

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM05
HON. Judge Ebrahim Baytieh

Date: 02/07/2025

Court Room Rules and Notices

#	Case Name	Tentative
1	Lady – Trust (2020-01154499)	<p style="text-align:center">MOTION FOR SUMMARY JUDGEMENT</p> <p>Respondent Kevin C. Kelter (“Respondent” or “Kevin”) brings this Motion for Summary Judgment as to the “Petition for Instructions re Sale of Trust Property and for Suspension of Trustee and Appointment of Temporary Trustee” (ROA 125) filed by Petitioners Patricia Lady (“Patricia”) and Elizabeth Ward (“Elizabeth”) (collectively, “Petitioners”). The court uses first names for clarity. No disrespect is intended.</p> <p style="text-align:center">EVIDENTIARY MATTERS</p> <p>Respondent’s request for judicial notice is GRANTED as to exhibits A-G.</p> <p>While the court takes judicial notice of certain exhibits as listed above, the court does not take judicial notice of the truths asserted within those exhibits. (Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt (2001) 91 Cal.App.4th 875, 882; Herrera v. Deutsche Bank National Trust Co. (2011) 196 Cal.App.4th 1366, 1375; Evid. Code, §§ 452, subd. (d)(l), (c), (h), 453; Fontenot v. Wells Fargo Bank, N.A. (2011) 198 Cal.App.4th 256, 264-265; Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal.App.4th 471, 482.)</p> <p>Petitioners’ objections made throughout the separate statement are overruled for failure to comply with California Rules of Court, rule 3.154(b) and (c).</p> <p>Respondent’s evidentiary objections (ROA 556) are overruled for failure to comply with California Rules of Court, rule 3.154(c). Regardless, none of the objected to material was relied upon by the court in reaching its decision.</p> <p style="text-align:center">PERTINENT UNDISPUTED FACTS</p> <p>This case involves the L. Leonard and Dorothy Lady Trust created on 3/23/84 by Settlers Leonard Lady (“Leonard”) and Dorothy Lady</p>

(collectively, “Settlors”). (Respondent’s Undisputed Material Facts (“RUMF”), 1, 3.)

On 10/2/02, the Settlers created the 2002 Restatement Trust Agreement of L. Leonard and Dorothy Lady Trust. (RUMF, 4.)

The 2002 Restatement was amended and restated by the Settlers on 5/1/09 (“Lady Trust”). (RUMF, 5.)

The Settlers’ three daughters - Linda Marie Kelter (“Linda”), Patricia, and Elizabeth – are the initial life beneficiaries of the Lady Trust. (RUMF, 6, 7.) Pursuant to the terms of the Lady Trust, upon the Settlers’ death, each of the daughters’ trusts is to receive an equal (1/3) life estate in the Lady Trust property. (RUMF, 7; Petitioners’ Undisputed Material Facts (“PUMF”), 15)

On 5/1/09, when the Lady Trust was created, Leonard created three largely identical trusts for each daughter, referred to herein as Patricia’s Trust, Elizabeth’s Trust, and Linda’s Trust (collectively, the “Daughters’ Trusts”). (RUMF, 11.)

Kevin is the successor trustee of the Lady Trust. (RUMF, 8.) Kevin is the trustee each of the Daughters’ Trusts. (RUMF 12; PUMF, 13.) Kevin is also Linda’s husband (RUMF, 2.)

The named successor trustees for the Lady Trust, Patricia’s Trust, and Elizabeth’s Trust are Linda and Elizabeth as co-trustees, then Patricia. (PUMF, 8, 13.)

Patricia’s Trust and Elizabeth’s Trust (collectively, “Petitioners’ Trusts”) are irrevocable and provide them with a life estate in the Lady Trust property. (RUMF, 14.) The remainder beneficiaries are their issue or the remaining two Daughters’ Trusts if they have no issue. (Id.)

