In the Supreme Court of the State of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

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

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

-vs-

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

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

-vs-

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

and

JACQUELINE UTKIN,
Respondent.

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Case No.: 75750

APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 12

Filed by:

/s/ Cary Colt Payne, Esq.

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Docket 75750 Document 2019-01472
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DATE	*DOCUMENT*	*NUMBERED*
APPENDIX VOLUME 1:		
7/13/17	Petition to Assume Jurisdiction of Trust; Confirm Trustees; Instructions, etc.	APP-ROA--001-72
8/17/17	Notice of Motion and Motion to Dismiss 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 Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)	APP-ROA—98-101
9/15/17	Supplement and Addendum to Petition to Assume Jurisdiction of Trust; confirm Trustees' Instructions, etc. Alternatively to Reform Trust Agreement	APP-ROA--102-105
9/15/17	Petitioner's Opposition to Motion to Dismiss	APP-ROA--106-115
APPENDIX VOLUME 2:		
10/4/17	Reply to Petitioner's Opposition to Motion to Dismiss	APP-ROA--116-156
10/13/17	Response to Petition to Assume Jurisdiction of Trust; Confirm Trustees; Insturctions, Etc. and Joinder in Motion to Dismiss Pursuant 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

DATE	*DOCUMENT*	*NUMBERED*
APPENDIX VOLUME 3:		
11/3/17	Joint Petition for Review of Former Trustees Refusal to Provide a Proper Accounting Pursuant to NRS 165.143	APP-ROA--194-222
APPENDIX VOLUME 4a:		
11/13/17	Joint Objection to Petition Jurisdiction Etc. Part 1	APP-ROA--223-298
APPENDIX VOLUME 4b:		
11/13/17	Joint Objection to Petition Jurisdiction Etc. Part 2	APP-ROA--299-373
APPENDIX VOLUME 5:		
12/4/17	Petitioner's Opposition to Motion for Review/Proper Accounting	APP-ROA--374-413
12/14/17	Petitioner's Opposition to Joint Counterpetition to Confirm/Breach of Fiduciary Duty, Etc. Request for Discovery	APP-ROA--414-428
APPENDIX VOLUME 6:		
12/12/17	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	APP-ROA--429-452

DATE	*DOCUMENT*	*NUMBERED*
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 Part 1	APP-ROA--509-539

APPENDIX VOLUME 7b:

1/26/18	Petition to Confirm Successor Trustee 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

DATE	*DOCUMENT*	*NUMBERED*
APPENDIX VOLUME 9:		
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
APPENDIX VOLUME 10:		
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
APPENDIX VOLUME 11:		
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

DATE	*DOCUMENT*	*NUMBERED*
APPENDIX VOLUME 12:		
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
APPENDIX VOLUME 13a:		
4/4/18	Hearing Transcript Part 1	APP-ROA-1037-1061
APPENDIX VOLUME 13b:		
4/4/18	Hearing Transcript Part 2	APP-ROA-1062-1186
APPENDIX VOLUME 13c:		
4/4/18	Hearing Transcript Part 3	APP-ROA-1087-1111
APPENDIX VOLUME 13d:		
4/4/18	Hearing Transcript Part 4	APP-ROA-1112-1134

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

DATE	*DOCUMENT*	*NUMBERED*
APPENDIX VOLUME 16:		
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
APPENDIX VOLUME 17:		
6/1/18	Notice of Entry of Order (Utkin suspension)	APP-ROA-1391-1401
10/8/18	Notice of Entry – Probate Commissioner R&R (Hearing re Utkin removal)	APP-ROA-1402-1408
11/13/18	Notice of Entry – Order Affirming Probate Commissioner R&R (Utkin removal)	APP-ROA-1409-1414

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Steven D. Grierson
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the THE CHRISTIAN FAMILY TRUST Dated October 11, 2016	Case Number: P-17-092512-T Dept.: S

MOTION FOR TURNOVER OF ASSETS AND TO DISSOLVE THE INJUNCTION OVER CHRISTIAN FAMILY TRUST ASSETS

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, Jerimy Kirschner & Associates, PLLC., and hereby files this MOTION FOR TURNOVER OF ASSETS AND TO DISSOLVE THE INJUNCTION OVER CHRISTIAN FAMILY TRUST ASSETS ("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.

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NOTICE OF MOTION

Please take notice that the undersigned will bring the above-entitled MOTION FOR TURNOVER OF ASSETS AND TO DISSOLVE THE INJUNCTION OVER CHRISTIAN FAMILY TRUST ASSETS for hearing before Department S of the District Court on the ____ day of May 14, , 2018, at the hour of 3:00 pm, or as soon thereafter as counsel can be heard.

DATED this 30th day of March, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Trustee Utkin seeks an order from this Court requiring Rosemary K. Christian-Keach, Raymond T. Christian, Jr., and Susan G. Christian-Payne ("RRS Beneficiaries") to turnover possession and control of any and all assets of the CFT, including but not limited to financial accounts, investment accounts, real property, and any other CFT property titled in their names as individuals or as former trustees.

Trustee Utkin also requests that this Court dissolve its October 31, 2017 injunction. Since October 31, 2017, the RRS Beneficiaries have abused this Court's freeze order to prevent even basic administration of the trust. The October 31, 2017 order freezing all assets of the CFT ("Freeze Order") is a void, bond-free injunction and is no longer justified in light of this Court's ruling that the trust terms are clear and that Trustee Utkin is the trustee of the CFT as a result.

II. BRIEF STATEMENT OF FACTS

The CFT was created on or about October 11, 2016. At its creation the existing trustees were Rosemary K. Christian-Keach, Raymond T. Christian, Jr., and Susan G. Christian-Payne ("RRS Beneficiaries"). RRS Beneficiaries were subsequently removed as trustees by the trustor Nancy Christian ("Nancy"), who then appointed Monte Reason ("Monte"). After Monte's resignation Trustee Utkin became the trustee for the CFT, and her appointment has been confirmed by this Court at a March 19, 2018 hearing.[1]

RRS Beneficiaries initiated this action challenging the still living trustor Nancy's appointment of Monte as trustee, paradoxically alleging the trustors never intended Monte to become a trustee. RRS Beneficiaries demanded that they be reappointed as trustees, and for a protective order freezing all assets of the CFT. Nancy and Monte opposed the RRS Beneficiaries on the basis that they were removed under the clear terms of the trust and after they had abused their position as trustees to enrich themselves while also unjustly withholding distributions to Nancy.

[1] The order arising from the hearing is still pending signature.

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On October 31, 2018, this Court entered a preliminary ruling taking jurisdiction over the CFT and freezing all of its assets. **Exhibit 1 – October 31, 2017 Freeze Order**. The Freeze Order did not require the RRS Beneficiaries to post a bond, nor did it articulate an irreparable harm or the RRS Beneficiaries' likelihood of success on the merits. The only parties benefitting from said freeze order was RRS Beneficiaries who had been hiding the trust funds in their attorney's trust account.

The RRS Beneficiaries effectively denied Nancy distributions of her own money while they were trustees, then blocked her from accessing her own money after they were removed, and then used this Court to obtain an injunction to deny her access to her own money in the final months of her life. Nancy died a pauper locked out of her own wealth.

Since Nancy's death the RRS Beneficiaries have utilized the Freeze Order to block Trustee Utkin from administering assets of the CFT, and blocking her from paying Nancy's final bills and the bills of the CFT. The Court has now confirmed Trustee Utkin as the trustee of the CFT, and it is time for the RRS Beneficiaries to release their hold on CFT assets and for Trustee Utkin to administer the trust.

III. ARGUMENT

A. TRUSTEE UTKIN IS THE TRUSTEE AND MUST BE ABLE TO ADMINISTER ALL TRUST PROPERTY.

NRS 153.031 permits a trustee to petition to this Court in regard to the affairs of a trust. As such, Trustee Utkin petitions this Court to assist in the marshalling of the CFT assets. The CFT has only one trustee, Trustee Utkin, and she is the only one that must be in possession and control of CFT assets. It is also critical that Trustee Utkin be given control over *all* assets of the CFT, even those which RRS Beneficiaries have yet to disclose.

On October 25, 2017, RRS Beneficiaries submitted their original "Inventory Record of Value" which was signed under penalty of perjury by Susan Christian-Payne. **Exhibit 2 – October 25, 2017 Inventory**. Susan Christian-Payne certified to this Court that this was true statement of all of the assets of the CFT. This was in response to a demand for an accounting from beneficiaries

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as well as the ruling of this Court. Under personal property the only two bank accounts identified as being assets of the CFT are two chase accounts. *Id.*

On January 17, 2018, this Court ordered RRS Beneficiaries to file a more detailed inventory and accounting with substantiation (i.e. receipts, invoices) within 45 days, which would have been March 5, 2018. As of March 15, 2018, RRS Beneficiaries had still not produced an inventory or accounting.

On March 16, 2018, Trustee Utkin noticed RRS Beneficiaries of a subpoena sent to Wells Fargo Bank requesting documents for all accounts in the name of CFT, Nancy or Raymond Sr., including bank accounts, and Voya investment accounts. Just four days after the subpoena was sent, RRS Beneficiaries quickly filed an amended accounting revealing two previously undisclosed Wells Fargo Bank accounts and a Voya investment account, collectively valued at over $150,000.00 ("Amended Accounting"). **Exhibit 3 – Amended Inventory**. The Amended Accounting does not provide the initial value of the Wells Fargo accounts when RRS Beneficiaries became trustees, nor is there details of a single transaction within those accounts. What is known is that the accounts were not revealed by RRS Beneficiaries until Trustee Utkin was about to discover them.

Regardless, it is time for Trustee Utkin to be given full control over all assets of the CFT, including Chase accounts, Wells Fargo accounts, as well as control over all real property of the trust, including the real property located in 37920 Grandview Ave, Yermo, CA ("Yermo Property"). The RRS Beneficiaries have continued to hold themselves out as trustees, such as listing themselves on Chase accounts as "Susan G Christian-Payne Trustee Or Raymond Tyrone Christian Trustee" and the result is undeniable confusion for apparent agency. *See,* **Exhibit 4 – Chase Account Documents**.

Trustee Utkin is requesting this Court order the turnover of all assets currently in RRS Beneficiaries' possession or control to avoid confusion with third parties, and to allow her to administer the trust.

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B. THE PRIOR FREEZE ORDER IS AN INVALID INJUNCTION, AND TRUSTEE UTKIN REQUESTS IT BE DISSOLVED.

"Injunctive relief is extraordinary relief, and the irreparable harm must be articulated in specific terms by the issuing order or be sufficiently apparent elsewhere in the record." State, Dept Of Conservation v. Foley, 109 P.3d 760, 121 Nev. 77 (Nev., 2005). For a preliminary injunction to issue, the moving party must show that there is a likelihood of success on the merits and that the nonmoving party's conduct, should it continue, would cause irreparable harm for which there is no adequate remedy at law. *See*, Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142 (1999); Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426 (1992). "The plaintiff must demonstrate potential harm which cannot be redressed by a legal or equitable remedy following trial. The preliminary injunction must be the only way of protecting the plaintiff from such harm. " Ultra Internet Media, S.A. v. Harrah's License Co., LLC, No. 2:10-cv-00455-JCM-RJJ, 2010 WL 1946666, at 3 (D. Nev. May 13, 2010) (quotation omitted). "The absence of irreparable, imminent harm is fatal to a preliminary injunction motion. " *Id.* (citing Midgett v. Tri-County Metro Trans. Dist. Of Oregon, 254 F.3d at 846, 850-51 (9th Cir. 2001)).

In addition, "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." N.R.C.P. 65(c). "Where a bond is required by statute before the issuance of an injunction, it must be exacted or the order will be absolutely void." Strickland v. Griz Corp., 549 P.2d 1406, 92 Nev. 322 (Nev., 1976).

The Freeze Order is a bondless injunction and should be rescinded. The lack of any security supporting the Freeze Order is a tragedy when, like in this circumstance, immeasurable harm is brought upon the enjoined parties. CFT was starved out of its finances by the RRS Beneficiaries until Nancy died; CFT was unable to provide for Nancy maintenance and welfare or even pay for medical treatments she may have needed. The CFT has also been starved out of the resources it needs to pay its creditors and investigate the extent of its own assets. CFT also faces ever-increasing bills from creditors who are entitled to payment and are charging interest on the

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amounts owed. The lack of security means that CFT must now pursue the RRS Beneficiaries rather than having a readily available remedy "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." NRCP 65(c).

Moreover, RRS Beneficiaries never demonstrated irreparable harm, or that they would succeed on the merits in any dispute. This Court's recent ruling that Trustee Utkin is the trustee of the CFT under the clear and unambiguous terms of the trust is fatal to their likelihood of success on the merits to rest. And the only irreparable harm surrounding the Freeze Order is that done to the CFT and Nancy, who were starved of the funds needed (1) to care for its primary beneficiary; and (2) to investigate the extent of its own assets.

The Freeze Order is an injunction by another name, except it lacks the necessary bond, showing of irreparable harm or likelihood of success on the merits. It is void, and Trustee Utkin requests that it be rescinded so that she may properly administer the trust.

