APPENDIX

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellant*, v. JAMES D. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson; VIKKI E. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust; CRYSTAL CHRISTENSEN, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust; MADELEINE PICKENS, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Trustee of the Marital Trust created under the Allen E. Paulson Living Trust; and as Trustee of the Madeleine Anne Paulson Separate Property Trust, *Defendants-Appellees*.	No. 21-55197 D.C. No. 3:15-cv-02057-AJB-NLS OPINION

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. JOHN MICHAEL PAULSON, individually; and as Executor of the Estate of Allen E. Paulson; JAMES D. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson, MADELEINE PICKENS, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Trustee of the Marital Trust created under the Allen E. Paulson Living Trust; and as Trustee of the Madeleine Anne Paulson Separate Property Trust, *Defendants*, and VIKKI E. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust; CRYSTAL CHRISTENSEN, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson	No. 21-55230 D.C. No. 3:15-cv-02057-AJB-NLS

Living Trust,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Argued and Submitted February 11, 2022
San Francisco, California

Filed May 17, 2023

Before: Kim McLane Wardlaw, Sandra S. Ikuta, and Bridget S. Bade, Circuit Judges.

Opinion by Judge Bade;
Dissent by Judge Ikuta

SUMMARY*

Tax

The panel reversed the district court's judgment in favor of defendants, and remanded with instructions to enter judgment in favor of the government on its claims for estate taxes, and to conduct any further proceedings necessary to

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

determine the amount of each defendant's liability for unpaid taxes.

The United States sued several heirs of Allen Paulson, alleging that they were trustees of Paulson's trust or received estate property as transferees or beneficiaries, and were thus personally liable for estate taxes under 26 U.S.C. § 6324(a)(2). The United States also alleged that two of the heirs, Vikki Paulson and Crystal Christensen, were liable for estate taxes under California state law. The district court ruled in favor of defendants on the Tax Code claims, and in favor of the United States on the state law claims.

Allen Paulson died with an estate valued at nearly $200 million, most of which was placed in a living trust. The estate was distributed among Paulson's heirs over the years. When the estate filed its tax return, it also paid a portion of its tax liability, and elected to pay the remaining balance in installments with a fifteen-year plan under 26 U.S.C. § 6166. After the estate missed some payments, the Internal Revenue Service terminated the § 6166 election and issued a notice of final determination under 26 U.S.C. § 7479. The IRS then recorded notices of federal tax liens against the estate. In the meantime, the various beneficiaries of the living trust settled their disputes, after which they claimed that the living trust had been "completely depleted."

The United States filed an action against the beneficiaries, seeking a judgment against the estate and living trust for the outstanding balance of the estate's tax liability. The United States also sought judgment against the individual defendants under 26 U.S.C. § 6324(a)(2), 31 U.S.C. § 3713, and state law. The district court concluded that defendant Madeleine Pickens was not liable for the unpaid estate taxes as a beneficiary of the living trust, and

that the remaining defendants were not liable for estate taxes as transferees or trustees because they were not in possession of estate property at the time of Allen Paulson's death.

The panel held that § 6324(a)(2) imposes personal liability for unpaid estate taxes on the categories of persons listed in the statute who have or receive estate property, either on the date of the decedent's death or at any time thereafter (as opposed to only on the date of death), subject to the applicable statute of limitations. The panel next held that the defendants were within the categories of persons listed in § 6324(a) when they had or received estate property, and are thus liable for the unpaid estate taxes as trustees and beneficiaries. The panel further held that each defendant's liability cannot exceed the value of the estate property at the time of decedent's death, or the value of that property at the time they received or had it as trustees and beneficiaries. The panel did not reach the state law claims, because its conclusion on the federal tax claims resolved the matter.

Judge Ikuta dissented. Disagreeing with the majority's statutory interpretation, she explained that the taxpayers' reading of the statute is more plausible, avoids an illogical result (namely, that a person who receives estate property years after the estate is settled could be held personally liable for estate taxes that potentially exceed the current value of the property received), and is a better indication of Congress's intent to impose such personal liability only on the date of the decedent's death.

COUNSEL

Lauren E. Hume (argued), Joan I. Oppenheimer, and Ivan C. Dale, Attorneys; David A. Hubbert, Acting Assistant Attorney General; Tax Division, United States Department of Justice; Washington, D.C.; Randy S. Grossman, Acting United States Attorney; Office of the United States Attorney; Washington, D.C.; for Plaintiff-Appellant/Cross-Appellee.