The purpose of the Daughters’ Trusts was to create a spendthrift or discretionary trust to enable Leonard to make gifts for the life beneficiaries (i.e., his daughters). (RUMF, 16.)

One asset of the Lady Trust, in which the daughters have a 1/3 life estate, is residential real property located in Lake Arrowhead, California (“Arrowhead Property”). (PUMF 15; RJN, Ex. A, Ex. 1, p. 8.) As acknowledged by Petitioners, the Settlers had a strong emotional connection to the Arrowhead Property and desired for it to stay in the family. (PUMF, 38, 40.)

After Leonard passed away in 2016, there was a substantial increase in the costs of repairs and maintenance for the property in question. (PUMF, 29; RUMF 31-59.)

Kevin pays all expenses for the Arrowhead Property from a Wells Fargo account titled in the name of Linda's Trust ("Arrowhead Account"). (RUMF, 26.) Kevin deposits funds from the Daughters' Trusts to the Arrowhead Account and pays all expenses for the Arrowhead Property from the Arrowhead Account. (RUMF, 27.) The Arrowhead Property has stayed afloat since 2021 solely from funds transferred from the Lady Trust to the Daughters' Trusts. (RUMF, 54.) Kevin considers each transfer as a "loan" from the Lady Trust to the Daughters' Trusts. (RUMF, 55.)

Kevin has provided accountings for the Lady Trust and for Petitioners' Trusts. (RUMF, 30.) The accountings show a significant increase in expenses for maintenance, repairs, and improvements for the Arrowhead Property since Leonard's death. (RUMF, 31-59.) The accountings also show that Kevin hired his own construction company and/or his sons to perform many of the repairs and improvements. (Id.)

Kevin prepared accountings for the Petitioners' Trusts for the period of 12/31/22 to 12/31/23. (RUMF, 57.) The 2023 Accountings show that the Arrowhead Property had a market value of \$2,250,000 on 12/31/22 and a market value of \$1,176,699.99 on 12/31/23. (RUMF, 58.)

On or about 10/1/16, after Leonard's death, Kevin entered into a "Tenants In Common Agreement" with himself as trustee of each of the Daughters' Trusts ("Arrowhead Agreement"). (RUMF, 60.) In the Arrowhead Agreement, Kevin appoints himself as property manager of the Arrowhead Property. (RUMF, 61.) The Arrowhead Agreement prohibits the Arrowhead Property from being leased or sold. (RUMF, 62, 63.) Kevin can terminate the Arrowhead Agreement any time he wants. (RUMF, 67.) The court notes that all of the facts about the Arrowhead Agreement are undisputed.

Petitioners have received no benefit from the Arrowhead Property since 2016. (RUMF, 20.) The Arrowhead Property has been used for the exclusive benefit of Kevin and Linda's family since 2016. (RUMF, 23.) Patricia testified at her deposition that Respondent has not prevented her from visiting the Arrowhead Property. (PUMF, 39.) Elizabeth testified at her deposition that she does not want to visit the Arrowhead Property because she does not want to interact with Kevin. (Id.)

Article 7.2.7 of the Petitioners' Trusts gives Kevin authority to sell the Arrowhead Property.

Kevin has rejected Petitioners' demand to sell the Arrowhead Property. (PUMF, 44.)

MERITS OF THE MOTION

On 9/20/22, Petitioners filed the "Petition for Instructions re Sale of Trust Property and for Suspension of Trustee and Appointment of Temporary Trustee" (ROA 125) ("Petition") that is the subject of this motion for summary judgment. The Petition seeks the following orders:

1. That Kevin be ordered to sell the Arrowhead Property;
2. That Kevin be suspended as trustee of the Petitioners' Trusts; and
3. That Petitioners be appointed as interim trustees of their own trusts.

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.) Additionally, the moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (Ibid.) The burden of production entails only the presentation of evidence; the burden of persuasion entails establishing a requisite degree of belief based on such evidence. (Ibid.)

