPUNGE LIS PENDENS AND/OR STRIKE PLEADING; AND (2) FOR PRELIMINARY INJUNCTION ("Motion").

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

**NOTICE OF MOTION**

Please take notice that the undersigned will bring the above-entitled **MOTION (1) TO EXPUNGE LIS PENDENS AND/OR STRIKE PLEADING; AND (2) FOR PRELIMINARY INJUNCTNION** for hearing before Department 26 of the District Court on the \_\_\_\_ day of \_\_\_\_\_ May 2, 201 8, at the hour of 2:00 pm, or as soon thereafter as counsel can be heard.

DATED this 14th day of March, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.  
JERIMY L. KIRSCHNER, ESQ.  
Nevada Bar No. 12012  
5550 Painted Mirage Road, Suite 320  
Las Vegas, Nevada 89149  
Telephone:(702) 563-4444  
Fax: (702) 563-4445

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Trustee Utkin seeks an order from this Court expunging the lis pendens filed by Susan Christian-Payne against real property owned by the CFT. At no point has ownership of the property been in dispute. In addition, there is no provision in the CFT mandating distribution of the real property. The lis pendens has slandered the CFT's title to the property, and as such Trustee Utkin files this Motion to expunge lis pendens and also an award of attorneys' fees for the removal of the lis pendens.

### **II. BRIEF STATEMENT OF FACTS**

The CFT was created on or about October 11, 2016. After its creation the then existing trustees, Rosemary K. Christian-Keach, Raymond T. Christian, Jr., and Susan G. Christian-Payne ("RRS Beneficiaries") purchased real property located at 2848 Bluffpoint Drive, Las Vegas, Nevada 89134, APN: 138-18-611-074, and legally described as:

**Parcel I:** Lot 195 in Block One 4 of SUN CITY LAS VEGAS - UNIT NO. 25, as shown by map thereof on file in Book 49 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

**Parcel II:** Together with an easement for ingress and egress over and across common area Lots A through D.

(herein "Bluffpoint Property"). The Grant, Bargain, Sale Deed shows that the property was purchased for CFT. **Exhibit 1 – Bluffpoint Property Deed.**

RRS Beneficiaries were removed as trustees by the trustor Nancy Christian, who then appointed Monte Reason ("Monte"). After Monte's resignation Trustee Utkin became the trustee for the CFT, and has been confirmed by this Court for the same.

On January 10, 2018, Susan G. Christian-Payne, through her counsel of record, filed a document in this action titled NOTICE OF PENDENCY OF ACTION (LIS PENDENS) (NRS Chapter 14) ("Notice of Lis Pendens"). **Exhibit 2 – Notice of Lis Pendens.** This Notice of Lis Pendens was executed by Susan Christian-Payne and provides notice that the Bluffpoint Property was a subject of the above referenced action. *Id.* Although it does not appear to have been

recorded with the Clark County Record, the Notice of Lis Pendens is a matter of public record, having been filed in this action.

There is no provision in the CFT which mandates the transfer of the Bluffpoint Property to the RRS Beneficiaries or any other beneficiary. The CFT gives its trustee complete discretion of the use of real property in the trust, specifically Section 10.1 (a) provides:

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

### **Exhibit 3 – CFT.**

On March 26, 2018, the RRS Beneficiaries contacted, through counsel, the real estate who was previously listing the Bluffpoint Property stating, they were “the ultimate beneficiaries of this real property, are entitled to occupy and have keys,” and then demanded the keys be turned over to them. **Exhibit 4 – March 28, 2018 Letter to Real Estate Agent.** There is no record, order, or statement in this action that supports the proposition that they are entitled to occupy and have keys for the Bluffpoint Property.

## **III. ARGUMENT**

### **A. EXPUNGE LIS PENDENS AND/OR STRIKE PLEADING**

The party who recorded the notice of pendency of the action bears the burden of proving to the satisfaction of the court that: (1) the action is for foreclosure of a mortgage upon real property or affects the title or possession; (2) the action was not brought in bad faith or for an improper motive; (3) the recording party will be able to perform any conditions precedent to the relief

sought; or (4) the recording party would be injured by any transfer of an interest in the property before the action is concluded. NRS 14.015 (2) (a)-(d).