Glen A. Stankee (argued), Akerman LLP, Fort Lauderdale, Florida; Katherine E. Giddings, Akerman LLP, Tallahassee, Florida; Donald N. David, Akerman LLP, New York, New York; Joshua R. Mandell, Akerman LLP, Los Angeles, California; Lisa M. Coyle, Blank Rome LLP, New York, New York; for Defendant-Appellee Madeleine Pickens.

John C. Maloney Jr. (argued), Zuber Lawler LLP, New York, New York, for Defendants-Appellees/Cross-Appellants Vikki E. Paulson and Crystal Christensen.

James D. Paulson, Woodland Hills, California, pro se Defendant-Appellant.

OPINION

BADE, Circuit Judge:

Allen Paulson died with an estate valued at nearly $200 million, with most of his assets placed in a living trust. But years later more than $10 million in estate taxes, interest, and penalties remained unpaid. The United States of America (the United States or the government) sued several of Paulson's heirs—John Michael Paulson, James D. Paulson, Vikki E. Paulson, Crystal Christensen, and Madeleine Pickens—alleging that they controlled the trust, as trustees, or received estate property, as transferees or beneficiaries, and thus are personally liable for the estate taxes under § 6324(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6324(a)(2). The United States also alleged that Vikki Paulson and Crystal Christensen, as co-trustees of the living trust, were liable for unpaid estate taxes under section 19001 of the California Probate Code.

As relevant to this appeal, the district court granted in part Vikki Paulson's Crystal Christensen's, and Madeleine Pickens's motions to dismiss, concluding that they were not liable for the estate taxes under § 6324(a)(2) as trustees, transferees, or beneficiaries, and later ruled on several motions for summary judgment. Based on the reasoning in its order granting the motions to dismiss in part, the court ruled in favor of Madeleine Pickens and James Paulson on the United States' remaining claims under § 6324(a)(2), concluding that they were not personally liable for the estate taxes. The court entered summary judgment in favor of the United States on its claims under the California Probate Code. The United States appeals the rulings in favor of the defendants on the § 6324(a)(2) claims, and Vikki Paulson

and Crystal Christensen cross-appeal the judgment holding them liable for the unpaid estate taxes under section 19001.[1] We have jurisdiction over these appeals under 28 U.S.C. § 1291.

We hold that § 6324(a)(2) imposes personal liability for unpaid estate taxes on the categories of persons listed in the statute who have or receive estate property, either on the date of the decedent's death or at any time thereafter, subject to the applicable statute of limitations. We further hold that the defendants were within the categories of persons listed in § 6324(a) when they had or received estate property, and thus are liable for the unpaid estate taxes as trustees and beneficiaries. Therefore, we reverse the district court's judgment in favor of the defendants on the United States' claims under § 6324(a)(2), and remand to the district court with instructions to enter judgment in favor of the government on these claims with any further proceedings necessary to determine the amount of each defendant's liability for the unpaid taxes. Because our conclusion on the federal tax claims arising from the Internal Revenue Code resolves this matter, we do not reach the parties' dispute over the interpretation of the California Probate Code.

I

A

Allen Paulson died on July 19, 2000. He was survived by his third wife Madeleine Pickens, three sons from a prior

[1] The district court concluded that John Michael Paulson was liable for the unpaid estate taxes as executor and trustee of the living trust, but concluded that he had successfully discharged his liability for the estate taxes under 26 U.S.C. § 2204. The United States does not dispute that finding on appeal. Therefore, only its claims against James Paulson, Vikki Paulson, Crystal Christensen, and Madeleine Pickens are at issue.

marriage—Richard Paulson, James Paulson, and John Michael Paulson—and several grandchildren, including Crystal Christensen. Richard Paulson died after his father, and Vikki Paulson is Richard Paulson's widow. At the time of Allen Paulson's death, his gross estate was valued at $193,434,344 for federal estate tax purposes. Nearly all his assets, which included real estate, stocks, bonds, cash, and receivables, were held in a living trust.[2] The living trust was revocable during Allen Paulson's lifetime and, according to its terms, the trust was to pay any estate taxes.