IV. CONCLUSION

Trustee Utkin requests this Court's October 31, 2018 Freeze Order be rescinded and that all assets of the CFT be transferred to her from the RRS Beneficiaries.

DATED this 30th day of March, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.
JERIMY L. KIRSCHNER, ESQ.
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Attorney for Jacqueline Utkin, Successor Trustee to the Christian Family Trust Dated October 11, 2016

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VERIFICATION OF JACQUELINE UTKIN FOR MOTION FOR TURNOVER OF ASSETS IN POSSESSION OF BENEFICIARIES AND TO DISSOLVE THE INJUNCTION OVER CHRISTIAN FAMILY TRUST ASETS

I, JACQUELINE UTKIN, declare that:

1. I am submitting a MOTION FOR TURNOVER OF ASSETS IN POSSESSION OF BENEFICIARIES AND TO DISSOLVE THE INJUNCTION OVER CHRISTIAN FAMILY TRUST ASETS.
2. I know the contents of the Motion, which I know to be true of my own knowledge, except for those matters stated on information and belief.

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

March 30, 2018

Date

Jacqueline Utkin

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EXHIBIT 1

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Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

SUSAN CHRISTIAN-PAYNE, ROSEMARY KEACH, AND RAYMOND CHRISTIAN PETITIONERS, v. NANCY I. CHRISTIAN, RESPONDENT	)))))))))	Case No.: P-17-092512-T Dept No.: S

DECISION

This matter came before the Court for a Status Check on October 19, 2017. After reviewing the oral arguments and pleadings, reviewing exhibits and documents on file herein, the Court makes the following findings of fact and orders:

I. Statement of the Case

This is a dispute regarding a family trust following the removal of Petitioners as co-trustees and Respondent Nancy Christian's appointment of Monte Reason as the successor trustee.

II. Issues

1. Standing of Petitioners
2. Jurisdiction of the Court over the trust

III. Finding of Facts

VINCENT OCHOA
DISTRICT JUDGE
FAMILY DIVISION, DEPT. S
LAS VEGAS, NV 89155

1. One year ago, Raymond T. Christian (hereinafter "Raymond") and Nancy I. Christian (hereinafter "Nancy") executed The Christian Family Trust (hereinafter "the trust") on October 11, 2016.
2. Susan Christian-Payne, Rosemary Keach, and Raymond Christian (hereinafter "Petitioners") were the original individuals named co-trustees and accepted the Trusteeship of the Trust at the time of its initial execution in October 2016. The names of the four (4) now living children from the Grantors' marriage are Rosemary Christian-Keach, Raymond T. Christian, Jr., Tommy L. Christian, and Susan Christian-Payne.
3. In January 2017, the residence at 1060 Dancing Vines was listed for sale by Petitioners. On or about January 18, 2017, Petitioners accepted a contract on the Dancing Vines property. The property was sold on February 13, 2017.
4. Grantor Raymond Christian died on January 31, 2017. Grantor Nancy Christian is currently 77 years old.
5. About a month after Raymond died and after the property closed, Nancy Christian sought to be paid an additional $5,000 per month from the trust.
6. The Trust provides at Article 4.3(a) that: "the Trustee, in Trustees' sole discretion may pay to the Survivor all of the net Income of the Trust estate, as the Trustee may determine necessary, In the Trustee's sole discretion for the health, education and maintenance of the survivor . . ."
7. Nancy was informed as to the trust terms and net income payments by correspondence dated June 3, 2017. Within 10 days thereafter, Nancy, executed documents to remove Petitioners as co-trustees and appoint Monte Reason.

8. The Grantors resided in Clark County, Nevada; the Trust is being administered in Clark County, Nevada; the Trust is believed to own property in Clark County, Nevada; and the Trust is governed by the laws of the State of Nevada.

9. Petitioners claim that upon Raymond's death, the trust was to be divided into a survivor's trust and a decedent's trust.

10. As written, the trust provides Nancy with the authority to change the trustee or successor trustee after Raymond's death. *See* Trust Article 9.3.

11. Petitioners allege that the trust was not intended to be revocable as to the trustees and that Article 9.3 contained at least one scrivener's or other similar type of error.

12. Monte Reason, the successor trustee, is Nancy's child from a previous marriage. Monte Reason has past child support arrears and criminal issues including drug issues. His share was to be ten percent of the trust and was to be held in a trust to be distributed in the sole discretion of the trustee Susan G. Christian-Payne. *See* Trust Sec. 6.1 (f) and (g). Petitioners were to each receive twenty percent of the proceeds frtom the sale of the home outright and free of trust. *See* Trust Sec. 6.1 In addition, Petitioners were to receive each one third of any remaining property. *See* Sec.6.2

13. The Trust provides in Section 6.1 "Upon the death of **both** Trustors, the Trustee shall first sell the Trustors' primary residence located at 1060 Dancing Vines, Las Vegas, Nevada, and the proceeds from the sale of such home shall be distributed…" *Emphasis added.* However, Sec 6.1 (g) provides "Moreover, in the event the home referred to in this Section 6.1 was sold prior to the Survivor's death, then an amount equal to the net proceeds from such earlier sale shall be set aside to be held and distributed pursuant to the above terms of this Section 6.1."

VINCENT OCHOA
DISTRICT JUDGE
FAMILY DIVISION, DEPT. S
LAS VEGAS, NV 89155

IV. Law and Analysis

Pursuant to the trust, the Trustees had the "sole discretion" to use the net income to support the surviving trustor. Furthermore, if in the "opinion" of the Trustees the income from the trust was not sufficient to support the survivor, the Trustees could use the trust principal to support the needs of the survivor. *See* Trust Article 4.3.

After payments of decedent expenses following death of one of the trustors, any remaining property in the trust was to be transferred to the Survivor Trust. *See* Trust Article 4.3. Nancy claims that the trust provided that if she asked for more funds and the Trustees, in their sole discretion, did not agree, she had the authority to replace the Trustees. Nancy and the original co-trustees seek to litigate whether Nancy can remove and replace Petitioners pursuant to the interpretation of the language in the Trust. Sec.9.3. In addition, since the real property at 1060 Dancing Vines has been sold there is the question of using those proceeds for Nancy or setting the proceeds "aside to be held and distributed pursuant to the terms of" the trust.

In addition, there is the question of exploitation, fraud, duress, or undue influence by the newly appointed trustee Monte Reason over his mother, Nancy. Petitioners are the original trustees and the children of the grantors. *See* Trust Sec. 1.2. Moreover they were to receive sixty percent of "the net proceeds from . . .sale" of the home at 1060 Dancing Vines. *See* Trust Sec. 6.1 (g).

Nancy cites Linthicum v. Rudi, 122 Nev. 1452, 148 P.3d 746 (2006) to support her assertion that the Court lacks jurisdiction over this case. However, there are several distinctions between Linthicum and the present case. First, in Linthicum, the petitioners were only beneficiaries of the trust. Here, Petitioners were formerly trustees of the trust.

Second, the petitioners in Linthicum sought relief because they were removed as beneficiaries of the trust. Here, Petitioners were removed as trustees of the trust; their status as beneficiaries of the trust has not been modified or questioned. Furthermore, Petitioners allege that they were removed as trustees because of undue influence and duress.

Significantly, Linthicum deals exclusively with a revocable inter vivos trust with a sole grantor. Here, the Christian Family Trust was created as a revocable inter vivos trust by co-grantors. Upon the death of Raymond, the trust became irrevocable. *See* Trust Sec. 9.2. Furthermore, a discretionary survivor's trust was created. *See* Trust Sec. 4.3. The language of Linthicum is clear that it refers only to revocable inter-vivos trusts:

> "However, neither of these statutes directly addresses revocable inter vivos trusts, such as the trust in this case. [...]Nevada statutes do not contemplate beneficiaries to a revocable inter vivos trust challenging the trust until the settlor's death."

Nevada law provides the court discretion to accept jurisdiction and to decide who is an interested party. "Interested person" means a person whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary or court shall determine who is an interested person according to the particular purposes of, and matter involved in, a proceeding. NRS 132.185 .

Here, Petitioners were co-trustees of the trust and had fiduciary responsibility to protect the interests of Nancy and the assets of the Christian family trust. They had sole discretionary power of the assets of the trust and allege that they were removed as trustees for exercising this discretion. Petitioners further allege that appointment of Monte Reason as trustee will result in abuse or misuse of trust assets.

VINCENT OCHOA
DISTRICT JUDGE
FIL Y DIVISION, DEPT. S
AS VEGAS, NV 89155

Nevada law provides that trustees may petition the court regarding any aspect of the trust including appointing or removing a trustee. NRS 153.031(k). Moreover, Nevada law allows the Court to take jurisdiction of cases in matters involving fraud or duress. "The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a non-testamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence." NRS 164.015(1)

The Court finds that Petitoners, as the original co-trustees and the children of the Grantors, as well as beneficiaries of the trust, are interested person as defined in NRS 132.185. Petitioners have standing to question whether Nancy properly removed them from the role of trustees. NRS 164.015, (1) (3) and (4).

This Court has jurisdiction over the trust. NRS 164.010 (2). In fact, both sides have questions regarding the holding and setting aside of net proceeds of the sale of real property, breach of fiduciary duty, and interpretation of the trust instrument. The Court has jurisdiction to review the trust to resolve these issues. NRS 164.033.

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V. CONCLUSION

The Petitioners are "interested persons" as defined in NRS 132.185 and have standing to pursue their petition. The Court has jurisdiction to review the trust to help resolve their issues. NRS 164.033. It is the Court's intention to refer this matter for a conference with a Senior Judge.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Nancy shall file an Answer/Responding Pleading pursuant to statute.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED THAT all trust assets shall be frozen until further order of the Court.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED THAT the assets withdrawn from the trust by Petitioners shall be placed in to an account and frozen. Petitioners shall provide proof of the location of these assets to Nancy and the Court within 10 days.

IT IS SO ORDERED this 31 **day of October, 2017**

Honorable VINCENT OCHOA
District Court Judge, Department S

VINCENT OCHOA

VINCENT OCHOA
DISTRICT JUDGE
FAMILY DIVISION, DEPT. S
LAS VEGAS, NV 89155

EXHIBIT 2

Electronically Filed
10/25/2017 3:55 PM
Steven D. Grierson
CLERK OF THE COURT

IARV
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 Petitioner

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 Dept. No.: PC-1

INVENTORY RECORD OF VALUE

STATE OF NEVADA: COUNTY OF CLARK } ss.

SUSAN CHRISTIAN PAYNE, pursuant to the laws of the State of Nevada (NRS 53.045), and under penalty of perjury, hereby declares that the following is a true statement of all of the estate of the above-named Trust. I hereby certify that the property described herein is property where there is no reasonable doubt as to value and is believed to be equal in value to money in the amount set opposite each respective item, and that the value of the whole of the inventoried estate as of the date of decedent's death (1/31/17) was as stated herein.

Dated the 20 day of October, 2017

SUSAN CHRISTIAN PAYNE

CARY C PAYNE, CHTD.
700 South Eighth Street
Las Vegas, Nevada 89101
Tel: 702. 383.9010 • Fax 702. 383.9049

CARY COLT PAYNE, CHTD.
700 S. Eighth Street
Las Vegas, Nevada 89101
Tel: 702. 383.9010 • Fax 702. 383.9049

REAL PROPERTY

2848 Bluff Point Drive, Las Vegas, NV	$292,960.00[1]	
37920 Grandview Ave., Yermo, CA (rental)	$ 64,088.00	
		$357,048.00

PERSONAL PROPERTY

Proceeds of Sale [2]		
1060- Dancing Vines, Las Vegas, NV	$194,704.59	
Oxford Policy proceeds	$ 54,206.61	
Oxford Policy proceeds	$106,719.79	
Chase accounts proceeds	$ 73,197.94	
		$428,828.93[3]
Chase Savings (6040)	$ 6,513.45	
Chase Checking (4816)	$ 4,357.84	
(as of 9/30/17)		$10,871.29

TOTAL VALUE OF TRUST PROPERTY: $796,748.22

[1] Value based upon Zillow printout (10/16/17)

[2] Held for distribution, subject to claims, etc.

[3] Held by Client Trust Account

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 25, 2017, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

X **BY MAIL:** N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

Tommy L. Christian
245 South Lemon, Apt C
Orange, CA 92566

Christopher A. Christian
560 W. 20th Street #12
San Bernardino, CA 92405

X **BY E-MAIL AND/OR ELECTRONIC MEANS:** Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

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

Tiffany S. Barney, Esq.
ANTHONY L. BARNEY LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
email: tiffany@anthonybarney.com
Attorney for Nancy I. Christian

An employee of CARY COLT PAYNE, CHTD.