A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. Upon such a showing, the burden shifts to the plaintiff to show there is a triable issue of material fact on that issue. (Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co. (2002) 98 Cal.App.4th 66, 72.) The moving party's declarations and evidence will be strictly construed in determining whether they negate an essential element of plaintiff's claim in order to avoid unjustly depriving the plaintiff of a trial. (Molko v. Holy Spirit Assn. (1988) 46 Cal.3d 1092, 1107.)

The plaintiff opposing a motion for summary judgment has no burden to come forward with any evidence unless and until the moving defendant has discharged its burden of proof. "There is no obligation on the opposing party ... to establish anything by

affidavit unless and until the moving party has by affidavit stated facts ... necessary to sustain a judgment in his favor.” (Consumer Cause, Inc. v. SmileCare (2001) 91 Cal.App.4th 454, 468, internal citations omitted.)

Re Order for Instruction to Sell the Arrowhead Property

Kevin asserts that he cannot be ordered to sell the Arrowhead Property because (1) the sale would be contrary to the Settlor’s intent; and (2) he has sole power and absolute discretion as trustee of the trusts. Neither of these facts, even if true, provide a complete defense to Petitioners’ cause of action for an order instructing Kevin to sell the Arrowhead Property.

Re Settlor’s Intent

The Trusts do not expressly state the intent of the Settlor concerning the Arrowhead Property. Kevin argues that the Settlor’s intent to keep the Arrowhead Property is evidenced by the language in the Trust giving him, as trustee, sole discretionary power and restricting Petitioners’ interests to a life estate. Kevin also relies on extrinsic evidence to support his assertion that the Settlor intended for the Arrowhead Property to stay in the family for generations to come. He argues that he has reasonably refused Petitioners’ right to sell the Arrowhead Property because its sale would be contrary to the Settlor’s intent.

Petitioners concede that the Settlor would have liked to keep the Arrowhead Property in the family. They argue, however, that the Settlor did not intend to keep the Arrowhead Property in the family at all costs. Petitioners assert that the Settlor’s primary intention in creating the Petitioners’ Trusts was to benefit the Petitioners and that the Settlor did not intend to keep the Arrowhead Property if doing so would be detrimental to Petitioners.

Even if the Settlor intended to keep the Arrowhead Property in the Trust, such fact alone would not prohibit the court from ordering the sale of the Arrowhead Property under every circumstance.

Kevin’s Absolute Discretion

Likewise, Kevin’s sole discretion, alone, is not grounds to deny the petition for an order instructing the trustee to sell the Arrowhead Property.

Probate Code section 16080 requires that a trustee act in accordance with fiduciary principles and not act in bad faith or in disregard for the purpose of the trust, even if a trust instrument confers the trustee with absolute, sole, or uncontrolled discretion.

Petitioners argue that Kevin's refusal to exercise his power to sell the Arrowhead Property is contrary to his fiduciary duties, because he is acting solely for his own benefit and that of his wife, Linda.

While the parties expend much effort in arguing who is enjoying the use of the Arrowhead Property, the use and enjoyment of the Arrowhead Property alone is not dispositive. Even if each of the Settlers' three daughters had exclusive use of the Arrowhead Property alone for four months out of the year, the court would still have authority to order its sale under certain circumstances.

Court's Authority to Order Sale of Trust Property

Courts can intervene and order the sale of trust property if it is necessary to prevent serious loss or destruction of the trust estate, even if the trust explicitly prohibits such a sale. (*Security-First Nat. Bank v. Easter* (1934) 136 Cal.App. 691, 697.) Here, the Lady Trust and the Petitioners' Trusts do not prohibit the sale of the Arrowhead Property. In fact, Kevin concedes that the Lady Trust authorizes him to sell it.

There are triable issues of fact as to whether the cost of maintaining the Arrowhead Property justifies an order that it be sold. Kevin concedes that the costs are currently being paid by the Petitioners' Trusts from "loans" they receive from the Lady Trust. (RUMF 54, 55.) Thus, the Petitioners' Trusts are incurring debt to maintain the Arrowhead Property.