In addition, the recording party must also establish: (1) the recording party is likely to prevail in the action; or (2) the recording party has a fair chance of success on the merits in the action and the injury suffered from a transfer before completion is sufficiently serious that hardship on the recording party would be greater than the hardship suffered by defendant resulting from the notice of pendency. NRS 14.015 (3) (a)-(b). If the court finds the recording party has failed to establish the above elements the court shall order the cancellation of the notice of pendency. NRS 14.015 (4).

“As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens.” Levinson v. Eighth Judicial Dist. Court of State In & For Cty. of Clark, 109 Nev. 747, 750, 857 P.2d 18, 20 (1993). *Levenson* favorably cites Burger v. Superior Court of Santa Clara County, 151 Cal.App.3d 1013, 199 Cal.Rptr. 227, 230 (1984) which explains that:

Lis pendens is one of the few remaining provisional remedies available at its inception without prior notice to the adversary. Due process is said to be provided for by subsequent notice and an expungement procedure which casts the burden upon the proponent of the lis pendens, but a lis pendens may cause substantial hardship to the property owner before relief can be obtained.

Fundamentally, “[t]here must be some claim of entitlement to the real property affected by the lis pendens” Levinson at 751.

“Generally, an action to clarify or remove a cloud on title is either an action in equity or an action for declaratory relief.” Liu v. Christopher Homes, LLC, 130 Nev. Adv. Op. 17, 321 P.3d 875, 879 (2014). “[W]hen a plaintiff incurs attorney fees as a result of a defendant's intentional effort to cloud title, the plaintiff deserves the fees because he or she had no choice but to litigate.” Liu v. Christopher Homes, LLC, 130 Nev. Adv. Op. 17, 321 P.3d 875, 879 (2014), *cf* Horgan v. Felton, 123 Nev. 577, 584, 170 P.3d 982, 987 (2007) (“attorney fees are only available as special

1 damages in slander of title actions and not simply when a litigant seeks to remove  
2 a cloud upon title.”).

3       Herein, Susan G. Christian-Payne’s Notice of Lis Pendens lacks a basis in law or fact as she  
4 has no equitable right in the Bluffpoint Property. The Notice of Lis Pendens serves as a unilateral,  
5 bond free injunction which hinders Trustee Utkin’s ability to administer the trust. There is no  
6 mandatory distribution for the Bluffpoint Property in the CFT, therefore it is subject to Trustee  
7 Utkin’s discretion pursuant to Section 10.1 (a) of the CFT. RRS Beneficiaries interference with  
8 Trustee Utkin’s custody and control is a *per se* violation of Section 14.4 No Contest provisions.  
9 To that extent any lis pendens recorded against the Bluffpoint Property must be expunged, and any  
10 pleading putting parties on notice of the contest be stricken since it acts as a slander on title. In  
11 addition, Trustee Utkin request that RRS Beneficiaries pay the attorneys fees incurred in bringing  
12 this Motion.

13       **B. TRUSTE UTKIN REQUESTS A PRELIMINARY INJUNCTION ENJOINING RRS**  
14       **BENEFICAIRIES FROM DISTURBING BLUFFPOINT PROPERTY OR**  
15       **INTEREFERRING WITH HER ADMINISTRATION OF THE ASSET**

16       NRS 33.010 provides that an injunction may be granted in the following cases:

- 17               1. When it shall appear by the complaint that the plaintiff is entitled to the relief  
18               demanded, and such relief or any part thereof consists in restraining the commission or  
19               continuance of the act complained of, either for a limited period or perpetually.
- 20               2. When it shall appear by the complaint or affidavit that the commission or continuance  
21               of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
- 22               3. When it shall appear, during the litigation, that the defendant is doing or threatens, or  
23               is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff’s  
24               rights respecting the subject of the action, and tending to render the judgment ineffectual.

25       Before or after the commencement of the hearing of an application for a preliminary  
26 injunction, the court may order the trial of the action on the merits to be advanced and consolidated  
27 with the hearing of the application. NEV. R. Civ P. 65(a)(2). “[A] preliminary injunction may be  
28 issued if a plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable  
harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4)

that an injunction is in the public interest.” V'Guara Inc. v. Dec, 925 F. Supp. 2d 1120, 1123 (D. Nev. 2013).

Trustee Utkin now asks this Court for an injunction enjoining RRS Beneficiaries from accessing the Bluffpoint Property, hindering its alienation, or otherwise seeking to interfere with Trustee Utkin’s administration of the asset.