When Allen Paulson died, his son John Michael Paulson became a co-trustee of the living trust and was appointed co-executor by the probate court. In October 2001, John Michael Paulson became the sole executor of the estate, with a different co-trustee. That same month, he filed an estate tax return, or Form 706, with the Internal Revenue Service (IRS). On October 23, 2001, the IRS received the estate's Form 706 estate tax return, which reported a total gross estate of $187,729,626, a net taxable estate of $9,234,172, and an estate tax liability of $4,459,051. The estate paid $706,296 with the return and elected to defer the remaining balance of $3,752,755 to be paid in installments with a fifteen-year plan under 26 U.S.C. § 6166.[3] In November

[2] The only asset that was not held by the living trust was an ownership interest in a hotel and casino corporation, which is not relevant to these appeals.

[3] Under § 6166, an executor may pay a portion of the estate taxes in installments when more than 35% of the estate's value consists of interest in a closely held business. 26 U.S.C. § 6166(a)(1), (3). This election is limited to the portion of the estate taxes attributable to the interest in a closely held business. *Id.* § 6166(a)(2). Section 6166 allows the executor to make interest payments for five years and then pay the taxes over ten years. *Id.* § 6166(a)(3), (f).

2001, the IRS assessed the reported estate tax liability of $4,459,051.

The IRS audited the estate tax return and asserted a deficiency in the estate tax reported on the return, which the estate challenged in Tax Court. In December 2005, the Tax Court entered a stipulated decision and determined that the estate owed an additional $6,669,477 in estate taxes. The IRS assessed the additional liability in January 2006, and the estate elected to pay this amount through the remaining § 6166 installments. John Michael Paulson, as executor, made interest installment payments until his removal as Trustee in 2009, and he timely made the first estate tax and interest payment in April 2007. He obtained a one-year extension, until April 2009, to make the 2008 tax and interest payment. But neither he nor anyone else made that payment or any of the subsequent installment payments.[4]

Meanwhile, various disputes arose between Madeleine Pickens and Allen Paulson's other heirs. In settlement of those disputes, Madeleine Pickens received assets that the government asserts were worth approximately $19 million, including $750,000 in cash, two residences and the personal property located at those residences, and an ownership interest in the Del Mar Country Club.[5] Vikki Paulson and Crystal Christensen assert that the assets Madeleine Pickens received were worth over $42 million. Madeleine Pickens does not state a value for the assets she received. In February

[4] After the estate's default in 2009, the successor co-trustees of the living trust submitted two offers in compromise to the IRS, accompanied by non-refundable partial payments that the IRS applied to the estate taxes.

[5] Allen Paulson's living trust included provisions listing these two residences as gifts to Madeleine (Paulson) Pickens, which she would receive if, among other conditions, she survived him by six months.

2003, John Michael Paulson and the co-trustee transferred these assets from the living trust to Madeleine Pickens, as trustee of her personal living trust. Between 2003 and 2006, John Michael Paulson distributed at least $7,261,887 in cash from the living trust to other trust beneficiaries, including $990,125 to Crystal Christensen.[6]

In March 2009, the probate court removed John Michael Paulson as trustee of the living trust for misconduct and appointed Vikki Paulson and James Paulson as co-trustees. The government asserts that, at that time, the trust contained assets worth more than $13.7 million, which exceeded the estate tax liability. Vikki Paulson and Crystal Christensen claim that by this time the living trust was insolvent, with $10.8 million in assets, but $28.3 million in liabilities, including $9.6 million in federal tax liability.

In May 2010, because of the missed installment payments, the IRS terminated the § 6166 election and issued a notice of final determination under 26 U.S.C. § 7479. The probate court removed James Paulson as co-trustee, and Vikki Paulson, as sole trustee of the living trust, challenged the IRS's termination of the § 6166 election in the Tax Court. In May 2011, the Tax Court sustained the IRS's termination of the estate's installment payment election.

In February 2011, the probate court appointed Crystal Christensen co-trustee of the living trust with Vikki Paulson. At that time, according to the government, the living trust

[6] In his living trust, Allen Paulson bequeathed $1.4 million to Crystal (Paulson) Christensen to be held in trust until she reached the age of 18, with provisions that allowed for the trustee's discretionary distributions of principal and set specific times (when Crystal Christensen turned 25, 30, and 35 years old) for mandatory disbursements and the termination of the trust.

held assets worth at least $8.8 million. In June and July 2011, the IRS recorded notices of federal tax liens against the estate under 26 U.S.C. §§ 6321, 6322, and 6323. In the meantime, between 2007 and 2013, various disputes arose between John Michael Paulson, Vikki Paulson, Crystal Christensen, James Paulson, and others with interests in the living trust. In January 2013, they settled their disputes through an agreement in which John Michael Paulson received the living trust's ownership interest in a jet project, the estate's casino ownership interest, and certain tax losses in exchange for resigning as executor. Vikki Paulson and Crystal Christensen assert that, by the time of this agreement, the living trust was "completely depleted." The probate court adopted the settlement agreement.