Kevin argues that the Petitioners have been benefited by the costs of repairs and improvements to the Arrowhead Property because the result has been an increase in value from approximately \$1.5-2M in 2016 to \$3.5M today. However, there is insufficient evidence to support this argument.

Kevin's real estate expert, Meghan Hardin-Griffiths, states the current value of the Arrowhead Property in conclusory fashion based only on her "inspection and experience." She does not provide any facts or analysis to support her opinion. Further, her opinion as to the market value of the property on June 11, 2016, is completely unsupported. "The value of opinion evidence rests not in the

		<p>conclusion reached but in the factors considered and the reasoning employed." (Pacific Gas & Electric Co. v. Zuckerman (1987) 189 Cal.App.3d 1113, 1135.) Further, the opinion of Ms. Hardin-Griffiths conflicts with Kevin's 2023 Accountings, which show the market value decreasing. While there is no competing expert declaration, the court must still strictly construe the moving party's papers and liberally construe the opposing party's papers to determine if they raise a triable issue of material fact.</p> <p>Second, even if the Arrowhead Property has increased in value as a result of the extensive repairs and improvements, there would remain a triable issue as to whether the benefit Petitioners may derive from the increased value of the property outweighs the burden of maintaining it.</p> <p>Kevin has not met his burden of showing that no triable issues of fact exist as to whether the court should order the sale of the Arrowhead Property.</p> <p>No Motion for Summary Adjudication</p> <p>An order granting summary judgment must dispose of the entire case thereby negating the need for trial. (Aguilar v. Atl. Richfield Co., (2001) 25 Cal. 4th 826, 858, internal citation omitted.) Kevin has not moved for summary adjudication in the alternative. The court cannot deem the instant motion a motion for summary adjudication because it fails to comply with the stringent requirements of California Rules of Court, Rule 3.1350(b).</p> <p>Since the issue of whether the trustee should be instructed to the sell the Arrowhead Property remains triable, the motion for summary judgment must be denied. The court need not reach the remaining requests for relief.</p> <p>Motion for summary judgment is DENIED.</p> <p>Counsel for Petitioners is ordered to give notice.</p>
2	Obert – Trust (2020-01124614)	<p style="text-align: center;">MOTION TO SET ASIDE</p> <p>Linda Dengler's motion to set aside the 6/7/24 Judgment is DENIED.</p> <p><u>Evidentiary Matters</u></p>

Linda Dengler's request for judicial notice (ROA 297) is **GRANTED** as to Exhibit A.

Gregory Gardiner's request for judicial notice (ROA 312) is **GRANTED** as to Exhibits A-G over the objections of Linda Dengler (ROA 319), which objections are **OVERRULED**.

While the court takes judicial notice of certain exhibits as listed above, the court does not take judicial notice of the truths asserted within such exhibits. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt* (2001) 91 Cal.App.4th 875, 882; *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375; Evid. Code, §§ 452, subd. (d)(l), (c), (h), 453; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

Linda Dengler's objections to the Declaration of Julia C. McBride are **OVERRULED** as to objections 1, 2, 3, 6, 7, and 8 and **SUSTAINED** as to objections 4, 5, and 9.

Motion

Linda Dengler seeks to set aside the court's 6/7/24 Judgment on the ground that the court lacked jurisdiction over real property located in Oregon (the "Oregon Property") at the time the Judgment was made.

First, the 6/7/24 Judgment rendered rulings on several issues that had nothing to do with the Oregon Property. Even if the court lacked jurisdiction over the Oregon Property, such lack of jurisdiction would not be a proper ground to set aside the entire 6/7/24 Judgment.

Second, the court is not persuaded that it lacked jurisdiction over the Oregon Property.