1. Trustee Utkin has a likelihood of success on the merits;

This Court has already determined that the language of the Trust and the documents leading to appointment of Trustee Utkin are clear and unambiguous. Furthermore, the former trustee, Monte Reason, has already confirmed the CFT’s control over the property with the eviction of Raymond Christian Jr. in Justice Court Case No. 17C023096. Finally, the express terms of the CFT provide Trustee Utkin with exclusive control over real property owned by the CFT. *See*, Exhibit 3, Section 10.1(a).

To the extent Trustee Utkin has to prove a likelihood of success on the merits, success has already occurred. The only remaining action is to administer the CFT without further interference from the RRS Beneficiaries.

2. There is a likelihood of irreparable harm in the absence of preliminary relief;

RRS Beneficiaries have resorted to underhanded tactics to regain custody of the Bluffpoint Property which could cause immeasurable harm to the CFT. For example, in their March 26, 2018 letter they state “are entitled to occupy and have keys” which is simply wrong. At no point has this Court ordered this. To the contrary, the RRS Beneficiaries have already been evicted from the property pursuant to a Justice Court order. They also have the declaration from this Court that Trustee Utkin is the trustee which means they have not right to occupy the residence absent her permission. The RRS Beneficiaries actions are unpredictable and they have shown no willingness to abide by the terms of the trust or this Court’s January 17, 2018 ruling. As such the harm is impossible to measure and justifies an injunction.



1        3. The balance of equities tips in Trustee Utkin's favor;

2        Trustee Utkin is the trustee of the CFT with the duty to administer the trust according to its  
3 terms. The settlors of the CFT intended the trust to speak with one voice and not be subject to  
4 vexatious challenges at every turn. Section 14.4 of the Christian Family Trust specifically  
5 provides:

6                    *The Trustors specifically desire that this Trust Agreement and these Trusts*  
7                    *created herein be administered and distributed without litigation or dispute*  
8                    *of any kind. If any beneficiary of these trusts or any other person, whether*  
9                    *stranger, relative, or heir, or any legatee or devisee under the Last Will and*  
10                   *Testament of either of the Trustors or the successors-in-interest of any such*  
11                   *persons, including the Trustors' estates under the intestate laws of the State of*  
12                   *Nevada or any other state lawfully or indirectly, singly or in conjunction with*  
13                   *another person, seek or establish to assert any claim or claims to the assets of*  
14                   *these Trusts established herein, or attach, oppose or seek to set aside the*  
15                   *administration and distribution of the Trusts, or to invalidate, impair or set*  
16                   *aside its provisions, or to have the same or any part thereof declared null and*  
17                   *void or diminished, or to defeat or change any part of the provisions of the*  
18                   *Trusts established herein, then in any and all of the above-mentioned cases*  
19                   *and events, such person or persons shall receive One Dollar (\$1.00), and no*  
20                   *more, in lieu or any interest in the assets of the trusts or interest in income or*  
21                   *principal.*

22        *See, Exhibit 1. The equities are in favor of allowing the settlors for the CFT final wishes and*  
23        *desires be met and without interference from others.*

24        4. That an injunction is in the public interest.

25        The public interest is best served by allowing the final desires of trustors to be honored,  
26 allowing the trust to speak with one voice, and enforcing the clear unequivocal terms of the trust.  
27 To do otherwise creates confusion, undermines the confidence in people's estate planning, and  
28 spawns frivolous litigation.

IV. CONCLUSION

Trustee Utkin asks for an order from this court expunging any lis pendens filed by RRS  
Beneficiaries as well as striking any pleading which purports to show a lien on the Bluffpoint  
Property. In addition, Trustee Utkin asks this Court for a preliminary injunction enjoining the RRS

1 Beneficiaries from interfering with her administration of the Bluffpoint Property or otherwise  
2 trying to gain access to the asset.

3 DATED this 29<sup>th</sup> day of March, 2018.

4 JERIMY KIRSCHNER & ASSOCIATES, PLLC

5 /s/ Jerimy L. Kirschner, Esq.