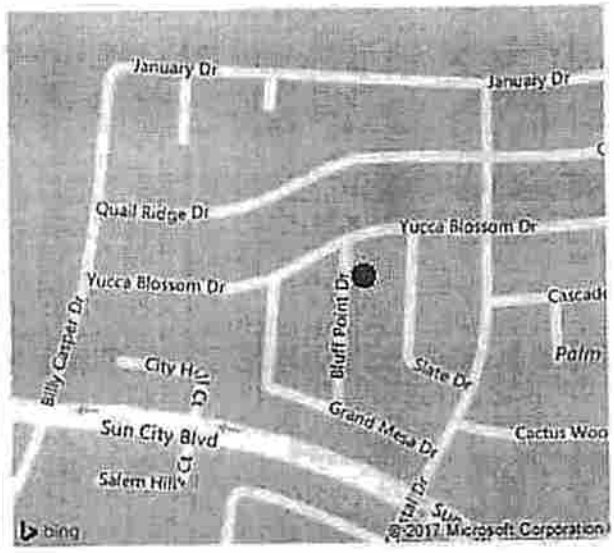
CARY COLT PAYNE, CHTD.
700 S. Eighth Street
Las Vegas, Nevada 89101
Tel: 702.383.9010 • Fax 702.383.9049

City, !

ZILLOW INSTANT OFFERS

500+ homeowners in your area got cash Instant Offers.

2848 Bluff Point Dr, Las Vegas, NV 89134



2848 Bluff Point Dr,
Las Vegas, NV 89134

2 beds · 2 baths · 1,653 sqft

SOLD: $265,000

Sold on 12/09/16

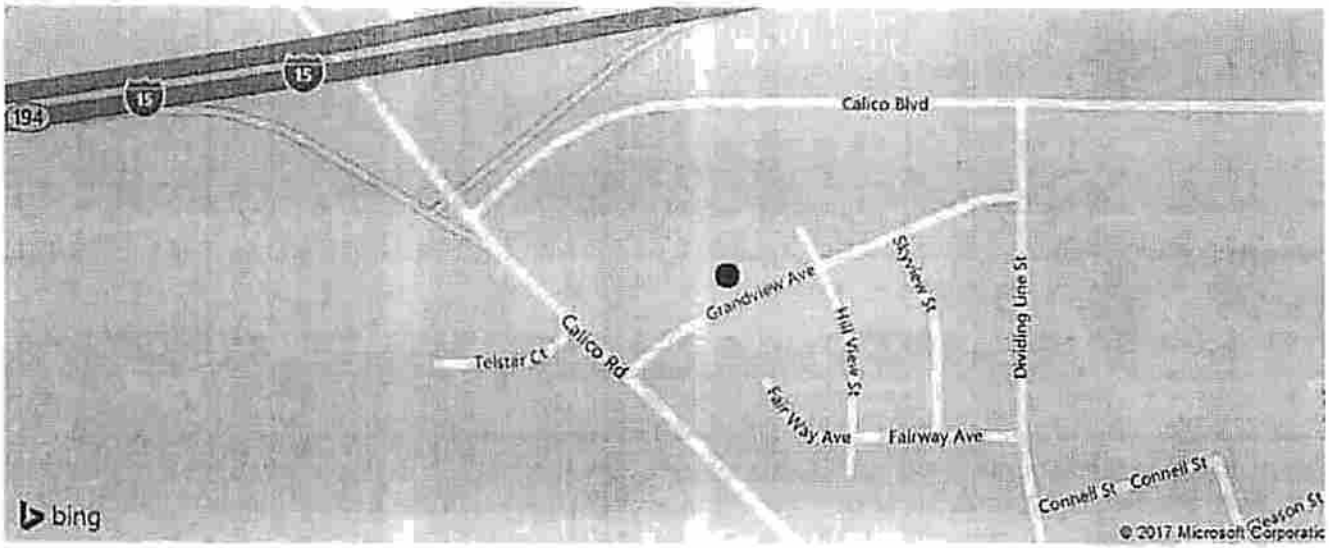
Zestimate®: $292,960

Est. Refi Payment

$1,034/mo

City, S

37920 Grandview Ave, Yermo, CA 92398



37920 Grandview Ave, Yermo, CA 92398

3 beds · 2 baths · 1,144 sqft

OFF MARKET

Zestimate®: $64,088

Rent Zestimate®: $950 /mo

Est. Refi Payment

$250/mo

Is this your rental?

Get a monthly local market report with comparable rentals in your area.

I own and manage this rental

I manage this rental for the owner

Enter email

Subscribe

For Internal Use

Estimated

Closing Disclosure

Closing Information

Date Issued	2/8/2017
Closing Date	
Disbursement Date	
Settlement Agent	Equity Title of Nevada
File #	17840030-084-TGR
Property	1060 Dancing Vines Avenue Las Vegas, NV 89183
Sale Price	$210,000.00

Transaction Information

Borrower	Deborah Coulter and Paul Hirsch 1060 Dancing Vines Avenue Las Vegas, NV 89183
Seller	**See Attachment

Summaries of Transactions

SELLER'S TRANSACTION

Due to Seller at Closing				$210,511.59
01 Sale Price of Property				$210,000.00
02 Sale Price of Any Personal Property Included in Sale				
03				
04				
05				
06				
07				
08				
Adjustments for Items Paid by Seller in Advance				
09 City/Town Taxes		to		
10 County Taxes	2/10/17	to	7/1/17	$382.08
11 Assessments	2/10/17	to	3/1/17	$15.62
12 Sewer	2/10/17	to	7/6/17	$90.04
13 Trash	2/10/17	to	4/1/17	$23.85
14				
15				
16				
Due from Seller at Closing				$15,807.00
01 Excess Deposit				
02 Closing Costs Paid at Closing (J)				$15,503.40
03 Existing Loan(s) Assumed or Taken Subject to				
04 Payoff of First Mortgage Loan				
05 Payoff of Second Mortgage Loan				
06				
07				
08 Seller Credit				
09				
10 Title Insurance Premium Adjustment				$303.60
11				
12				
13				
Adjustments for Items Unpaid by Seller				
14 City/Town Taxes		to		
15 County Taxes		to		
16 Assessments		to		
17				
18				
19				

CALCULATION

Total Due to Seller at Closing	$210,511.59
Total Due from Seller at Closing	-$15,807.00
Cash ☐ From ☒ To Seller	$194,704.59

Contact Information

REAL ESTATE BROKER (B)	
Name	Black & Cherry Real Estate
Address	2421 W. Horizon Ridge PKWY Suite 110 Henderson NV 89052
NV License ID	
Contact	Mark Hillers
Contact NV License ID	
Email	thehillersteam@gmail.com
Phone	(702) 480-4454

REAL ESTATE BROKER (S)	
Name	Real Estate By Design
Address	1180 Town Center Drive Suite 100 Las Vegas NV 89144
NV License ID	
Contact	Jackie Akester
Contact NV License ID	
Email	jackie@rebdiv.com
Phone	(702) 945-2728

SETTLEMENT AGENT	
Name	Equity Title of Nevada
Address	2475 Village View Dr. Suite 250 Henderson NV 89074
NV License ID	
Contact	Taci Granlund
Contact NV License ID	
Email	TeamTLT@equitynv.com
Phone	(702) 432-1111

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Closing Cost Details

Loan Costs	At Closing	Seller-Paid Before Closing
A. Origination Charges		
01 % of Loan Amount (Points)	$0.00	
02		
03		
04		
05		
06		
B. Services Borrower Did Not Shop For	$0.00	
01		
02		
03		
04		
05		
06		
07		
08		
C. Services Borrower Did Shop For	$480.00	
01 Escrow Fee to Equity Title of Nevada	$355.00	
02 Notary Signing Fee	$125.00	
03		
04		
05		
06		
07		
08		
09		
10		

Other Costs	At Closing	Seller-Paid Before Closing
E. Taxes and Other Government Fees	$1,071.00	
01 Recording Fees Deed: Mortgage:		
02 County Transfer Tax to Equity Title of Nevada	$1,071.00	
F. Prepaids	$0.00	
01 Homeowner's Insurance Premium (mo.)		
02 Mortgage Insurance Premium (mo.)		
03 Prepaid Interest (per day from to)		
04 Property Taxes (mo.)		
G. Initial Escrow Payment at Closing	$0.00	
01 Homeowner's Insurance per month for mo.		
02 Mortgage Insurance per month for mo.		
03 Property Taxes per month for mo.		
04 Aggregate Adjustment		
05		
06		
07		
08		
H. Other	$13,952.40	
01 HOA Dues to Silverado South Homeowners Association	$60.00	
02 Real Estate Commission to Real Estate By Design	$6,300.00	
03 Real Estate Commission to Black & Cherry Real Estate	$6,300.00	
04 Reimburse Agent to Real Estate By Design	$330.00	
05 Title - ALTA 2013 Homeowner's Policy or Title Insurance (Rev 12-2-13) to Equity Title of Nevada	$737.40	
06 Transfer Fee to First Service Residential Realty	$225.00	
07		
08		
09		
10		
J. TOTAL CLOSING COSTS	$15,503.40	

American Land Title Association

ALTA Settlement Statement - Seller - Estimated
Adopted 05-01-2015

Equity Title of Nevada

2475 Village View Dr., Suite 250 Henderson, NV 89074
Phone: (702) 432-1111

File No./Escrow No.: 17840030-084-TGR
Print Date & Time: 2/8/2017 - 12:47:19PM
Officer/Escrow Officer: Tad Granlund
Settlement Location: 2475 Village View Dr., Suite 250, Henderson, NV 89074
Property Address: 1060 Dancing Vines Avenue, Las Vegas, NV 89183, 177-27-611-254
Seller: Rosemary K. Christian-Keach, Raymond T. Christian, Jr. and Susan G. Christian-Payne, Trustees of the Christian
Lender: American Financial Network
Settlement Date: 2/10/2017
Disbursement Date:

Description	Seller	
	Debit	Credit
Financial		
Sale Price of Property		210,000.00
Prorations/Adjustments		
County Taxes 02/10/17 to 07/01/17		382.08
Assessments 02/10/17 to 03/01/17		15.62
Sewer 02/10/17 to 07/06/17		90.04
Trash 02/10/17 to 04/01/17		23.85
Title Insurance Premium Adjustment	303.60	
Other Loan Charges		
Notary Signing Fee	125.00	
Title Charges & Escrow/Settlement Charges		
ALTA 2013 Homeowner's Policy or Title Insurance (Rev 12-2-13) to Equity Title of Nevada	737.40	
Escrow Fee to Equity Title of Nevada	355.00	
Commission		
Real Estate Commission to Real Estate By Design	6,300.00	
Real Estate Commission to Black & Cherry Real Estate	6,300.00	
Government Recording and Transfer Charges		

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File #17840030-084-TGR

Description	Seller	
	Debit	Credit
County Transfer Tax to Equity Title of Nevada	1,071.00	
Miscellaneous		
HOA Dues to Silverado South Homeowners Association	60.00	
Reimburse Agent to Real Estate By Design	330.00	
Transfer Fee to First Service Residential Realty	225.00	
	Debit	Credit
Subtotals	15,807.00	210,511.59
Proceeds Due Seller	194,704.59	
Totals	210,511.59	210,511.59

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/ I authorize Equity Title of Nevada to cause the funds to be disbursed in accordance with this statement.

The Christian Family Trust, dated October 11, 2016

_____

Rosemary K. Christian-Keach, Trustee
The Christian Family Trust, dated October 11, 2016

_____

Raymond T. Christian, Jr., Trustee
The Christian Family Trust, dated October 11, 2016

_____

Susan G. Christian-Payne, Trustee

_____

Taci Granlund

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File #17840030-084-TGR

CARY COLT PAYNE, CHTD.

10/5/2017 3:53 PM

Register: CLIENT TRUST ACCOUNT:Christian Family Trust

From 06/01/2016 through 10/05/2017

Sorted by: Date, Type, Number/Ref

ate	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
06/30/2017	185830	Christian Family Trust	CLIENT TRUST ACC...	Deposit			106,719.79	106,719.79
06/30/2017	185831	Christian Family Trust	CLIENT TRUST ACC...	Deposit			54,206.61	160,926.40
06/30/2017	9569903...	Susan G. Christian-P...	CLIENT TRUST ACC...	Deposit			267,902.53	428,828.93

CONSOLIDATED BALANCE SUMMARY

ASSETS

Checking & Savings	ACCOUNT	BEGINNING BALANCE THIS PERIOD	ENDING BALANCE THIS PERIOD
Chase Private Client Checking	[redacted]	$4,670.33	$4,357.84
Chase Private Client Savings		5,763.25	6,513.45
Total		**$10,433.58**	**$10,871.29**
TOTAL ASSETS		**$10,433.58**	**$10,871.29**

All Summary Balances shown are as of September 29, 2017 unless otherwise stated. For details of your retirement accounts, credit accounts or securities accounts, you will receive separate statements. Balance summary information for annuities is provided by the issuing insurance companies and believed to be reliable without guarantee of its completeness or accuracy.