B

In September 2015, the United States filed this action against John Michael Paulson, Madeleine Pickens, James Paulson, Vikki Paulson, and Crystal Christensen in their individual and representative capacities. The complaint sought a judgment against the estate and the living trust for the outstanding balance of the 2006 estate tax liability, which then exceeded $10 million, as well as judgments against the individual defendants under § 6324(a)(2), 31 U.S.C. § 3713, and California law.

James Paulson, Vikki Paulson, Crystal Christensen, and Madeleine Pickens filed motions to dismiss and argued that they were not personally liable for the estate taxes under § 6324(a)(2) as trustees, beneficiaries, or transferees of the living trust. The district court denied James Paulson's motion to dismiss, and partially granted and partially denied Madeleine Pickens's, Vikki Paulson's, and Crystal Christensen's motions to dismiss. The district court

concluded that Madeleine Pickens was not liable for the unpaid estate taxes as a beneficiary of the living trust because she did not receive life insurance benefits.[7] The district court further concluded that James Paulson,[8] Vikki Paulson, and Crystal Christensen were not liable for the unpaid estate taxes as transferees or trustees because they were not in possession of estate property at the time of Allen Paulson's death.[9]

II

These appeals raise questions of statutory interpretation, which we review de novo. *Mada-Luna v. Fitzpatrick*, 813 F.2d 1006, 1011 (9th Cir. 1987).

III

Section 2001 of the Internal Revenue Code imposes a tax on a decedent's taxable estate, which the executor is required to pay. 26 U.S.C. §§ 2001(a), 2002. Section 6324, in turn,

[7] Madeleine Pickens also argued that she was not liable as trustee of her personal trust, and the district court granted summary judgment to her on this issue because she did not receive estate property until three years after Allen Paulson's death. The district court, however, did not determine whether Madeleine Pickens could be a "trustee," under § 6324(a)(2), based on her role as a trustee of her separate personal trust. The government does not argue on appeal that Madeleine Pickens is liable for the estate taxes in her role as trustee of her separate personal trust. Therefore, we do not address this issue.

[8] James Paulson did not appeal the district court's orders.

[9] Vikki Paulson and Crystal Christensen also argued that they were not liable under California law. After discovery, the district court granted summary judgment to the United States on its claims that Vikki Paulson and Crystal Christensen, as successor trustees of the living trust, were liable for the unpaid estate taxes under the California Probate Code. As previously stated, we do not address this issue of California law.

operates to protect the government's ability to collect estate and gift taxes. *See* 26 U.S.C. § 6324(a); *see also United States v. Vohland*, 675 F.2d 1071, 1076 (9th Cir. 1982) ("[Section] 6324 is structured to assure collection of the estate tax."). To this end, the statute imposes a lien on the decedent's gross estate for the unpaid estate taxes in § 6324(a)(1) and imposes personal liability for such taxes on those who receive or have estate property in § 6324(a)(2).[10] 26 U.S.C. § 6324(a)(1) and (2); *see also United States v. Geniviva*, 16 F.3d 522, 524 (3d Cir. 1994) (explaining that § 6324(a)(2) "affords the Government a separate remedy against the beneficiaries of an estate when the estate divests itself of the assets necessary to satisfy its tax obligations").

The statutory provision at issue here, § 6324(a)(2), as stated in its title, imposes personal liability on "transferees and others" who receive or have property from an estate. The statute provides that:

> If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees'

[10] These statutory tools to guard against the risk of non-payment, while complementary, have some important differences. Section 6324(a)(1) imposes "a lien upon the gross estate of the decedent for 10 years from the date of death," in the amount of the unpaid estate tax. 26 U.S.C. § 6324(a)(1). Unlike the general tax lien of §§ 6322 and 6323, the estate tax lien arises before the tax is assessed and is valid against most third parties even if notice of the lien is not recorded. *See Detroit Bank v. United States,* 317 U.S. 329, 336–37 (1943); *Vohland*, 675 F.2d at 1074–76. In contrast, § 6324(a)(2) imposes personal liability for unpaid estate taxes, on those listed in the statute, for ten years after assessment, 26 U.S.C. § 6502(a)(1), and that collection period is tolled by a § 6166 election and other events. *See* 26 U.S.C. § 6503(a)(1), (d); *see also id.* §§ 6213(a), 6331(k)(1).

> trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, *who receives, or has on the date of the decedent's death,* property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of decedent's death, of such property, shall be personally liable for such tax.

26 U.S.C. § 6324(a)(2) (emphasis added). The question before us is whether the phrase "on the date of the decedent's death" modifies only the immediately preceding verb "has," or if it also modifies the more remote verb, "receives."

The United States argues the limiting phrase "on the date of decedent's death" modifies only the immediately preceding verb "has," and not the more remote verb "receives." Therefore, in its view, the statute imposes personal liability on those listed in the statute who (1) receive estate property at any time on or after the date of the decedent's death, or (2) have estate property on the date of the decedent's death. Thus, it contends, § 6324(a)(2) imposes personal liability for the unpaid estate taxes in this case on successor trustees and beneficiaries of the living trust, including those who have or received estate property *after* the date of decedent Allen Paulson's death.

The defendants, in contrast, argue that the limiting phrase "on the date of the decedent's death" modifies both the immediately preceding verb "has," and the more remote verb "receives." Thus, under their interpretation, the statute imposes personal liability for the unpaid estate taxes only on

those who receive or have property included in the gross estate on the date of the decedent's death. But those who receive property from the estate at any point after the date of the decedent's death have no personal liability for the unpaid estate taxes.

We conclude that the most natural reading of the statutory text, and other indicia of its meaning, supports the United States' interpretation. Therefore, we hold that § 6324(a)(2) imposes personal liability for unpaid estate taxes on the categories of persons listed in the statute who have or receive estate property, either on the date of the decedent's death or at any time thereafter, subject to the applicable statute of limitations.

A

"Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004) (internal quotation marks omitted) (quoting *Park 'N Fly, Inc., v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)); *see also, e.g.*, *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021) (explaining that when interpreting a statute, "[w]e begin with the text."); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) ("The task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself.").

Here, the statutory text at issue states that a person (who fits within a category listed in the statute) "*who receives, or has on the date of the decedent's death,* property included in the gross estate . . . shall be personally liable" for the unpaid estate tax. 26 U.S.C. § 6324(a)(2) (emphasis added). Thus,

in the disputed text the statute lists two verbs: "receives" and "has." *Id*. These two verbs are in separate independent clauses, set off from each other by a comma and the conjunction "or." *See id.* In addition, the first verb "receives" is set off from the limiting phrase ("on the date of the decedent's death") by a comma. A term or phrase "set aside by commas" and "separated . . . by [a] conjunctive word[]" from a limiting clause "stands independent of the language that follows." *Ron Pair Enters*., 489 U.S. at 241.[11] Thus, the structure of § 6324(a)(2) supports the conclusion that "receives" stands independent of the language that follows, "on the date of the decedent's death." Therefore, this limiting phrase does not modify the remote verb "receives." *See id*.

This reading of the statute is supported by the canon of statutory construction known as "the rule of the last antecedent." The Supreme Court has long applied this "timeworn textual canon" to interpret "statutes that include a list of terms or phrases followed by a limiting clause,"

[11] In *Ron Pair Enterprises*, the Court considered whether § 506(b) of the Bankruptcy Code, 11 U.S.C. § 506(b), allowed the holder of an over-secured claim to recover, in addition to "interest on such claim," fees, costs, or other charges. 489 U.S. at 241. The statute provided that "[t]here shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs or charges provided for under the agreement under which such claim arose." *Id*. (quoting 11 U.S.C. § 506(b)). The Court explained that "[t]he phrase 'interest on such claim' is set aside by commas, and . . . stands independent of the language that follows." *Id*. Therefore, it is not "joined to the following clause so that the final 'provided for under the agreement' modifies it as well." *Id*. at 242. The Court therefore concluded that "[b]y the plain language of the statute, the two types of recovery [(1) "interest on such claim," and (2) "reasonable fees, costs or charges provided for under the agreement"] are distinct." *Id*.

Lockhart v. United States, 577 U.S. 347, 351 (2016). The "rule of the last antecedent" provides that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows."[12] *Id.* (alteration in original) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)); *see also id.* ("[Q]ualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire writing." (alteration in original) (quoting BLACK'S LAW DICTIONARY 1532–33 (10th ed. 2014))). The rule of the last antecedent supports the conclusion that the limiting phrase "on the date of the decedent's death" modifies only the immediately preceding antecedent "has," and not the more remote antecedent "receives."