6 JERIMY L. KIRSCHNER, ESQ.

7 Nevada Bar No. 12012

8 5550 Painted Mirage Rd., Suite 320

9 Las Vegas, NV 89149

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

12 **VERIFICATION OF JACQUELINE UTKIN FOR MOTION (1) TO EXPUNGE LIS**  
13 **PENDENS AND/OR STRIKE PLEADING; AND (2) FOR PRELIMINARY INJUNCTION**

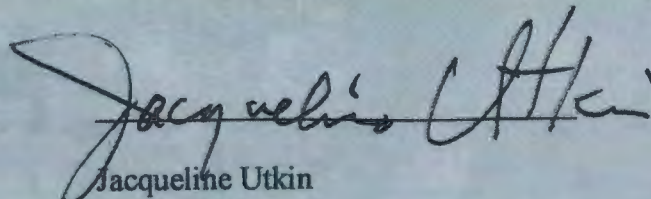
14 I, JACQUELINE UTKIN, declare that:

- 15 1. I am submitting a MOTION (1) TO EXPUNGE LIS PENDENS AND/OR STRIKE  
16 PLEADING; AND (2) FOR PRELIMINARY INJUNCTION.  
17 2. I know the contents of the Petition, which I know to be true of my own knowledge, except  
18 for those matters stated on information and belief.  
19

20  
21 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true  
22 and correct.

23  
24 March 29, 2018

25 Date

26   
27 Jacqueline Utkin  
28

# EXHIBIT 1

APN No. 138-18-611-074

RECORDING REQUESTED BY:  
Equity Title of Nevada

RETURN TO:  
Equity Title of Nevada  
2475 Village View Dr., Suite 250  
Henderson, NV 89074

Inst #: 20161209-0003048

Fees: \$20.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #003

12/09/2016 02:34:16 PM

Receipt #: 2951368

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: ANI Pgs: 7

DEBBIE CONWAY

CLARK COUNTY RECORDER

## GRANT, BARGAIN, SALE DEED

---

Type of Document

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

THIS DOCUMENT IS BEING RE-RECORDED IN ORDER TO CORRECT THE  
LEGAL DESCRIPTION, INSTRUMENT No. 20161121-0001174

This page added to provide additional information required by NRS 111.312 Sections 1-2.  
An additional recording fee of \$1.00 will apply.

APN NO.: 138-18-611-074

**RECORDING REQUESTED BY:**

EQUITY TITLE OF NEVADA

**WHEN RECORDED MAIL TO:**

Christian Family Trust Dated October 11,  
2016

2848 Bluffpoint Drive

Las Vegas, NV 89134

**MAIL TAX STATEMENTS TO:**

SAME AS ABOVE

Affix RPTT: \$1,351.50

ESCROW NO.: 16840226 TGR

Inst #: 20161121-0001174

Fee: \$19.00 N/C Fee: \$0.00

RPTT: \$1351.50 Ex: #

11/21/2016 12:05:51 PM

Receipt #: 2934760

Requestor:

EQUITY TITLE OF NEVADA

Recorded By: OSA Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH THAT:

Boyd Lynn Duffin, as Trustee of The Boyd Lynn Duffin Living Trust, dated October 9,  
2012

for a valuable consideration, the receipt of which is hereby acknowledged, does hereby Grant,  
Bargain Sell and convey to

Rosemary K. Christian-Keach, Raymond T. Christian, Jr., and Susan G. Christian-  
Payne, trustees of the Christian Family Trust Dated October 11, 2016

all that real property situated in the County of Clark, State of Nevada, described as follows:

See Exhibit "A" attached hereto and made a part hereof

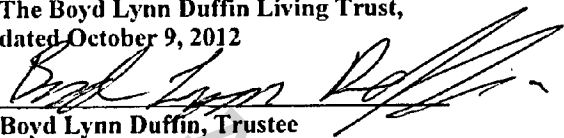
TOGETHER WITH all and singular the tenements, hereditaments and appurtenances  
thereunto belonging to in anywise appertaining.

SUBJECT TO:

1. General and special taxes for the current fiscal year.
2. Covenants, conditions, restrictions, rights of way, easements and reservations of record.

SELLER:

The Boyd Lynn Duffin Living Trust,  
dated October 9, 2012

  
Boyd Lynn Duffin, Trustee

STATE OF FL  
COUNTY OF Lee

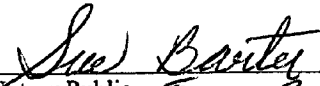
} SS:

On Nov. 17, 2016

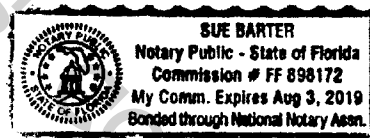
Personally appeared before me, a Notary Public

Boyd Lynn Duffin, Trustee

Who acknowledged that he executed the above instrument.