Ms. Dengler claims that after the 6/7/24 Judgment was entered, Gregory Gardener admitted that the Oregon Property was never an asset of the Trust. The record does not reflect the truth of such statement. Rather, Mr. Dengler's attorney in Oregon sent a letter stating that the deed transferring the Oregon Property from the decedent Eleanor May Orbert to the Trust needed to be corrected. In short, title to the Oregon Property needed to be perfected in the Trust so that it could be transferred to Mr. Gardner as set forth in the 6/7/24 Judgment.

		<p>A defect in the title of real property belonging to a trust does not mean that the property is not a trust asset. A declaration of trust is sufficient to create a trust interest in real property; a grant deed transferring title of the real property to the trustee is not necessary. (Prob. Code § 15200(a); <i>Estate of Heggstad</i> (1993) 16 Cal.App.4th 943, 949-950.)</p> <p>Furthermore, there is no question that the court had fundamental jurisdiction, that is, subject matter jurisdiction and personal jurisdiction. Thus, even if the court acted in excess of its jurisdiction when it made orders concerning the Oregon Property, the judgment pertaining to the Oregon Property would be voidable, not void. (<i>Pacific Mut. Life Ins. Co. of Calif. v. McConnell</i> (1955) 44 Cal.2d 715, 726; <i>Conservatorship of O'Connor</i> (1996) 48 Cal.App.4th 1076, 1088.)</p> <p>“Acts in excess of jurisdiction are subject to harmless error analysis, that is, they support a reversal of the judgment only upon a showing of prejudice. (See <i>People v. Williams</i> (2006) 40 Cal.4th 287, 301.) Furthermore, challenges to a judgment based on the defect may be barred under principles of estoppel, forfeiture, and waiver.” (<i>LAOSD Asbestos Cases</i> (2018) 28 Cal.App.5th 862, 870–71, citing <i>In re Griffin</i> (1967) 67 Cal.2d 343, 347; <i>People v. Mower</i> (2002) 28 Cal.4th 457, 474, fn. 6.)</p> <p>Ms. Dengler has not made a showing of prejudice resulting to her from the court’s alleged lack of jurisdiction over the Oregon Property. Indeed, the Oregon Property has since been distributed as agreed to by Ms. Dengler in the January Partial Distribution Agreement. Further, the Quitclaim Deed transferring the Oregon Property to the Trust, which Mr. Gardener’s Oregon attorney sought to correct (and has since corrected), was a trial exhibit, and Ms. Dengler made no objection to it.</p> <p>On the record presented, the court finds no grounds to set aside the 6/27/24 Judgment. The motion to set aside by Linda Dengler is denied.</p> <p>Counsel for Gregory Gardner is directed to give notice.</p>
3		
4	Goodwin – Trust (2021-01221814)	<p style="text-align: center;">MOTION FOR ATTORNEY FEES</p> <p>The motion by Conservator Cheryl Perkins for an order requiring Objector Sharon Lee Page and/or David Geare, Trustee, to pay attorney fees is DENIED.</p>

Evidentiary Matters

Ms. Perkins's objections to Ms. Page's request for judicial notice (ROA 939) are SUSTAINED as to exhibits 1-6. None of the material of which Ms. Page requests judicial notice is relevant to the court's decision.

Ms. Perkins's objections to the Declaration of Ms. Page (ROA 940) are SUSTAINED as to objections 1, 2, 3, 4, 5, and 6 and OVERRULED as to objections 7, 8, 9, 10, 11, and 12.

Ms. Perkins's objections to the Declaration of Fred G. Muscarella are OVERRULED as to objections 1-6.

Motion for Fees

Attorney fees incurred in litigation are not recoverable unless authorized by statute or contract. This is known as the American Rule, and it is codified in California Code of Civil Procedure section 1021, as follows: "Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided."