CHASE PRIVATE CLIENT CHECKING

CHRISTIAN FAMILY TRUST
SUSAN G CHRISTIAN-PAYNE TRUSTEE
OR RAYMOND TYRONE CHRISTIAN TRUSTEE

Account Number [redacted]

CHECKING SUMMARY

	AMOUNT
Beginning Balance	**$4,670.33**
Deposits and Additions	0.03
Electronic Withdrawals	-312.52
Ending Balance	**$4,357.84**
Annual Percentage Yield Earned This Period	0.01%
Interest Paid This Period	$0.03
Interest Paid Year-to-Date	$0.37

TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		**$4,670.33**
09/06	WI Home Mtg Auto Pay 0022758965 Web ID: W952318940	-312.52	4,357.81
09/29	Interest Payment	**0.03**	4,357.84
	Ending Balance		**$4,357.84**

EXHIBIT 3

AMENDED FIRST ACCOUNT AND REPORT

IN THE MATTER OF THE CHRISTIAN FAMILY TRUST,
CASE NO. P-17-092512-T
October 16, 2016 – February 28, 2018

INVENTORY as filed on 10/25/17			$796,748.22*
ADDITIONS:			
Income received (Schedule A)	$12,187.86		
Gain from sale of assets (Schedule B)	$ -0-		
Refunds (Schedule C)	$ 3,167.59		
Other Additions (Schedule D)	$ -0-		
TOTAL ADDITIONS		$15,355.45	
TOTAL CHARGEABLE ASSETS			$812,103.67
DEDUCTIONS:			
Expenses paid (Schedule E)	$36,084.52		
Losses from sale of assets (Sch F)	$ -0-		
Other Deductions (Schedule G)	$ -0-		
TOTAL DEDUCTIONS			($36,084.52)
TOTAL ASSETS ON HAND as of February 28, 2018			$808,499.15

RECAP OF ACCOUNTING as of February 28, 2018

Cash in Banks (Schedule H)	$454,451.22	
Notes Receivable (Schedule I)	$ -0-	
Shares of Stock (Schedule J)	$ -0-	
Real Property (Schedule K)	$354,047.93**	
Vehicles (Schedule L)	$ -0-	
Other Assets (Schedule M)	$ -0-	
RECAP TOTAL ASSETS as of February 28, 2018		$808,499.15

* This Amended Accounting does not include Voya account (Wells Fargo-$143,056.28) which has not been marshaled. It is an asset of Raymond Christian, Sr., beneficiary unknown, and may not be an ultimate asset of the trust.

** This value is an estimate subject to change/fluctuation in market, etc.

Gmail

Marj Arena <marja.carycoltpayne@gmail.com>

Notification of Service for Case: P-17-092512-T, In the Matter of the Trust of:The Christian Family Trust u.a.d. 10/11/16 for filing Motion - MOT (PRB), Envelope Number: 2358461

1 message

efilingmail@tylerhost.net <efilingmail@tylerhost.net> Tue, Apr 3, 2018 at 9:07 AM
To: marja.carycoltpayne@gmail.com

Notification of Service

Case Number: P-17-092512-T
Case Style: In the Matter of the Trust of:The Christian Family Trust u.a.d. 10/11/16
Envelope Number: 2358461

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	P-17-092512-T
Case Style	In the Matter of the Trust of:The Christian Family Trust u.a.d. 10/11/16
Date/Time Submitted	4/2/2018 9:51 AM PST
Filing Type	Motion - MOT (PRB)
Filing Description	Motion for Turnover of Assets and to Dissolve the Injunction over Christian Family Trust Assets
Filed By	Sarah Mintz
Service Contacts	Other Service Contacts not associated with a party on the case: Cary Payne, Esq. (carycoltpaynechtd@yahoo.com) Marj Arena, Paralegal (marja.carycoltpayne@gmail.com) Joseph Powell, Esq. (joey@rushforth.net) Tiffany Barney, Esq. (office@anthonybarney.com) Anthony Barney, Esq. (office@anthonybarney.com) Zachary Holyoak, Esq. (office@anthonybarney.com) Jerimy Kirschner, Esq. (jerimy@jkirschnerlaw.com) Sarah Mintz (sarah@jkirschnerlaw.com) Anthony Barney, Esq. (anthony@anthonybarney.com) Tiffany Barney, Esq. (tiffany@anthonybarney.com)

Document Details	
Served Document	Download Document
This link is active for 7 days.	

SCHEDULE "A" -- RECEIPTS OF INCOME DURING ACCOUNTING PERIOD

FROM:	*AMOUNT*	
Yermo Property Rent	$ 12,045.96	
Deposits	$ -0-	
Interest	$ 142.86	
TOTAL:		$15,355.45

SCHEDULE "B" -- GAINS OF SALES -- NONE

SCHEDULE "C"-- REFUNDS

FROM:	*AMOUNT*	
Bluff Point Escrow Rebate	$ 3,127.80	
Yermo Rental Property Escrow Rebate	$ 9.73	
Credit Card Rebates	$ 30.06	
TOTAL:		$3,167.59

SCHEDULE "D"-- OTHER ADDITIONS --- NONE

SCHEDULE "E" -- EXPENSES PAID

ITEM	*AMOUNT*	
Yermo Mortgage	$ 5,022.56	
Bluff Point Expenses	$11,839.00	
Medical Expenses	$ 5,048.36	
Trust Expenses	$ 8,369.22	
Yermo Expenses	$ 780.50	
Credit Card Expenses	$ 2,208.92	
Dancing Vines Expenses	$ 704.04	
Groceries/Medical Supplies	$ 2,111.92	
TOTAL:		$36,084.92

SCHEDULE "F" -- LOSSES FROM SALE OF ASSETS --- None

SCHEDULE "G" -- OTHER DEDUCTIONS --- None

SCHEDULE "H" -- CASH IN BANKS

ITEM	*AMOUNT*	
Wells Fargo - checking	$ 4,639.90	
Wells Fargo - savings	$ 3,192.57	
Chase - checking	$ 10,749.36	
Chase – savings***	$435,869.54	
TOTAL:		$454,451.22

*** Includes funds accidentally deposited by Raymond Christian, Jr. of his personal funds ($12,000) into wrong account, to be returned to him.

SCHEDULE "I" -- *NOTES RECEIVABLE* --- None

SCHEDULE "J" -- SHARES OF STOCK --- None

SCHEDULE "K" -- REAL PROPERTY

ITEM	***AMOUNT***	
2848 Bluff Point Drive, Las Vegas, NV	$289,959.93	(est)
37920 Grandview Ave, Yermo, CA (rental)	$ 64,088.00	
TOTAL:		$354,047.93

SCHEDULE "L" -- VEHICLES --- None

SCHEDULE "M" -- OTHER ASSETS ---None

EXHIBIT 4

CHASE PRIVATE CLIENT
JPMorgan Chase Bank, N.A.
P O Box 659754
San Antonio, TX 78265-9754

December 01, 2017 through December 29, 2017
Primary Account: [redacted]6040

CUSTOMER SERVICE INFORMATION

Web site:	Chase.com
Service Center:	1-888-994-5626
Deaf and Hard of Hearing:	1-800-242-7383
International Calls:	1-713-262-1679

00029754 DRE 703 210 36417 NNNNNNNNNNN 1 000000000 60 0000
CHRISTIAN FAMILY TRUST
SUSAN G CHRISTIAN-PAYNE TRUSTEE
OR RAYMOND TYRONE CHRISTIAN TRUSTEE
2848 BLUFF POINT DR
LAS VEGAS NV 89134-8934

00297540201600000022

We eliminated a fee for sending certain online international wires and updated our Deposit Account Agreement

The following changes were made November 12, 2017:

- There is **no Chase fee** when you use chase.com or the Chase Mobile® app to send a wire transfer from a checking account to a bank outside of the U.S. in a foreign currency when the transfer amount is the equivalent of USD $5,000 or more. As a reminder, there is never a Chase fee to send a wire from a Chase Private Client Checking account.
- We published an updated version of our Deposit Account Agreement. You can get the latest agreement at chase.com/disclosures, at a branch or by request when you call us. Here's what you should know:
  - We didn't change how we calculate your Available Balance but we clarified how it's defined. (Definitions)
  - We added language to explain our duty to act in good faith and with reasonable care. (General Account Terms, Section I, Rules Governing your Account)
  - We added language to explain how we would notify you if we ever transferred your account to a different business unit within JPMorgan Chase Bank. (General Account Terms, Section I, Changes to the Agreement)

Please call us at the number on this statement if you have any questions.

CONSOLIDATED BALANCE SUMMARY

ASSETS

Checking & Savings	ACCOUNT	BEGINNING BALANCE THIS PERIOD	ENDING BALANCE THIS PERIOD
Chase Private Client Checking	[redacted]6040	$2,623.90	$2,923.75
Chase Private Client Savings	[redacted]4816	7,263.94	7,264.17
Total		**$9,887.84**	**$10,187.92**

TOTAL ASSETS	**$9,887.84**	**$10,187.92**

All Summary Balances shown are as of December 29, 2017 unless otherwise stated. For details of your retirement accounts, credit accounts or securities accounts, you will receive separate statements. Balance summary information for annuities is provided by the issuing insurance companies and believed to be reliable without guarantee of its completeness or accuracy.

CHASE PRIVATE CLIENT CHECKING

CHRISTIAN FAMILY TRUST
SUSAN G CHRISTIAN-PAYNE TRUSTEE
OR RAYMOND TYRONE CHRISTIAN TRUSTEE

Account Number: [redacted]040

CHECKING SUMMARY

	AMOUNT
Beginning Balance	**$2,623.90**
Deposits and Additions	750.02
ATM & Debit Card Withdrawals	-21.65
Electronic Withdrawals	-428.52
Ending Balance	**$2,923.75**
Annual Percentage Yield Earned This Period	0.01%
Interest Paid This Period	$0.02
Interest Paid Year-to-Date	$0.44

TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		**$2,623.90**
12/05	Wf Home Mtg Auto Pay 0022758965 Web ID: W952318940	-312.52	2,311.38
12/05	Sun City Summerl ACH PPD ID: 1880251727	-116.00	2,195.38
12/11	ATM Check Deposit 12/09 9350 Sun City Blvd Las Vegas NV Card 1368	**750.00**	2,945.38
12/20	Card Purchase 12/19 Simple Cremation Las Vegas NV Card 7272	-21.65	2,923.73
12/29	Interest Payment	**0.02**	2,923.75
	Ending Balance		**$2,923.75**

CHASE PRIVATE CLIENT

December 01, 2017 through December 29, 2017
Primary Account: [redacted]6040

CHASE PRIVATE CLIENT SAVINGS

CHRISTIAN FAMILY TRUST
SUSAN G CHRISTIAN-PAYNE TRUSTEE
OR RAYMOND TYRONE CHRISTIAN TRUSTEE

Account Number: [redacted]4816

SAVINGS SUMMARY

	AMOUNT
Beginning Balance	**$7,263.94**
Deposits and Additions	0.23
Ending Balance	**$7,264.17**

Annual Percentage Yield Earned This Period	0.04%
Interest Paid This Period	$0.23
Interest Paid Year-to-Date	$67.75

The monthly service fee for this account was waived as an added feature of Chase Private Client Checking account.

TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		**$7,263.94**
12/29	Interest Payment	0.23	7,264.17
	Ending Balance		**$7,264.17**

You earned a higher interest rate on your Chase Private Client Savings account during this statement period because you had a qualifying Chase Private Client Checking account.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS: Call us at 1-866-564-2262 or write us at the address on the front of this statement (non-personal accounts contact Customer Service) immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.
For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS: Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account. Deposit products and services are offered by JPMorgan Chase Bank, N.A. Member FDIC

JPMorgan Chase Bank, N.A. Member FDIC

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CLERK OF THE COURT

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Creditors of The Christian Family Trust

EIGHTH JUDICIAL 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

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

Anthony L. Barney, Ltd., ("ALB, Ltd.") creditor of The Christian Family Trust dated October 11, 2016 ("Trust"), who were the attorneys for the late Nancy Christian ("Nancy" or "Trustor"), hereby files their 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 ("Motion"). This Motion is based upon the pleadings and papers on file herein, the

memorandum of points and authorities and exhibits attached hereto, and any oral arguments presented at the time of the hearing.

Dated this 3rd day of April, 2018.

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.

/s/Zachary D. Holyoak, Esq.
Anthony L. Barney, Esq.
Nevada Bar No. 8366
Tiffany S. Barney, Esq.
Nevada Bar No. 9754
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102-1835
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MEMORANDUM OF POINTS AND AUTHORITIES ON MOTIONS

I. Facts Presented

After a Petition had been filed, Petitioners Susan Christian-Payne, Rosemary Keach, and Raymond Christian Jr., ("Former Trustees"), filed an Opposition and a Reply was filed on the court record, the Former Trustees then filed a Supplemental Response to Opposition to Petition for Fees (Barney Firm); Request for Evidentiary Hearing, and Reopening Discovery, which constitutes a Sur-Reply, which was not authorized or warranted (hereinafter this document will be referred to as a "Sur-Reply"). With one exception, the Former Trustees Sur-Reply filed March 30, 2018 appears to be nothing more than a regurgitation of the previous Petitioner's Combined Opposition to 1) Barney Firm's Petition for Fees Etc., 2) Monte Reason's Application for Reimbursement ("Opposition") filed March 9, 2018. To make matters worse, the Petitioners do not even attempt to address or explain the numerous misrepresentations identified by the Barney Firm's Reply to Petitioner's Combined Opposition to 1) Barney Firm

Petition for Fees, Etc., 2) Monte Reason's Application for Reimbursement ("Reply") filed March 13, 2018, which might justify a Sur-Reply.