  
Notary Public Sue Barter

My commission expires: Aug. 3, 2019



**EXHIBIT A**  
**Legal Description**

Parcel I:

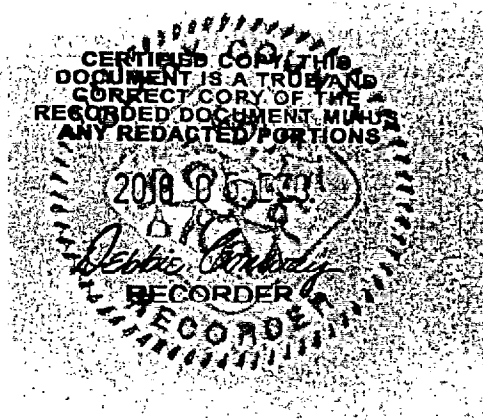
195 4  
Lot 195 in Block 4 of **SUN CITY LAS VEGAS – UNIT NO. 25**, as shown by map thereof  
on file in Book 49 of Plats, Page 32, in the Office of the County Recorder of Clark County,  
Nevada.

Parcel II:

Together with an easement for ingress and egress over and across common area Lots A  
through D.

ASSESSOR'S COPY

ASSESSOR'S COPY





STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a) 138-18-611-074

b)

c)

d)

2. Type of Property:

- a) ☐ Vacant Land      b) ☒ Single Fam. Res  
c) ☐ Condo/Twnhse      d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg      f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural      h) ☐ Mobile Home  
☐ Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3. a) Total Value/Sales Price of Property  
b) Deed in Lieu of Foreclosure Only (value of property)  
c) Transfer Tax Value:  
d) Real Property Transfer Tax Due

\$265,000.00

(\_\_\_\_\_)

\$265,000.00

\$1,351.50

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section  
b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_

Capacity: \_\_\_\_\_

Signature: \_\_\_\_\_

Capacity: \_\_\_\_\_

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Boyd Lynn Duffin, as Trustee of The  
Boyd Lynn Duffin Living Trust, dated October  
9, 2012

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: Christian Family Trust Dated October  
11, 2016

Address: 5431 OAKLIDGE AVE  
City: FORT MYERS BEACH  
State: FL Zip: 33931

Address: 2848 BLUFFPOINT DRIVE  
City: LAS VEGAS  
State: NV Zip: 89134

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: Equity Title of Nevada

Escrow #: 16840226 TGR

Address: 2475 Village View Dr.

City, State & Zip: Henderson, NV 89074

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a) 138-18-611-074

b)

c)

d)

2. Type of Property:

- a) ☐ Vacant Land      b) ☒ Single Fam. Res  
c) ☐ Condo/Twnhse      d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg      f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural      h) ☐ Mobile Home  
☐ Other \_\_\_\_\_

**FOR RECORDER'S OPTIONAL USE ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes:

3. a) Total Value/Sales Price of Property \$ 0.00  
b) Deed in Lieu of Foreclosure Only (value of property) ( \_\_\_\_\_ )  
c) Transfer Tax Value: \$ 0.00  
d) Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section No. 3

Explain Reason for Exemption: RE-RECORDED IN ORDER TO CORRECT THE  
LEGAL DESCRIPTION, INSTRUMENT No. 20161121-0001174

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: \_\_\_\_\_

Capacity: Agent

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Boyd Lynn Duffin, as Trustee of The  
Boyd Lynn Duffin Living Trust, dated October 9,  
2012

Address: 5431 Oakridge Avenue  
City, State & Zip: Fort Meyers, FL 33931

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: Christian Family Trust Dated October 11,  
2016

Address: 2848 Bluffpoint Drive  
City, State & Zip: Las Vegas, NV 89134

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: **Equity Title of Nevada**

Escrow #: 16840226

Address: 2475 Village View Dr.