Contrary to arguments made by Ms. Perkins, the case of *Hollaway v. Edwards* ("*Hollaway*") (1998) 68 Cal.App.4th 94 does not provide an exception to the American Rule in probate cases. In *Hollaway*, one trustee successfully defended against a removal petition filed by her co-trustee. (*Id.* at p. 96.) The prevailing trustee filed a petition for attorney fees under Probate Code sections 15684 and 17200(b)(9), which petition was granted. (*Id.*) The losing co-trustee appealed. She argued that the lower court wrongfully permitted the petition to be filed after the 60-day time limit set forth in California Rules of Court, Rule 870.2 (which is now Rule 3.1702). (*Id.*) The appellate court agreed with the lower court that Rule 870.2 did not apply to probate petitions. It reasoned that, since Rule 870.2 provides for fees "up to and including the rendition of judgment," it presumably applies only to civil litigation because many probate petitions do not end in a judgment. (*Id.* at pp.98.)

The unsuccessful co-trustee in *Hollaway* further argued that attorney fees were not recoverable because they only benefited the successful trustee, not the trust. (*Id.* at p. 99.) The appellate court disagreed, holding that the attorney fees also benefited the trust: "While defense against those allegations may have benefited [the successful trustee] personally by eliminating the possibility of individual

liability, they also benefited the trust by eliminating charges raising serious questions about whether she had and could continue to administer the trust properly. [Citation.]” (*Id.* at pp. 99–100.)

In short, *Holloway* involved an order for attorney fees based on statute, specifically Probate Code sections 15684 and 17200(b)(9). In fact, the court in *Holloway* specifically declined to adopt the successful trustee’s assertion that the fees she was seeking were not statutory. (*Id.* at p. 98.)

Ms. Perkins points to language in *Holloway* in which the court distinguishes Code of Civil Procedure section 1032 from Probate Code section 1002 as follows:

For example, although Code of Civil Procedure section 1032, subdivision (b) entitles a prevailing party in ordinary civil litigation to costs as a matter of right, the probate court retains discretion to decide not only whether costs should be paid, but also, if they are awarded, who will pay and who recover them. (Prob. Code, § 1002.) We are loath to circumscribe the probate court's discretion by importing California Rules of Court, rule 870.2's strict time limits.

Such language does not provide that Probate Code section 1002 gives the probate court discretion to award attorney fees to a prevailing party in a probate action. In fact, it does not address the issue of attorney fees at all. Instead, it simply notes that under the Code of Civil Procedure, costs must be awarded to a prevailing party, but under the Probate Code, the court has discretion whether and how to award costs based on its “broad equitable powers over trusts.” (*Id.* at p. 99, emphasis added.)

This instant case involves a conservatorship action. Mr. Leight represented the proposed conservator whose petition was granted. While the Probate Code does provide a basis for attorney’s fees to be paid to the attorney of a conservator in certain circumstances, said circumstances are not present here.

Probate Code sections 1470-1472 permit an order that the conservatee’s estate pay attorney fees for the court-appointed attorney for the conservatee. Mr. Leight is not a court-appointed attorney, and he is not requesting payment from the conservatee’s estate.