Instead, the Former Trustees failed to address the legal arguments presented by Barney Firm's Reply. They attempt to request new relief, which is completely inappropriate in a Sur-Reply. Most importantly, the Former Trustees attempt to put on a Recusal Order filed in another case, which is currently being sealed[1] or under various motions to strike in other departments including this Department.[2] Therefore, the Sur-Reply needs to be stricken in its entirety (especially Exhibit A), the Court should find that the Former Trustees are vexatious litigants, and the Court should sanction Mr. Payne for what the Probate Commissioner has already deemed his repeated harassment in attaching an irrelevant order from another proceeding that had been previously stricken from the court record, which is discussed further below.

II. <u>Legal Authority and Argument</u>

A. The Former Trustees prior arguments are refuted by the Barney Firm's Reply and the one "new" issue raised should be stricken from the record.

For the sake of brevity and clarity, the Barney Firm will provide a summary of previous pleadings, which address the Former Trustee's arguments and reserve the remaining argument in this section to address the one "new" issue raised by the Former Trustees. The Former Trustee's repeated arguments from their Opposition contained in their Sur-Reply and the legal argument against it have been compiled into separate paragraphs below for ease of reference:

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[1] Department 26 just recently sealed the entirety of the Recusal Order in Case #G-16-043377-A and left only one finding of fact, which was the last sentence on page 1 of the Recusal Order. Notably, Cary Colt Payne, Esq., was in attendance at that hearing to be advised that the judge had sealed the order including the language to which he has underlined in his attached exhibit to the Sur-Reply.

[2] This department will hear the motion to strike on the Recusal Order in Case #99-G-020357 on April 12, 2018.

1. The Former Trustees again claim that "They [ALB law firm] have no standing in these proceedings."[3] This statement has no legal or factual support and was addressed in detail in the undersigned's Reply filed March 13, 2018.[4] By way of summary, NRS 132.390(c)(8) states "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." There is no basis for Mr. Payne's statement to the contrary.
2. The Former Trustee's again claim that "In ALB's 20 page Reply (filed March 13, 2018), they fail to fully address pertinent application of Nevada Law. See NRS 163.417 [and] NRS 163.5559."[5] The Barney Firm's Reply filed March 13, 2018 addresses NRS 163.417,[6] and NRS 163.5559,[7] in far more detail than provided in the Petitioner's Reply. By way of summary, NRS 163.417 is clearly inapplicable because it does not prevent a Trustee from approving or a court from requiring payment of otherwise valid claims against the Trust or the Settlor(s) of the Trust. NRS 163.5559 also provides for a creditor of a settlor to seek to satisfy a claim against the settlor from the assets of a trust when the settlor's interest is: (1) not solely the existence of a discretionary power granted to a person other than the settlor by the terms of the trust or by operation of law or (2) not to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

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[3] See Petitioner's Sur-Reply filed March 30, 2018 at 2:8
[4] See Reply filed March 13, 2018 at section B.I.
[5] See Sur-Reply filed March 30, 2018 at 2:9-10
[6] See Reply filed March 13, 2018 at page 15:12 through 16:4
[7] See Reply filed March 13, 2018 at page 9:11-28

3. The Former Trustees claim that "In ALB's 20 page Reply (filed March 13, 2018), they fail to fully address pertinent application of Nevada Law. See… NRS 166.040."[8] NRS 166.040 was not cited by the Former Trustees in any pertinent way.[9] NRS 166.040 is not applicable to the Christian Family Trust because the Trust clearly states that the spendthrift provision of the Trust "shall not apply to a Trustor's interest in the Trust estate."[10] Furthermore, NRS 166.040 provides that a spendthrift provision is not valid if it is created for the benefit of the settlor and is revocable at creation. The Christian Family Trust was revocable at creation and was expressly created "for the use and benefit of RAYMOND T. CHRISTIAN and NANCY I. CHRISTIAN."[11]
4. The Former Trustees' citation to *Brock v. Premier Trust, Inc* is inapplicable as it deals with a beneficiary's interest in a valid spendthrift trust and Nancy was a settlor of a trust which, even if it is considered a valid spendthrift trust, expressly did not apply spendthrift provisions to the settlor(s).[12]
5. The Former Trustees again claim that the Trust did not contain joint property, when in ***several pleadings***, the Barney Firm has provided this Court with evidence that the Trust clearly contained joint property of the Nancy and Raymond Sr.[13] Even if the court were to entertain the Former Trustees arguments that the jointly owned

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[8] See Reply filed March 13, 2018 at page 9:11-28
[9] See Petitioner's Opposition at page 8:3-4 stating "A spendthrift trust is still a contractual relationship and intended to effectuate a non-probate matter/transfers. NRS 166.040." See also, Opposition filed March 9, 2018 at 9:12 stating "The trust is a valid Nevada spendthrift (NRS 166.040)"
[10] See Section 14.2 of the Trust.
[11] See Section 1.2 of the Trust.
[12] See **Brock v. Premier Trust, Inc. (In re Frei Irrevocable Trust),** 390 P.3d 646, 648, 2017 Nev. LEXIS 14, *1, 133 Nev. 8, 133 Nev. Adv. Rep. 8, "[a] spendthrift trust is a trust containing a valid restraint on the voluntary and involuntary transfer of the **interest of the beneficiary**." Emphasis added.
[13] See Reply filed March 13, 2018 at page 13:12-21

property is set aside as a specific devise and may not be used to satisfy creditors of the trustor, this argument still does not foreclose the payment of the Barney Firm's creditor's claim when they were actively representing Nancy in furtherance of the terms of the Trust.

6. The Former Trustees' objection to the payment of the Barney Firm's fees is their attempt to act as trustees when they are not, in fact, acting trustees because of Nancy's changes (which were requested to be done by the Barney Firm). It is also an attempt to mask the fact that a presumption of undue influence exists based on the Former Trustees admission through their attorney, that they sat at the table and negotiated the terms of the Trust.[14] The Former Trustees have not even attempted to refute the fact that they participated in the formulation of the material provisions of the Trust, nor have they attempted to present any evidence to rebut the presumption. The Barney Firm has received substantial additional evidence overwhelmingly shows that the presumption of undue influence is appropriate in this matter.[15] Their objection to the Barney Firm's fees and their attempts to discredit the Barney Firm is simply their attempt to mask the factual evidence that exists in support of claims against the Former Trustees.

7. The Former Trustees' use of case law is also inapplicable. Neither *Schrager*[16] nor *Albios*[17] is applicable to the payment of a creditor, even an attorney creditor, of a Trust. *Schrager* deals with payment of attorney's fees from an estate which by

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[14] See Affidavit of Michael Payne dated April 3, 2018 attached hereto and incorporated herein as Exhibit A

[15] "See Video Transcript of October 19, 2017 hearing at 2:33 wherein Mr. Payne stated, referring to his clients, 'these three trustees sat at the table, negotiated the terms of the agreement, and you kind of alluded to it, and signed the agreement.' See also Video Transcript of October 19, 2017 hearing at 2:16 wherein Mr. Payne stated, 'the **family** retained Mr. Grant to form the Trust for **their** benefit.' (emphasis added)."

[16] Sur-Reply at page 4:14-15 citing *Estate of Schrager v. Solomon Dwiggins & Freer, Ltd.* (Nev., 2015)

statute requires judicial oversight and approval of fees. *Albios* deals with an award of attorney's fees to a prevailing party. Neither of these scenarios deals with the payment of a creditor's claim from the settlor's trust.

8. The Former Trustees again claim that "ALB's current Rule 11 threat (VI, page 23) is specious and unsupported by the allegations".[18] This was also addressed in detail in the Reply filed March 13, 2018. Mr. Payne, on behalf of the Former Trustees, made several misrepresentations to the court as detailed in the Reply. It is notable that Mr. Payne has not even attempted to rebut the allegations that he has made misrepresentations to this Court, rather, he spends several pages complaining about the use of NRCP 11. Without citation to case law, statute or rule, Mr. Payne argues that threats of Rule 11 sanctions "are out of line where an adversary's arguments and/or position is plausible (even if incorrect)."[19] However, Mr. Payne does not even attempt to justify as plausible his thirty-six (36) enumerated misrepresentations on the court record that were referenced in the Reply.

9. The only "new" issue raised by the Former Trustees or Mr. Payne is that they seek to place an order on the court record, which was issued by an admittedly biased judge in an entirely **unrelated** matter in order to claim that Mr. Payne and the Former Trustees are somehow victims in this matter.[20] The undersigned believes that there is no valid reason to cite to another district court case unless it involves the same issues of law, fact, the same parties, or there is an argument for the application of some principle contained therein. To the extent that the court entertains Mr. Payne's

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[17] Id. at 4:2-21 citing *Albios v. Horizon Communities, Inc.*, 132 P.3d 1022, 122 Nev. 409 (Nev. 2006).
[18] See Sur-Reply as page 2:22-23
[19] See Sur-Reply at page 3:9-10

inclusion of an order from an entirely unrelated case, the following information is provided for context and as the basis for the current countermotion to strike.

As can be seen the Sur-Reply does not respond to "new" issues raised in the Reply by the Barney Firm; therefore, it should not be allowed. Further, it is inappropriate for the Former Trustees to be raising a "new" issue on a Sur-Reply. As such, the Sur-Reply should be stricken, especially the Recusal Order as requested below.

B. The Recusal Order should be stricken from this matter because it is erroneous and does not provide the Barney Firm with the opportunity to reply to the allegations raised therein.

The Nevada Supreme Court indicated that procedural due process requires that parties receive "notice and an opportunity to be heard."[21] Furthermore, NRCP 12(f) provides the following:

> **(f) Motion to Strike.** Upon motion made by a party before responding to a pleading or, <u>if no responsive pleading is permitted</u> by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. (Emphasis added).

Herein, the Former Trustees/Mr. Payne have placed additional arguments and referenced a Recusal Order filed in other cases on this court record in their Sur-Reply where no response pleading is permitted pursuant to the Nevada Rules of Civil Procedure. The Sur-Reply does not give the Barney Firm the ability to respond to the allegations raised against it in violation of due process.

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[20] See Sur-Reply at page 3:16 through page 4:2 see also Exhibit A thereto, wherein Judge Potter admits that "after deep reflection it has become clear that this Court cannot hear these matters in an unbiased manner."

[21] *Eureka Cty. v. Seventh Judicial Dist. Court*, 407 P.3d 755, 758, 2017 Nev. LEXIS 142, *7, 133 Nev. Adv. Rep. 111, 2017 WL 6629127

Further, the law firm of Anthony L. Barney, Ltd. was not given proper notice nor an opportunity to be heard before the Former Trustees/Mr. Payne attached a Recusal Order which contained erroneous statements of fact concerning the law firm of Anthony L. Barney, Ltd., and did not enable them to rebut the erroneous statements made in the Recusal Order. Notably, the Recusal Order is currently under several Motions to Strike in the respective cases in which it was filed. Department 26 has already sealed the Recusal Order and ordered that redaction occur on Page 1 to only leave the last sentence of the findings of fact on Page 1 of the Order.[22] As he has done in another case, Mr. Payne is now attempting to place the entire Recusal Order in another case in an attempt to harass the Barney Firm. Mr. Payne already has pending sanctions against him personally as recommended by the Probate Commissioner in the amount of $4,500.00.

NRS 159.0486 prevents a vexatious litigation from filing documents that are intended to harass or are without merit. As mentioned, Cary Colt Payne, Esq. ("Mr. Payne") has used this tactic before against the Barney Firm in another case – Case #P-17-090719-T – in which he attempted to put on the record a ***stricken*** order from one of the Barney Firm's other cases (Case #G-16-043377-A). After the Barney Firm provided Mr. Payne with a safe harbor to remove the stricken order from Case #P-17-090719-T and he would not, Mr. Payne was sanctioned in the amount of $4,500.00.[23] Commissioner Wesley Yamashita confirmed that Mr. Payne simply sought to harass his opposing counsel by citing to a stricken order stating, "You don't cite it to the record. It's irrelevant to this record. It is nothing meant to be other than harassive and

[22] The court hearing occurred on March 28, 2018
[23] See Report and Recommendation filed March 5, 2018 in the McGuire Trust case attached hereto and incorporated herein as Exhibit B

without basis."[24] Herein, it appears that Mr. Payne is attempting to use the same harassive tactic that is without basis - there is no basis to put on the Recusal Order that is currently being sealed or stricken in other courts, including this department. Notably, the motions to strike are a direct result of Mr. Payne's tactics in Case #P-17-090719-T.

Because there is no responsive pleading permitted, a motion to strike the Recusal Order and Mr. Payne's Sur-Reply which contains erroneous information regarding the Recusal Order is warranted pursuant to NRCP 12(f). The violation of rights provides grounds to strike the Recusal Order from this Court's record, thus, the Barney Firm requests that this Court strike the entire Sur-Reply and, at the very least, Exhibit A attached thereto.

C. The Barney Firm motions this Court to find that the Former Trustees are Vexatious Litigants with their present Sur-Reply and use of the Recusal Order.