City, State & Zip: Henderson, NV 89074

**AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED**

# EXHIBIT 2

*Steven D. Grierson*

LISP  
CARY COLT PAYNE, ESQ.  
Nevada Bar No. 4357  
CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
(702) 383-9010  
carycoltpaynechtd@yahoo.com  
Attorney for Petitioners

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of ) Case No.: P-17-092512-T  
) Dept. No.: PC-1

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

~~~~~ )  
SUSAN CHRISTIAN-PAYNE,)
ROSEMARY KEACH and)
RAYMOND CHRISTIAN,)
Petitioners)

-vs-

NANCY I. CHRISTIAN and)
MONTE REASON,)
Objectors)
~~~~~ )

**NOTICE OF PENDENCY  
OF ACTION (LIS PENDENS)  
(NRS Chapter 14)**

NOTICE IS HEREBY GIVEN that a Petition has been filed in the above entitled Court by the foregoing Petitioners. The said premises affected by this action are situate in the State of Nevada, County of Clark, commonly known as: 2848 Bluffpoint Drive, Las Vegas, Nevada 89134, APN: 138-18-611-074, and legally described as:

**Parcel I:** Lot 195 in Block One 4 of SUN CITY LAS VEGAS – UNIT NO. 25, as shown by map thereof on file in Book 49 of Plats, Page 32, in the Office of the County Recorder, Clark County, Nevada.

**Parcel II:** Together with an easement for ingress and egress over and across common area Lots A through D.

Dated: January 9, 2018.

*Susan I. Christian-Payne*  
SUSAN CHRISTIAN-PAYNE  
Petitioner

CARY COLT PAYNE, CHTD.

700 South Eighth Street

Las Vegas, Nevada 89101

Tel: 702. 383.9010 • Fax 702. 383.9049



# EXHIBIT 3

March 26, 2018  
*Sent via email: Kenneth.Manesse@cbvegas.com*

Kenneth Manesse  
Coldwell Banker  
Premier Realty  
8290 W Sahara Ave 100 Ste.#5122  
Las Vegas, NV 89117

RE: Christian Family Trust u.a.d. 10/11/16  
Case No.: P-17-092512-T  
2848 Bluff Point Drive  
Las Vegas, Nevada

Dear Mr. Manesse:

We understand that you currently hold the listing, for sale, of the above referenced property. Mr. Monte Reason did not have the requisite authority to place the house on the market for sale, and is no longer the "trustee" of the above referenced trust.

Currently, despite the court ordering that the Bluffpoint house not be sold (hearing 1/17/18-copy of minutes attached), the For Sale sign is still outside, and the property is still on the market.

My clients, as the ultimate beneficiaries of this real property, are entitled to occupy and have keys.

Kindly deliver the keys to my office forthwith, and take the property off the market for sale and remove your sign.

Sincerely,

CARY COLT PAYNE, CHTD.



CARY COLT PAYNE, ESQ.  
CCP/ma



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Probate -  
Trust/Conservatorships**

**COURT MINUTES**

**January 17, 2018**

P-17-092512-T      In the Matter of the Trust of:  
The Christian Family Trust u.a.d. 10/11/16

**January 17, 2018      2:00 PM      All Pending Motions**

**HEARD BY:** Ochoa, Vincent

**COURTROOM:** RJC Courtroom 10A

**COURT CLERK:** Yvette Clayton

**PARTIES:**

|                                             |                                       |
|---------------------------------------------|---------------------------------------|
| Jacqueline Utkin, Trustee, not present      | Jerimy Kirschner, Attorney, present   |
| Monte Reason, Objector, not present         |                                       |
| Monte Reason, Objector, not present         |                                       |
| Nancy Christian, Other, not present         | Tiffany Barney, Attorney, not present |
| Raymond Christian, Petitioner, not present  | Cary Payne, Attorney, present         |
| Rosemary Keach, Petitioner, present         | Cary Payne, Attorney, present         |
| Susan Christian Payne, Petitioner, present  | Cary Payne, Attorney, present         |
| The Christian Family Trust u.a.d. 10/11/16, | Cary Payne, Attorney, present         |
| Trust, not present                          |                                       |