Vikki Paulson and Crystal Christensen, however, argue that we should apply the series-qualifier canon and conclude that the limiting phrase "on the date of the decedent's death" modifies both the immediately preceding verb "has," and the more remote verb, "receives." The series-qualifier canon provides that "'[w]hen there is a straight-forward, parallel construction that involves all nouns or verbs in a series,' a modifier at the end of the list 'normally applies to the entire

[12] In *Lockhart*, the Court applied the rule of the last antecedent to interpret 18 U.S.C. § 2252(b)(2), which increases the sentences of defendants if they have "a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." 577 U.S. at 350–52 (quoting 18 U.S.C. § 2252(b)(2)). The Court concluded that the limiting phrase "involving a minor or ward" modified only the immediately preceding crime in the list of offenses, "abusive sexual conduct," and did not modify the other listed crimes, "aggravated sexual abuse," or "abusive sexual conduct." *Id.* at 349.

series.'" *Facebook*, 141 S. Ct. at 1169 (alteration in original) (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 147 (2012)).

In *Facebook*, the Court interpreted the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227(a)(1), and concluded that the series-qualifier canon suggested the most natural reading of the statute.[13] 141 S. Ct. at 1169–70 & n.5. The Court focused on the statute's syntax and punctuation, explaining that because the limiting phrase at issue ("using a random or sequential number generator") immediately followed an integrated clause that contained the antecedents ("store or produce telephone numbers to be called"), and the limiting phrase was separated from the antecedents by a comma, the limiting phrase applied to all the antecedents, not just the immediately preceding one. *Id.* at 1170; *cf. United States v. Pritchett*, 470 F.2d 455, 459 (D.C. Cir. 1972) (applying rule of the last antecedent and explaining that if the limiting phrase were intended to apply to all categories of persons listed in the statute, the drafters would have included a comma "so as to separate it from the clause immediately preceding"). The Court also explained that applying the series-qualifier canon did not conflict with "the rule of the last antecedent," which does not apply when a limiting phrase follows an integrated clause. *Facebook*, 141 S. Ct. at 1170.

Here, however, the limiting phrase in § 6324(a)(2), "on the date of the decedent's death," is *not* separated from both antecedents by a comma, and it does *not* follow an integrated

[13] The statute at issue in *Facebook*, § 227(a)(1), defined an "automatic telephone dialing system" as "equipment with the capacity both to store or produce telephone numbers to be called, using a random or sequential number generator." 141 S. Ct. at 1167 (quoting 47 U.S.C. § 227(a)(1)).

clause that contains both antecedents. Instead, the limiting phrase is set off by commas *with* the immediate antecedent, "has," from the rest of the sentence ("who receives, or has on the date of the decedent's death, property included in the gross estate"). 26 U.S.C. § 6324(a)(2). Thus, the punctuation of § 6324(a)(2) does not support a reading that applies the limiting phrase to both the immediate and remote antecedents.

Moreover, accepting the defendants' interpretation would require us to read the statute as if it were punctuated differently—to essentially rewrite the statute. Specifically, we would either need to read the statute as if the two verbs "receives" and "has" appeared together in an integrated clause and were separated from the limiting phrase by a comma (i.e., a person who receives or has, on the date of the decedent's death, property included in the gross estate is liable for the unpaid estate taxes) or as if the statute included an additional comma that separated the limiting phrase from the antecedents (i.e., a person, who receives, or has, on the date of the decedent's death, property included in the gross estate is liable for the unpaid estate taxes). *Cf. In re Bateman*, 515 F.3d 272, 277 (4th Cir. 2008) (reading a provision in the bankruptcy code so that "[n]o punctuation needs to be added or deleted" (internal quotation marks and citation omitted)). But Congress did not structure the statute this way. *See Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund*, 500 U.S. 72, 79–80 (1991) (explaining that Congress would have added a comma if it had intended a meaning other than the natural reading);[14] *see also In re*

[14] In *International Primate Protection League*, the Court construed 28 U.S.C. § 1442(a)(1) and concluded that the statute's punctuation

Sanders, 551 F.3d 397, 400 (6th Cir. 2008) ("Congress no doubt could have worked around [the rule of the last antecedent] had it wished . . . .").