The Former Trustees are improperly using a Sur-Reply to make the exact same arguments that were provided in their Opposition; however, they do attach a Recusal Order in an unrelated case. If this Court considers the Recusal Order and uses it as a basis for its decision, then, this Court should be aware of the underlying facts that resulted in the Recusal Order:

1. The context of Judge Potter's recusal begins with the case of The Guardianship of Giulian Grasso, Case Number G-16-043377-A ("Grasso").
2. In Grasso, Tiffany Barney, Esq., worked diligently to protect a ward with diminished capacity from a former guardian who has since been indicted for several felonies against the protected person.[25]

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[24] See Transcript of Proceedings for December 8th Hearing filed February 7, 2018 at Page 58:14-16.
[25] See Indictment in the Eighth Judicial District Court Court, Department XXIII, Case No. C-18-329127-1 filed January 11, 2018 ("Indictment") at Page 5:4-14.

3. Unfortunately, for the protected person, Judge William Potter was initially frustrated by the allegations made against the former guardian, even though such allegations were based on substantial evidence of theft and fraud.
4. The Court in its frustration adopted the arguments of the former guardian's attorney, Mark Hafer, Esq., who was himself implicated by the presented evidence.[26]
5. This wholesale adoption of the accused Guardian's arguments resulted in an admittedly erroneous order in Grasso.
6. Based on the substantial evidence of fraud, as well as the complete lack of support either in fact or law of the erroneous order Ms. Barney's client filed a motion for reconsideration and an appeal of the now stricken order.
7. At the hearing on the motion for reconsideration, Judge Potter apologetically spoke to Ms. Barney and encouraged the parties to reach a stipulation to vacate the order.
8. Rather than attempt to defend the erroneous order on appeal, the other parties agreed to a stipulation, which struck the order ("stricken order").
9. Ms. Barney's client was then granted sole guardianship over the protected person as requested because of the former guardian's theft and fraud.
10. The firm of Anthony L. Barney, Ltd. was later notified that the accused former guardian in Grasso has been indicted on fourteen (14) felony counts and that other connected parties are under investigation.[27]
11. The former guardian's attorney, Mark Hafer, Esq., then provided Cary Colt Payne, Esq., with information about the stricken order from Grasso.

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[26] See Page 5, Count 13 of the Indictment.
[27] See Indictment.

12. Mr. Payne, in an unrelated case, the McGuire Family Trust Case No. P-17-090719-T ("McGuire"), then cited to the erroneous and stricken order and argued, much as he has here, and falsely alleged that he and his client were the victims of abusive litigation.
13. On September 11, 2017 after reading Mr. Payne's pleading which cited the stricken order for the first time, Mr. Barney spoke to Mr. Payne to demand that Mr. Payne withdraw his citation to the stricken order.
14. Mr. Payne claimed that his employee just "happened" to discover the order while browsing the *Grasso* case.
15. Mr. Payne was provided the June 28, 2017 order, which showed that the order cited by him was vacated and stricken from the record in Grasso.
16. Mr. Payne claimed that he would withdraw his reference to the erroneous Grasso order; however, Mr. Payne never did so.
17. Even a cursory review of the court record in the Grasso matter indicates that the cited order is not available and is designated as having been stricken.
18. Additionally, the court record reveals that less than two (2) weeks after the entry of the stricken order, a motion to reconsider was filed in Grasso, and less than a month after the stricken order was entered an appeal was filed.
19. The record indicates that a hearing on the motion for reconsideration was held on May 10, 2017 in Grasso.
20. A review of the May 10, 2017 hearing minutes in Grasso shows that the Court acknowledged errors in the order and provided details regarding the vacating of the order and the terms of the order replacing it.

21. Finally, the court record shows that on Jun 28, 2017 a stipulation and order was entered in Grasso.
22. A review of this order indicates that the Stricken Order was vacated and stricken from the record in Grasso.
23. On September 26, 2017, the undersigned provided to Mr. Payne in McGuire, via hand-delivery, a safe harbor letter under NRCP Rule 11.
24. This letter requested the withdrawal of any reference to the stricken order by Mr. Payne in McGuire.
25. After Mr. Payne refused to withdraw his citation to the stricken order in McGuire, the undersigned filed the motion for sanctions under NRCP 11 in McGuire.
26. On March 5, 2018 the Probate Commissioner recommended sanctions against Mr. Payne in an amount of $4,500.00 for his citation to a stricken order in an unrelated case.
27. The Commissioner found in McGuire that "Mr. Payne's citation to the Stricken Order is hereby found to violate NRCP 11(b)(1) because it was presented for an improper purpose, namely to prejudice the Petitioner's case by disparaging their attorneys."[28]
28. The Commissioner further found, "Mr. Payne's citation to the Stricken Order as a valid order is hereby found to violate NRCP 11(b)(3) because it is a factual contention without support."[29]
29. After the Commissioner made an oral ruling of sanctions, but before a written recommendation was entered, Judge William Potter held a hearing in McGuire case and was informed of the recommended sanctions.

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[28] See Report and Recommendation filed March 5, 2018 in the McGuire Trust case attached hereto and incorporated herein as Exhibit B.
[29] Id.

30. After this hearing, and without request from the Barney Firm, Judge Potter issued a *sua sponte* order recusing himself from all matters involving ALB, LTD ("Recusal Order").[30]

31. Three identical orders were issued in 3 of the 5 matters involving ALB, LTD before Judge Potter on February 9, 2018.

32. In all three case the undersigned and his clients filed motions to strike the language contained in the Recusal Order as being a violation of due process and for reference to the admittedly erroneous and previously stricken order.

33. In *Grasso*, the motion to strike has just been adjudicated by the Honorable Judge Gloria Sturman who sealed the original order and redacted language contained in the publicly available order.

34. Another motion is set to be heard by this court on April 11, 2018 in the *Matter of Garrett Dosch* before this department.

35. Finally, the motion in McGuire is set for hearing on June 4, 2018 before the Honorable Judge Elizabeth Gonzalez.

36. While not a party to the action or attorney for a related party, Mr. Payne was in attendance at the *Grasso* hearing before Judge Sturman wherein the recusal Order was sealed and redacted.

37. Therefore, Mr. Payne is aware of how other courts are disposing of the Recusal Order.

38. It appears as though Mr. Payne is attempting to disseminate the recusal order through as many cases as possible before the respective courts may seal, redact, or strike the

[30] See Exhibit A to the Former Trustee's Sur-Reply filed March 30, 2018

erroneous and biased language, in order to create additional expense to ALB, Ltd, by forcing it to seek relief in additional unrelated cases.

39. There is no justifiable reason for Mr. Payne's citation to Judge Potter's recusal order in a case which is entirely unrelated, is not analogous in any way, and which was never before Judge Potter.

Given the prior sanctions recommended against Mr. Payne for similar conduct, the clearly unrelated nature of the recusal order to this matter, and Mr. Payne's knowledge that another court has already sealed and redacted an identical order in another case, Mr. Payne's citation to Judge Potter's recusal order appears to have been made for the purpose of harassing the Barney Firm, needlessly and vexatiously extending a proceeding, and unreasonably and vexatiously increasing the costs of this action for the Barney Firm. As such, the Barney Firm requests that this Court find that the Former Trustees are vexatious litigants.

NRS 155.165 provides that "[t]he court may find that a person, including, without limitation, a personal representative or trustee, is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without merit, intended to harass or annoy the personal representative or a trustee 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."** Emphasis added. Furthermore, "[i]f 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, incurred by the estate or trust to respond to the petition, objection, motion or other pleading and for any other pecuniary losses which are associated with the actions of the vexatious litigant." Finally, "[i]f a court finds that a person is a vexatious litigant pursuant to

subsection 1, that person does not have standing to… Request the removal of a personal representative or a trustee."

Herein, the Former Trustees have filed their objection and Sur-Reply solely to unreasonably frustrate the good faith efforts of the Barney Firm, which is seeking to enforce its rights as a creditor of the Trustor. As fees related to the enforcement of the Barney Firm's right increase, the Barney Firms' claim against the Trust increases as well.

The Court should find that the Former Trustees are vexatious litigants and require them to reimburse the Trust for all fees incurred by the Barney Firm in its responses to the Former Trustees' vexatious pleadings. This sanction can then be paid to the Barney Firm to satisfy the increased amount of its creditor's claim based on responding to the vexatious claims of the Former Trustees, instead of imposing the cost upon the Trust.

D. The Barney Firm motions this Court for sanctions against Cary Colt Payne, Esq., under NRS 7.085 and EDCR 7.60

NRS 7.085 provides that "If a court finds that an attorney has…[u]nreasonably and vexatiously extended a civil action or proceeding before 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." The statute further provides:

> The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil 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.

Similarly, EDCR 7.60 provides that "the court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of

the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause… [s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously." The Barney Firm requests that this court consider the actions of Mr. Payne and his clients in unreasonably and vexatiously increasing the cost of litigation in this matter through their redundant filing, their citation to impertinent and immaterial information, and reference to the Recusal Order that has no application on this case. Mr. Payne is simply using the same tactics herein as he used in McGuire to attempt to gain an advantage at the expense of all parties involved.

The Barney Firm requests that this Court also order sanctions against Mr. Payne sufficient to punish his continued harassive conduct, and, hopefully, deter frivolous or vexatious defenses, such as those presented in the Sur-Reply. Sanctions will likely also prevent the continued litigation that will only be detrimental to the Trust. Mr. Payne has been sanctioned for his conduct in citing to orders that have no precedential value (or no value at all because they were stricken from the court record) and are only used to be harassive and vexatious to the other parties.[31] The undersigned respectfully requests that this Court do the same.

III. Conclusion:

The Former Trustee's Sur-Reply is redundant because it merely regurgitates previous arguments with only one exception – a reference to the Recusal Order filed in other cases. The Sur-Reply fails to address the counterarguments made in ALB's Reply filed March 13, 2018, the only instance in which a Sur-Reply may be filed. The reference to and inclusion of Judge Potter's Recusal Order is immaterial and impertinent because it has no bearing on the matter currently before the court. This case has never been scheduled before Judge William Potter,

[31] See Exhibit B.

there are no legal principles addressed in the Recusal Order which are at issue in this matter, and Judge William Potter's admittedly biased opinion of ALB, Ltd., is irrelevant to whether its fees are appropriately paid from the Trust. The Recusal Order itself is erroneous, disparaging, and scandalous as detailed in ALB's several motions to strike the orders in each case in which it was filed. Because the Sur-Reply and the Recusal Order were filed without providing the Barney Firm the ability to provide briefing or be heard on the matter is a violation of due process. Because Mr. Payne harassive actions have been pursued in other matters, the Barney Firm requests that this court find that he and his clients are vexatious litigants and that Mr. Payne be sanctioned for his conduct. Therefore, the Barney Firm respectfully requests that:

1. This Court strike the Former Trustee's SUPPLEMENTAL RESPONSE TO OPPOSITION TO PETITION FOR FEES (BARNEY FIRM); REQUEST FOR EVIDENTIARY HEARING, AND REOPENING DISCOVERY in its entirety as being redundant, immaterial, impertinent, and/or scandalous;
2. This Court find that the Former Trustees are vexatious litigants pursuant to NRS 155.165 and impose sanctions in an amount appropriate to reimburse the additional expenses caused by their filings;
3. This Court issue appropriate sanctions against Mr. Payne under NRS 7.085 and EDCR 7.60 for needlessly, unreasonably, and vexatiously increasing the costs of this matter; and

///

///

4. This Court order any other relief the Court deems appropriate and necessary.

DATED this 3rd day of April 2018.

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.

_/s/Zachary D. Holyoak, Esq._____
Anthony L. Barney, Esq.
NV State Bar No. 8366
3317 W. Charleston Boulevard, Suite B
Las Vegas, NV 89102-1835
(702) 438-7878

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 April 3, 2018 I served the foregoing 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 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. 8th 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 A

AFFIDAVIT OF MICHAEL PAYNE

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

I, Michael Payne, do declare under penalty of perjury, the following:

1. I am over the age of eighteen years old.
2. I make this affidavit of my own free will and choice and have personal knowledge of the facts stated herein.
3. I am currently married to Susan Christian-Payne ("Susan").
4. Susan and I have one son together, Myles Payne ("Myles").
5. I make this affidavit in an effort to protect my son's interest and put the Trustee of the Christian Family Trust dated October 11, 2016 ("Christian Family Trust") on notice that my son has potential claims against the prior trustees of the Christian Family Trust, Susan Christian-Payne, Raymond Christian Jr., and Rosemary Christian-Keach.
6. A couple years ago, my father-in-law's ("Raymond Christian, Sr.'s") brother told Susan (my wife), Myles Payne (our son), and myself that Raymond Christian, Sr. had made Myles the sole beneficiary of one of his accounts in the amount of three hundred thousand dollars ($300,000.00).
7. In October of 2016, Raymond Christian, Sr. was practically bedridden, and subsequently required twenty-four (24) hour care.
8. When Susan came home after the first day she visited her father, Raymond Christian, Sr., she stated that she went through all of his papers and accounts and discovered that he was actually leaving almost $383,000.00 to Myles.
9. Susan further stated that Raymond Christian, Sr. had over five hundred thousand dollars ($500,000.00) in various accounts in Las Vegas, Nevada.
10. To make a long story short, within one (1) to two (2) weeks of my wife and her siblings (Raymond Christian, Jr., and Rosemary Christian-Keach) finding out about their father's accounts and how much money existed in them, they convinced their bedridden father, Raymond Christian Sr. ("Raymond Sr."), to change his will, to give Susan financial power of attorney, and to create a trust (the Christian Family Trust), of which only my wife, her brother and sister were the trustees.
11. Susan, Raymond Christian Jr. ("Raymond Jr."), and Rosemary Christian-Keach ("Rosemary") then closed out the account that Myles was to receive as a beneficiary and moved the money to another bank under their Christian Family Trust.
12. When my wife, Susan, told me what she, Rosemary and Raymond Jr., had done, she couldn't understand why I was upset.
13. Susan said that she, Rosemary and Raymond Jr., told their father, Raymond Sr., that they would take care of the grandkids.
14. When I ask my wife what they had set up for the grandkids she got mad and told me "nothing yet."
15. A few months later when I asked her again if they had set up anything for the grandkids, she became angry and told me "They'll get what we leave them when we pass!"