		<p>Probate Code section 2640 permits a conservator to petition for the payment of attorney fees, after an Inventory and Appraisal has been filed and after Letters have issued. In this case, an Inventory and Appraisal has not been filed and Letters have not issued.</p> <p>Moreover, the court’s Final Statement of Decision (ROA 841) does not state or imply that Ms. Perkins is entitled to prevailing party fees. Rather, the Statement of Decision states that the court will rule on “future fee <i>petitions</i> for costs and attorney fees” (emphasis added) consistent with the authorities cited by the court. Indeed, such petitions have since been filed by the guardian <i>ad litem</i> and the proposed conservatee. (ROAs 877 and 914.)</p> <p>The court finds that there is no provision in the Probate Code that permits the prevailing party in a conservatorship action to be awarded fees payable by the opposing parties. Thus, Ms. Perkins’s motion for attorney fees is denied.</p> <p><u>Motion for Orders Against Mr. Geare as Trustee</u></p> <p>Ms. Perkins is requesting that fees be awarded against Mr. Geare in his capacity as trustee of the Donald and Helen Goodwin Trust. Mr. Geare was a party to the instant action, but not in his capacity as trustee because the underlying trial was not a trust litigation. Thus, even assuming <i>arguendo</i> that there exists a basis for awarding attorney fees to Ms. Perkins as prevailing party, such fees could not be awarded against Mr. Geare as trustee.</p> <p>Ms. Perkins seeks other orders against Mr. Geare as trustee. Specifically, she seeks an order for Mr. Geare to account for all trust funds used to pay the attorney fees incurred in the instant litigation, as well as an order for all such funds to be reimbursed to the trust. Such requests must be made via a trust petition in the court of proper jurisdiction over the trust.</p> <p>Thus, Ms. Perkins’s motion for orders pertaining to the trustee is denied.</p> <p>Counsel for Ms. Page is ordered to give notice of this ruling.</p>
5	Harris – Trust (2023-01343455)	<p>MOTION TO SUSPEND TRUSTEE AND ORDER HER TO OBTAIN SEPARATE COUNSEL</p> <p>Timothy F. Jones (“Timothy”) moves this court for an order suspending Kathie M. Jones (“Kathie”) as Trustee and appointing Timothy as interim Trustee. Members of the Jones family are</p>

referred to by their first names for clarity only. No disrespect is intended. (*Young v. McCoy* (2007) 147 Cal.App.4th 1078, 1081 fn.2.; and *In re Marriage of Olsen* (1994) 24 Cal.App.4th 1702, 1704, fn. 1.) Timothy further seeks an order requiring Kathie to obtain separate legal counsel in her individual capacity. In the alternative, Timothy requests an order that Kathie be prohibited from using Trust funds to pay for claims for reimbursement against the Trust. All requests are **DENIED**.

Timothy's request for judicial notice is **GRANTED** as to exhibits A and B. While the court takes judicial notice of certain exhibits as listed above, the court does not take judicial notice of the truths asserted within those exhibits. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt* (2001) 91 Cal.App.4th 875, 882; *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375; Evid. Code, §§ 452, subd. (d)(l), (c), (h), 453; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

As pointed out in Kathie's opposition to the instant motion, the arguments raised in this motion are not any different than those raised in the motion denied by the court on 6/7/24. (ROA 82.)

The 6/7/24 ruling was made without prejudice to Timothy's right to seek the same relief upon the presentation of additional evidence. Timothy argues that, since the 6/7/24 ruling, there is substantial new evidence regarding the basis of Kathie's claims for reimbursements. However, all of Timothy's arguments still go to the merits of Kathie's claims for compensation which will be decided at trial.

There remains no evidence that Kathie's suspension is necessary to preserve Trust assets. There is no indication that Kathie will reimburse herself for any trustee claims without a court order.

There is no new evidence of a conflict of interest between Kathie and the Trust. While Timothy stands by his position that Kathie is an independent creditor of the Trust, the court's position remains that Kathie is a trustee seeking compensation and reimbursement which she claims are allowed by the Trust. (ROA 82.) The court, at this stage, makes no finding here as to the merits of any of Kathie's claims.

Thus, there are still no grounds for suspending Kathie at this time.

		<p>There is no legal authority for Timothy’s request that the court order Kathie to obtain separate counsel to represent her in her individual capacity. As more fully set forth in the court’s 6/7/24 ruling, Kathie is well within her right to use trust funds to represent her in the pending petitions concerning the Trust accounting and her claims for trustee compensation. There is no evidence before the court that the Trustee is incurring excessive or unreasonable attorney’s fees, or that an order prohibiting the Trustee from using Trust funds to pay attorney’s fees is otherwise necessary.</p> <p>Timothy’s requested orders are again denied without prejudice. However, Timothy should ensure that any possible future motion seeking the relief sought in this motion is based on more than his same position that Kathie is not ultimately entitled to the compensation she seeks.</p> <p>Counsel for Kathie is ordered to give notice.</p>
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7		