We therefore conclude that the rule of the last antecedent is the canon of interpretation that is most consistent with the text, structure, and punctuation of § 6324(a)(2), and therefore it is the appropriate tool to interpret the statute.

B

This conclusion, however, does not end our inquiry. As the Court has explained, canons of statutory interpretation are not absolute and can be "overcome by other indicia of meaning." *Lockhart*, 577 U.S. at 352 (citations omitted); *see also Facebook*, 141 S. Ct. at 1170 n.5 ("Linguistic canons are tools of statutory interpretation whose usefulness depends on the particular statutory text and context at issue."). Here, however, applying the rule of the last antecedent results in an interpretation of § 6324(a)(2) that is supported by the statutory text and context, while applying the series-qualifier canon does not.

This is so because we are also bound by the canon that requires us to "strive to 'giv[e] effect to each word and mak[e] every effort not to interpret a provision in a manner

supported the conclusion that the phrase "Any officer of the United States or any agency thereof, or person acting under him," did not permit agencies to remove civil suits from state to federal court. 500 U.S. at 79–80. As the Court explained, "[i]f the drafters of § 1442(a)(1) had intended the phrase 'or any agency thereof' to describe a separate category of entities endowed with removal power, they would have likely employed the comma consistently." *Id.* at 80. Thus, the Court concluded that "[a]bsent the comma, the natural reading of the clause is that it permits removal by anyone who is an 'officer' either 'of the United States' or of one of its agencies." *Id.*

that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" *R.J. Reynolds Tobacco Co. v. County of Los Angeles*, 29 F.4th 542, 553 (9th Cir. 2022) (alterations in original) (quoting *Shelby v. Bartlett*, 391 F.3d 1061, 1064 (9th Cir. 2004)). The defendants' narrow interpretation of § 6324(a)(2), which limits personal liability for unpaid estate taxes to those who have or receive estate property on the date of the decedent's death only, violates this canon because it conflicts with the plain meaning of the very next clause of the statute.

That clause applies § 6324(a)(2) to "property included in the gross estate under sections 2034 to 2042, inclusive." These sections, in turn, attach personal liability for the unpaid estate taxes on the gross estate to assets that are *receivable*. *See* 26 U.S.C. § 2039(a) (incorporating "annuity or other payments receivable" into the gross estate); *id.* § 2041(a)(2) (incorporating property that a transferee may not receive by a power of appointment until after "notice" and the "expiration of a stated period"); *id.* § 2042 (incorporating life insurance proceeds "[t]o the extent of the amount receivable"). Thus, the statute clearly anticipates that at the time of the decedent's death, the categories of persons listed in the statute may receive the expectation of the right to receive certain estate property. *Id.* § 6324(a)(2). In other words, they may have a "receivable interest" on the date of the decedent's death but not actually receive property on that date. *See Receivable,* BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "receivable" as "[a]waiting receipt of payment" or "[s]ubject to a call for payment"). Under the plain language of § 6324(a)(2), those who fit within the categories of persons listed in the statute are personally liable for the estate taxes on such property.

The statute also explicitly applies to those who *already have or possess* estate property on the date of the decedent's death, such as a "surviving tenant" or a "person in possession of the property." 26 U.S.C. § 6324(a)(2); *see id.* (incorporating § 2040, which includes in the gross estate property that is held by the decedent and any other person "as joint tenants with the right of survivorship"); *see also United States v. Craft*, 535 U.S. 274, 280–81 (2002) (explaining that certain tenancies enjoy the "right of survivorship," which is a "right of automatic inheritance" such that "[u]pon the death of one joint tenant, that tenant's share in the property does not pass through will or the rules of intestate succession; rather, the remaining tenant or tenants automatically inherit it"); *Survivorship Tenancy*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "survivorship tenancy" as "a tenancy in which the surviving tenant automatically acquires ownership of a deceased tenant's share").

Thus, the context and structure of the statute provide additional indicia of its meaning and further clarify that personal liability for the estate tax applies to those who receive estate property, on or after the date of the decedent's death (i.e., through annuities, other receivable payments, powers of appointment, or insurance policies), and to those who have estate property on the date of the decedent's death (e.g., through a survivorship tenancy).