16. It became clear to me that my wife, Susan, Rosemary and Raymond Jr., must have presented this information to Raymond Sr. - about caring for the grandkids as a way to induce him to change his estate plan.
17. It also became clear to me that my wife and her siblings never intended to do anything for anyone but themselves, and they were willing to lie even to Raymond Sr. to achieve that end.
18. Around December 2016, my wife and her siblings took the money from the Christian Family Trust and paid cash for a house in Sun City, Summerlin.
19. My wife said they purchased the house in Sun City, Summerlin so they'd be closer, since they all live in Summerlin, especially since they had to provide twenty-four (24) hour care for their father, and their mother would have a place to live that would be closer to them.
20. She explained they did this so after their father passed they would be close in case their mother needed anything.
21. Thereafter, my wife's brother, Raymond Jr., moved into the Summerlin house.
22. Neither my wife, Susan, nor her brother, Raymond Jr., or her sister, Rosemary, liked their mother, Nancy Christian ("Nancy").
23. They kicked Nancy out of the house in Sun City, Summerlin, even before Raymond passed.
24. They told her she had to leave, so their mother Nancy asked to be taken back to the home she was living in previously (in Henderson) to them purchasing the home in Sun City.
25. Unfortunately, that was not possible, because they had sold the Henderson home and had put the proceeds into the Christian Family Trust!
26. Nancy didn't know they had sold the Henderson home until she said she asked to return there.
27. My wife's brother, Raymond Jr., then dropped Nancy off at a one-bedroom condo that their mother owned, and where their half-brother and his girlfriend were living.
28. Not only were the three of them forced to live in a one-bedroom condo while my wife's brother lived in the Summerlin home (which was supposed to be for Nancy) the condo was also in terrible condition.
29. My wife, her brother, Raymond Jr., and her sister, Rosemary, proceeded to change all of the beneficiaries on all of their father's accounts/ policies/ certificates to either themselves, or to the Christian Family Trust.
30. My wife, Raymond Jr. and Rosemary started making changes almost as soon as they coerced Raymond Sr., into changing his will, they created the Christian Family Trust, and Susan was given financial power of attorney over his assets.
31. In addition, not all the accounts/policies/certificates owned by Raymond Christian or the Christian Family Trust have been disclosed by my wife, Raymond Jr., or Rosemary.
32. They are still receiving payouts from accounts/ policies/ certificates, as recently as March 2018.
33. They were denied a claim for payment for an account this past January 2018, because they were not on the financial company's records as the beneficiaries. See Letter from Voya Financial attached to my affidavit as Attachment 1.
34. In summary, Raymond Christian Sr. made the majority of his decisions on who would get what from his estate at the beginning of 2015.
35. When he became bedridden and required constant care, his three children – my wife, Susan Payne, Raymond Jr. and Rosemary) took full and complete advantage of his poor health and medical conditions and effectively changed all of the beneficiaries he had designated for his policies/ accounts/ certificates, to either themselves or the Christian Family Trust as the new beneficiaries.

36. As noted, they found out in the early part of October 2016 how much money and assets their father had, and within two weeks or less, they managed to get their father to sign a power of attorney giving control of his finances to my wife, Susan.
37. My wife, Raymond Jr. and Rosemary also got him to sign a new will, and the paperwork to establish the Christian Family Trust. All three actions were completed on October 16, 2016.
38. Raymond Christian, Sr. was in no condition (mentally or physically) to make these changes voluntarily.
39. One of the first things his children (my wife, Raymond Jr. and Rosemary) did was to close out a bank account their father (Raymond Sr.) had, which had just a little over three hundred and eighty-three thousand dollars ($383,000.00) in the account.
40. My son, Myles, was the sole beneficiary of this account when they closed the account and removed the funds.
41. They used the money to establish the Christian Family Trust in a new bank account.
42. I have copies of the majority of the policies / accounts /certificates from when Raymond Christian, Sr. initially signed off on the papers, plus copies of the paperwork he signed October 16, 2016, and on subsequent dates.
43. The majority of the changes were done between October and December 2016. There is a significant difference in Raymond Christian, Sr' s signature and initials from 2015 when he made his decision on who would get what from his insurance policies, and investment accounts to October 16, 2016 when his aforementioned children (my wife, Raymond Jr. and Rosemary) got him to sign/ initial the changed paperwork.
44. About two weeks after Raymond Christian, Sr. passed away at the end of January 2017, his three children (who were the only trustees for the Christian Family Trust at that time) made changes to his remaining investment accounts making themselves the beneficiaries of these accounts.
45. Susan Christian-Payne, Raymond Christian Jr., and Rosemary Keach have already collected on the policies/ accounts/ certificates, in which they were each paid 33.33% each.
46. The three children of Raymond Christian, Sr. (which includes my own wife), who were the trustees of the Christian Family Trust, shouldn't be allowed to profit from their actions.
47. They should be required to pay back all the funds that they acquired by their illegal actions, especially to Myles.

Michael Payne, Affiant

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

Subscribed and sworn before me this 3rd day of April, 2018, before me, the undersigned, a notary public in and for said State, personally appeared Michael Payne, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

NOTARY PUBLIC
NEVA LIEBE
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. SEPT. 8, 2020
No: 05-94934-1

NOTARY PUBLIC

Attachment 1

VOYA FINANCIAL™

January 8, 2018

Christian Family Trust
1704 Double Arch Court
Las Vegas NV 89128

Re: Voya Insurance and Annuity Company
Contract 90355653

Dear Representative,

We received your claimant statement for this annuity contract. However, our records do not show that you are a beneficiary. In order for us to release the name of the beneficiary(s), we need the executor of the estate of Raymond Christine to submit the estate documents and a written request for beneficiary information, signed by the executor. Documents can be sent to the address below. If you feel this is an error, the agent listed on the contract may be able to provide you with beneficiary information. Also, you can double check any contract documents or paperwork we may have sent Raymond Christine as part of servicing this contract.

Another option would be to reach out to the executor of the estate for beneficiary information.

If you have any questions, please contact us at the number shown below and a representative will be happy to assist you 8:30 a.m. to 6:30 p.m. Eastern Time Monday through Thursday, and 8:30 a.m. to 5:30 p.m. on Friday.

Customer Service
PO Box 1337
Des Moines, IA 50305-1337
(800) 369-5303
voya.com

000381 00001 00001

REQUEST FOR NON-FINANCIAL SERVICE

Voya Insurance and Annuity Company, Des Moines, IA
Voya Retirement Insurance and Annuity Company, Windsor, CT
ReliaStar Life Insurance Company, Minneapolis, MN
ReliaStar Life Insurance Company of New York, Woodbury, NY
Security Life of Denver Insurance Company, Denver, CO
(the "Company")
Members of the Voya® family of companies
Fax: 515-698-2034 (Variable Annuity) 515-698-2001 (Fixed Annuity)
Customer Service: 909 Locust Street, Des Moines, IA 50309-2899
Website: Voya.com Phone: 800-366-0066 (Variable Annuity) 800-369-5303 (Fixed Annuity)

Annuities

The contract owner may use this form to request action by the Company. Check the appropriate boxes and supply the information indicated. **Please remember to read Section 6, on page 2, and provide your signature of authorization to make this request effective.**

1. CONTRACT INFORMATION

Owner Name Raymond Christian Contract # 90355653

Owner SSN/TIN 417-48-8865 Owner Phone (702) 483-5847 Gender male

Joint Owner Name

Joint Owner SSN/TIN Joint Owner Phone Gender

2. ADDRESS CHANGE

☐ Owner ☐ Joint Owner ☐ Annuitant

New Address

City State ZIP

New Phone

3. NAME CHANGE *(Select one. Not to be used for ownership or beneficiary changes.)*

☐ Owner ☐ Joint Owner ☐ Annuitant

From To

Reason for Change

Please provide a legal document (such as a marriage certificate or divorce decree) to support this change.

4. OWNER CHANGE

Please note that as the current owner, certain changes in your contract's ownership may result in the Company issuing a 1099-R reporting taxable income to you.

Ownership changes may terminate systematic withdrawals from this contract. To begin a systematic withdrawal, please complete a Request for Financial Service form.

☐ New Individual Owner
☐ New Individual Owner who is a current or former spouse
☐ New Custodian Owner
☑ New Trust Owner *(Certificate of Trust form required.)*
☐ Add Joint Owner[1]
☐ Custodian to Custodian[2]
☐ Remove Joint Owner
☐ Remove Custodian - Annuitant will become owner.
☐ Other *(Transfer from Trust, etc.)*

New Owner Name Christian Family Trust

SSN/TIN 417-48-8865 Country of Citizenship Gender

Address 1060 Dancing Vines Ave City Las Vegas State NV ZIP 89183

Birth Date 10/11/10 Relationship to Current Owner Phone

[1]Some living and death benefit features are not available with joint ownership. If your contract has one of these features, any change in ownership may result in a change or deletion of this feature. See your prospectus for additional details.
[2]Changes to or from custodian require a custodial approved signature (the required signer is specific to each custodian's Custodial Agreement. See custodial back office for more information.) If changing ownership to a new custodian, the producer must be affiliated with the new broker-dealer custodian. A change of producer may be necessary to complete a custodial change. A beneficiary change is required with a custodian to individual owner change.

Order #129700 06/01/2015
SG

5. BENEFICIARY CHANGE

The designation of a new beneficiary revokes and replaces prior beneficiary designations for each beneficiary type. For example, if you change only the primary beneficiary, the contingent beneficiary remains unchanged. A beneficiary change may impact your contractual benefits. Please refer to your prospectus or contract or consult your tax advisor for additional details.

- If the annuity is corporately owned, an officer of the corporation must sign the form for the corporation. The officer's title must be included and a copy of the corporate resolution giving the officer authority to sign for the corporation must also be submitted with this form.
- If the current beneficiary designation is irrevocable, this form must also be signed by any irrevocable beneficiary(ies).
- If a trust is the beneficiary, please list the entire trust name and the trust date as applicable and complete the Certificate of Trust form.
- Total percentage of primary beneficiary shares must equal 100%. Total percentage of contingent beneficiary shares must also equal 100%. If no percentages are listed, beneficiaries' shares will be distributed equally.
- If no primary beneficiary is living, unless otherwise stated, proceeds will be paid equally to each living contingent beneficiary.
- For additional beneficiary designations, attach a separate page, signed and dated by the owner(s).
- If you would like to designate a restricted beneficiary, complete the Restricted Beneficiary form.

Name	Gender	Birth Date/Trust Date	SSN/TIN	%	Beneficiary Type:
Rosemary R. Christian-Keach	F	10/31/60	562-13-6891	33.33	☒ Primary
Address: 2016 Grouse Ave, LV, NV 89128		Phone: 702 271-3864	Relationship to Owner: Daughter		☐ Contingent
Name	Gender	Birth Date/Trust Date	SSN/TIN	%	Beneficiary Type:
Raymond T. Christian, Jr.	M	10/25/62	546-17-5920	3333	☒ Primary
Address: 3229 Little Stream St LV, NV 89135		Phone: 702 340-4700	Relationship to Owner: Son		☐ Contingent
Name	Gender	Birth Date/Trust Date	SSN/TIN	%	Beneficiary Type:
Susan G. Christian Payne	F	10/01/65	546-17-5892	33.34	☒ Primary
Address: 1704 Double Arch CT, LV, NV 89128		Phone: 702 308-6674	Relationship to Owner: Daughter		☐ Contingent
Name	Gender	Birth Date/Trust Date	SSN/TIN	%	Beneficiary Type:
					☐ Primary
Address		Phone	Relationship to Owner		☐ Contingent

6. AUTHORIZATION AND SIGNATURES *(If there are joint owners, both must sign this form.)*

I hereby certify that I, the owner, have an insurable interest in the life of the annuitant. As defined in more detail in my prospectus, an insurable interest means I have a lawful and substantial economic interest in the continued life of the annuitant. I hereby certify that I have read and understand the terms of this form and that the information provided on this form is true and complete to the best of my knowledge, and I authorize the transactions requested.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OWNING A REGISTERED ANNUITY CONTRACT:

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who purchases a registered annuity contract. What this means for you: When a change of ownership is submitted, we will ask for the new owner's name, address, date of birth, Social Security number and other identifying information. We may also request a copy of additional identifying documentation and use the information provided to further verify the new owner's identity through the use of third-party sources.