**JOURNAL ENTRIES**

- MOTION FOR COMPLIANCE WITH AND ENFORCEMENT OF COURT ORDER AND FOR SANCTIONS RELATING THERETO, FOR ORDER TO SHOW CAUSE WHY FORMER TRUSTEES SHOULD NOT BE HELD IN CONTEMPT, FOR ORDER COMPELLING FORMER TRUSTEES TO ACCOUNT, AND FOR ACCESS TO AND INVESTMENT CONTROL OF TRUST FUNDS BELONGING TO THE CHRISTIAN FAMILY TRUST...JOINT PETITION FOR REVIEW OF FORMER TRUSTEES REFUSAL TO PROVIDE PROPER ACCOUNTING...JOINT OBJECT TO PETITION TO ASSUME JURISDICTION OF TRUST; CONFIRM TRUSTEES; INSTRUCTIONS, ETC. AND JOINT COUNTERPETITION TO ASSUME JURISDICTION IN RE OF THE TRUST, TO CONFIRM TRUSTEE, TO FIND BREACH OF FIDUCIARY DUTY, CONVERSION , AND FRAUD AGAINST

|             |            |             |               |                  |
|-------------|------------|-------------|---------------|------------------|
| PRINT DATE: | 01/19/2018 | Page 1 of 4 | Minutes Date: | January 17, 2018 |
|-------------|------------|-------------|---------------|------------------|

**Notice:** Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

FORMER TRUSTEES, TO INVALIDATE ALL TRANSFERS TO THE FORMER TRUSTEES AS THE PRODUCT OF UNDUE INFLUENCE, TO ORDER THE IMMEDIATE DELIVERY OF ALL TRUST ASSETS, AND TO IMPOSE A CONSTRUCTIVE TRUST

Joseph Powell appeared for Monte Reason.  
Atty Zachary Holyoak, Bar #14217.

Mr. Kirschner stated they have accepted appointment of successor trustee and requested the Court ratified the successor trustee. Mr. Payne objected. Mr. Powell stated his client executed a resignation.

Discussion regarding the trust.

Mr. Payne indicated there was two (2) real-estate properties, one here and one in California.

Mr. Kirschner stated there was a house and is subject to utilities liens and he requested money to be release to preserved the house.

Mr. Kirschner and Mr. Payne addressed Bluff Point home in Las Vegas. Mr. Payne requested his client re-occupy the house.

COURT ORDERED, as follows:

Court will take Jurisdiction of the trust.

Mr. Payne shall transfer the money from his trust account into an interest bearing account and it shall be FROZEN within SEVEN (7) banking days and it shall be title in the name of the trust. Once the account is open Mr. Payne shall provide the other attorneys with the account numbers and the amount that was transferred within TWO (2) weeks.

The amount of \$5,000.00 shall be release to pay for whatever property needs to be saved and any bills that needs to be paid, not for administrative expenses or attorney's fees. Mr. Kirschner shall be responsible for the accounting of the \$5,000.00. There shall be no money release without a Petition to the Court.

Mr Kirschner shall write a letter to Mr. Payne requesting what accountings is needed.

The Bluff Point home shall not be sold. Mr. Payne and his clients shall make arrangement to go to the Bluff Point home and remove their property and pictures shall be taken of items in dispute for future litigations.

|             |            |             |               |                  |
|-------------|------------|-------------|---------------|------------------|
| PRINT DATE: | 01/19/2018 | Page 2 of 4 | Minutes Date: | January 17, 2018 |
|-------------|------------|-------------|---------------|------------------|

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.



Mr. Payne shall prepare an Accounting which will include the California property and substantiation of the documents and send the information to Mr. Kirschner within 45 days.

After Mr. Payne submit his accounting, Mr. Powell shall do an accounting within 15 days.

Mr. Payne clients shall be responsible for the California property and paying the bills for California property. Mr. Payne clients shall keep an accounting of the rent collection and the bills.

The home shall not be sold.

Discovery shall be done within 90 days.

Mr. Holyoak shall file a Petition for his Attorney's Fees.

The Order shall reflect the substitution of attorneys.

The Court's Judicial Assistant shall set a Settlement Conference with Justice Becker.

Mr. Kirshcner shall prepare the Order and circulate to the other attorneys in the case.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

January 17, 2018 2:00 PM Petition  
RJC Courtroom 10A  
Ochoa, Vincent  
Clayton, Yvette

January 17, 2018 2:00 PM Motion  
RJC Courtroom 10A  
Ochoa, Vincent  
Clayton, Yvette

January 17, 2018 2:00 PM Opposition & Countermotion  
RJC Courtroom 10A  
Ochoa, Vincent  
Clayton, Yvette

|             |            |             |               |                  |
|-------------|------------|-------------|---------------|------------------|
| PRINT DATE: | 01/19/2018 | Page 3 of 4 | Minutes Date: | January 17, 2018 |
|-------------|------------|-------------|---------------|------------------|

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.