6. AUTHORIZATION AND SIGNATURES *(continued)* *(If there are joint owners, both must sign this form.)*

THE FOLLOWING LANGUAGE IS APPLICABLE TO OWNERSHIP CHANGES ONLY.

U.S. TAXPAYER CERTIFICATIONS FOR CURRENT OWNER

Under penalties of perjury, I certify that:

1. **The Taxpayer Identification Number that appears on this form is correct.**
2. **I am not subject to back-up withholding due to failure to report interest and dividend income;**
   ☐ **If I am subject to backup withholding, I have checked here.**
3. **I am a U.S. person.**

If you are a Non-Resident Alien, please check the box below.

☐ Under penalties of perjury, I certify that I am a Non-Resident Alien.

The amount paid to you will be subject to 30% tax withholding unless you submit an IRS Form W-8 and are entitled to claim a reduced rate of withholding under the applicable U.S. tax treaty.

U.S. TAXPAYER CERTIFICATIONS FOR NEW OWNER

Under penalties of perjury, I certify that:

1. **The Taxpayer Identification Number that appears on this form is correct.**
2. **I am not subject to back-up withholding due to failure to report interest and dividend income;**
   ☐ **If I am subject to backup withholding, I have checked here.**
3. **I am a U.S. person.**

If you are a Non-Resident Alien, please check the box below.

☐ Under penalties of perjury, I certify that I am a Non-Resident Alien.

The amount paid to you will be subject to 30% tax withholding unless you submit an IRS Form W-8 and are entitled to claim a reduced rate of withholding under the applicable U.S. tax treaty.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications (in bold above) required to avoid back-up withholding.

Current Owner Signature Raymond Cirrotulo Date 10/21/16

Joint Owner Signature *(if applicable)* _____ Date _____

New Owner Signature *(if applicable)* Trce Date _____

Current Custodian Signature and Title *(if applicable)* _____ Date _____

New Custodian Signature and Title *(if applicable)* _____ Date _____

Irrevocable Beneficiary Signature *(if applicable)* _____ Date _____

A signature guarantee or notarized signature is required in the following instance:

- A valid signature of owner or power of attorney is not on file.
- The Irrevocable Beneficiary signs the form.

(Please print)

Venue _____

Subscribed and sworn before me on this _____ day of _____, 20_____

Notary Public Name _____ ID# _____ Phone _____

My commission expires _____

Firm Name on Medallion _____ ID# _____ Phone _____

Affix your notary stamp, if state required, and/or medallion signature guarantee stamp below. An embossing notary seal is not required. Please note that this form may be imaged and your transaction may be delayed when the stamp is illegible on scanned documents. The servicing producer is not permitted to act as notary or signature guarantee.

EXHIBIT B

Electronically Filed
3/5/2018 1:07 PM
Steven D. Grierson
CLERK OF THE COURT

ANTHONY L. BARNEY, ESQ.
NV State Bar No. 8366
TIFFANY S. BARNEY, ESQ.
NV State Bar No. 9754
ZACHARY D. HOLYOAK, ESQ.
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E-Mail: office@anthonybarney.com
Attorneys for Petitioners Belinda Deeter, Kathy Sneed, and Jeri McGuire

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the McGUIRE FAMILY TRUST Dated October 18, 1991	Case Number: P-17-090719-T Dept.: M

REPORT AND RECOMMENDATION

This matter came before the Court for hearing on the 8th day of December 2017, at 9:30 a.m., upon Belinda Deeter, Kathy Sneed, and Jeri McGuire ("Petitioners") NOTICE OF MOTION AND MOTION FOR SANCTIONS PURSUANT TO N.R.C.P. 11 ("Motion for Sanctions"), and upon Mary McGuire's OPPOSITION TO PETITIONER'S MOTION FOR SANCTIONS PURSUANT TO NRCP 11 AND COUNTERMOTION TO STRIKE, DISQUALIFY THE BARNEY FIRM; ALTERNATIVELY , VEXATIOUS LITIGANT ("Opposition and Countermotion"). The Petitioners, by and through their attorneys at the law firm of Anthony L. Barney, Ltd., were represented at the hearing. Mary McGuire was represented by Cary Colt Payne, Esq. at the hearing and was present. Judith Penna was represented by Sean Lyttle, Esq. at the hearing and was present.

For good cause appearing, the Probate Commissioner hereby reports the following findings of fact and conclusions of law, and recommends that the Court adopt the following findings of fact and recommendations by order as follows:

I. REPORT OF FINDINGS OF FACT

A. FACTS

1. The following findings are based on the evidence presented and/or the parties' failure to deny such statements of fact.
2. On February 1, 2017 Mary McGuire ("Mary"), through her prior attorney, initiated proceedings in the district court sitting in probate by filing her petition to confirm the herself as surviving trustee of the McGuire Family Trust dated October 18, 1991 ("Trust"), to take jurisdiction of the Trust, and order approving notice of proposed action ("Mary's Petition').
3. The Petitioners raised concerns that Mary McGuire may be incompetent.
4. Mary's prior attorney withdrew Mary's Petition on June 30, 2017.
5. On July 11, 2017, the Petitioners filed and served a notice of taking Deposition of Mary McGuire.
6. Mary's deposition was scheduled for August 2, 2017.
7. Mary failed to appear for several scheduled depositions.
8. On August 14, 2017, the Petitioners' served their first set of Requests for Production on Mary.
9. On August 16, 2017, Mr. Payne sent a letter to Anthony L. Barney, Ltd. wherein he indicated that his client would not be responding the Petitioner's Requests for Production.
10. After making multiple requests for an EDCR 2.34 conference with Mr. Payne, and after Mr. Payne's refusal to participate in such a conference, the Petitioners filed a motion for discovery sanctions and to compel participation in discovery.

11. On September 8, 2017 Mary filed her OPPOSITION TO MOTION FOR SANCTIONS, ETC., AND COUNTERMOTION FOR PROTECTIVE ORDER, SANCTIONS, AND ATTORNEY'S FEES, which contained citation to a stricken order in an unrelated case ("Stricken Order").
12. The unrelated case cited by Mr. Payne did not include any of the same parties as the current case, and it was entirely unrelated, either factually or legally, to the current case.
13. The Stricken Order was entirely unrelated to discovery.
14. On September 11, 2017 Mr. Barney spoke to Mr. Payne to demand that Mr. Payne withdraw his citation to the Stricken Order.
15. On September 11, 2017, Mr. Payne was provided the evidence which confirmed that the order cited by him was vacated and stricken from the record due to its errors. Mr. Payne indicated that he would withdraw his reference to the March 29, 2017 order.
16. Additionally, a cursory review of the court record indicates that the Stricken Order is not available and is designated as having been stricken from the record.
17. Additionally, the court record reveals that less than two (2) weeks after the entry of the Stricken Order, a motion to reconsider was filed regarding the Stricken Order, and less than a month later was appealed to the Nevada Supreme Court.
18. The court record further indicates that a hearing on the motion for reconsideration of the Stricken Order was held on May 10, 2017.
19. A review of the May 10, 2017 hearing minutes shows that the Court acknowledged errors in the Stricken Order and provided details regarding the vacating of the order and the terms of the order replacing it, as follows:

> This Court admits there are errors in that document. Additionally, the Court realizes that there are potential problems with certain findings that are likely to cause additional litigation at the expense of the Ward's Estate. [The Parties] have entered into a stipulation resolving the matters subject to the aforementioned Decision and Order… It appears that it is in the Ward's best interests that this Court accept the Stipulation of the parties…This Court therefore, upon receipt of the Stipulation, and as part thereof, will rescind its Decision and Order and strike it from the record.

20. Finally, the court record reveals that on June 28, 2017 a stipulation and order was entered. A review of this order indicates that the Stricken Order was vacated and stricken from the record.

21. On September 26, 2017, the Petitioners provided to Mr. Payne, via hand-delivery, a "safe harbor" letter under NRCP Rule 11. This letter requested the removal of any reference to the Stricken Order by Mr. Payne.

22. Mr. Payne has refused to withdraw his citation to the Stricken Order.

23. On October 19, 2017 the Petitioners filed their Motion for Sanctions.

24. On November 3, 2017 Mary filed her Opposition and Countermotion which raised as a defense, the "fair report privilege."

25. For the first time at the December 8, 2017 hearing Mr. Payne argued that NRCP 11 did not apply to his pleading because the citation to the Stricken Order was contained in a pleading designated as an opposition to a discovery motion.

II. REPORT OF CONCLUSIONS OF LAW

A. LEGAL AUTHORITIES

1. NRCP 11(b) states:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

2. Nevada Courts "have previously recognized that federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules." See *Aponte-Navedo v. Nalco Chem. Co.*, 268 F.R.D. 31, 41, 2010 U.S. Dist.

LEXIS 50957, *31-32 (D.P.R. May 20, 2010). See also *Blaine Equip. Co. v. State,* 122 Nev. 860, 865 (2006

3. Federal Courts have held that sanctions under FRCP 11 are appropriate if, "(1) 'after reasonable inquiry, a competent attorney could not form a reasonable belief that the pleading [or other paper] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law' or if (2) 'a pleading [or other paper] has been interposed for any improper purpose." See *United Services Funds v. Ward*, 121 F.R.D. 673, 677, 1988 U.S. Dist. LEXIS 10718, *11-13.

4. The *United Services Funds* Court explained that as to a particular pleading, "that a competent attorney could not, after reasonable inquiry, form a reasonable belief that the [pleading] was well-grounded in fact. Reasonable inquiry would have disclosed the deposition testimony in which Mr. Lazzell later repudiated his affidavit, a circumstance of which Ward's attorney would have been obligated to advise this court. A sanction is therefore mandated in this case." Therefore, even under the mistaken assumption by an attorney as to the veracity of affidavit later repudiated by its affiant, an attorney has a duty to review the record prior to reliance upon a previously filed affidavit.

5. NRCP 11(d) provides that "Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 16.1, 16.2, and 26 through 37. Sanctions for refusal to make discovery are governed by Rules 26(g) and 37."

6. NRS 155.170 exempts parties under the jurisdiction of the district court sitting in probate from certain requirements contained in NRCP 16.1 and NRCP 16.2.

7. EDCR 2.31 states "[a]ll cases which were not commenced by the filing of a complaint are exempt from the mandatory pre-trial discovery requirements of N.R.C.P. 16.1."

8. NRCP 26(g)(2) states:

> Every discovery request, response or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection, is:
>
> (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
>
> (B) not interposed for any improper purpose, such as to harass, obscure, equivocate or to cause unnecessary delay or needless increase in the cost of litigation; and
>
> (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

9. NRCP 37 provides that sanctions may be imposed based on a party's failure to participate in discovery.

III. RECOMMENDATIONS

THEREFORE, IT IS HEREBY RECOMMENDED THAT THIS COURT ORDER, ADJUDGE AND DECREE THE FOLLOWING:

1. The Petitioner's Motion for Sanctions complied with the requirements of due process as it provided Mr. Payne with appropriate notice of the motion and an opportunity to be heard.

2. Mr. Payne presented language from a Stricken Order as if it remained a valid order of the district court and such a citation was not related to discovery.

3. There is no legal or factual reason to cite to another district court case unless it involves the same issues of law, fact, the same parties, or there is an argument for the application of some principle contained therein.
4. Mr. Payne's citation to a Stricken Order in this matter did not involve the same issues of law or fact, the same parties, and no argument was made for the application of some principle contained therein.
5. Mr. Payne's citation to the Stricken Order is hereby found to violate NRCP 11(b)(1) because it was presented for an improper purpose, namely to prejudice the Petitioner's case by disparaging their attorneys.
6. Mr. Payne's citation to the Stricken Order as a valid order is hereby found to violate NRCP 11(b)(3) because it is a factual contention without support.
7. The District Court sitting in probate also has inherent power to impose sanctions upon a party for abusive litigation which includes monetary sanctions.
8. Mr. Payne's citation to the Stricken Order in this matter is improper and abusive.
9. Therefore, pursuant to NRCP 11 and the inherent power of the court to issue sanctions, Mr. Payne is hereby sanctioned in an amount of $3,500.00 to be paid to the Anthony L. Barney, Ltd., and an additional amount of $1,000.00 to be paid to the Nevada Law Library.
10. The total sanction of $4,500.00 is necessary to deter comparable conduct in future matters.
11. The Fair Reporting Privilege is a defense to a civil claim of defamation and is inapplicable to an analysis under NRCP 11.

///

12. Mary's Countermotion is denied in its entirety.

IT IS SO RECOMMENDED.

DATED this 2 day of ~~January~~ March 2018.

PROBATE COMMISSIONER

Respectfully Submitted by:

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