Vikki Paulson and Crystal Christensen acknowledge that § 6324(a)(2)'s definition of the "gross estate" includes property that the categories of persons listed in the statute will receive *after* the date of the decedent's death, for example property received through the power of appointment described in § 2041. But they argue that the phrase "on the date of the decedent's death" must be read "to

exclude certain assets that are part of the gross estate from the categories of assets that trigger personal liability." Thus, even though the statute explicitly incorporates "sections 2034 to 2042, inclusive" to define the "property included in the gross estate," 26 U.S.C. § 6324(a)(2), the defendants argue that we should nonetheless conclude that the receipt of such property does not subject the recipient to personal liability for unpaid estate taxes. They argue that because such property will not be received until after the date of the decedent's death, the recipient "does not have 'on the date of the decedent's death' an asset out of which that person can pay taxes, and so is not personally liable." Thus, they conclude that "some assets included in the gross estate would not trigger liability under [§] 6324(a)(2)."

But the statute does not state that liability for unpaid estate taxes attaches only to those who can pay the taxes on the date of the decedent's death. Instead, the statute imposes personal liability for the unpaid estate taxes based on the receipt or possession of property from the gross estate. *See* 26 U.S.C. § 6324(a)(2). And the tax code and regulations do not otherwise suggest that liability for estate taxes is related to the ability to pay the taxes on the date of the decedent's death, but instead they provide for the collection of taxes after assessment and allow for extensions of time and installment payments. *See* 26 U.S.C. §§ 6161, 6166, 6502, and 26 C.F.R. § 20.6166A-3. Therefore, we find no support in the text of the statute for the defendants' argument.

Madeleine Pickens, on the other hand, argues that "[§§] 2039 and 2042 do not bring within the gross estate insurance proceeds and annuity payments *received* on the date of death, but rather insurance payments and annuity payments *receivable* on the date of the decedent's death." Although she acknowledges that these payments are receivable at the

decedent's death and "may not actually be paid until some later point," she maintains "[i]t is that receivable"—the receivable available at the decedent's death—"that is brought within the gross estate by [§§] 2039 and 2042." But the statute does not impose personal liability on those who "receive a receivable" on the date of the decedent's death. *See* 26 U.S.C. § 6324(a)(2). Instead, the natural reading of the statute is that it defines the gross estate to include property that will be received after the date of the decedent's death, regardless of whether it is receivable on that date.

Madeleine Pickens also argues that the statute's incorporation of § 2041(a)(2), which brings within the gross estate property subject to a power of appointment that may not take effect until after the decedent's death, does not mean that the statute imposes liability on those who receive such property after the date of the decedent's death. This is so, she reasons, because § 2041(a)(2) states that such property shall be considered to exist on the date of the decedent's death. But she does not explain why personal liability under § 6324(a)(2) turns on whether property is deemed to exist on the date of the decedent's death.[15] The statute nowhere

[15] Section 2041(a)(2) provides that the gross estate shall include "any property with respect to which the decedent has at the time of his death a general power of appointment." It further states that:

> the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

includes this distinction. Instead, the statute explicitly applies to property that trustees, transferees, beneficiaries, and others listed in the statute have or receive. Property that exists on the date of the decedent's death, including property within the scope of § 2041(a)(1), may be received after the date of the decedent's death, and receiving such property subjects the recipient to personal liability for unpaid estate taxes.

Therefore, we conclude that the context and structure of § 6324(a)(2) provide additional indicia of its meaning—which supports the conclusion that the statute imposes personal liability for unpaid estate taxes on the categories of persons listed the statute who (1) receive estate property on or after the date of the decedent's death, or (2) have estate property on the date of the decedents' death—and defendants have not refuted these indicia of the statute's meaning.

C

Vikki Paulson and Crystal Christensen also argue that applying the rule of the last antecedent to interpret the statute, as in the government's proposed "overly broad interpretation," would result in "two absurd situations." First, they argue that if § 6324(a)(2) is construed to impose personal liability on those listed in the statute who receive property from the gross estate after the date of the decedent's death, then the government could impose personal liability for unpaid estate taxes on purchasers of estate assets. They base this argument on the definition of a "transferee" as any

26 U.S.C. § 2041(a)(2). Thus, by its plain terms, this provision clarifies that property subject to a power of appointment is included in the gross estate, even if the power of appointment is exercised after the decedent's death.

person to whom a property interest is conveyed, which, in their view, includes "purchasers." Second, they argue that because the estate property is valued "at the time of the decedent's death," if the property later depreciates, those who receive estate property after the date of the decedent's death could be personally liable for estate taxes that exceed the value of the property they received.

Although not expressly stated in their briefing, it appears these defendants are impliedly invoking the canon against absurdity. *See United States v. Middleton*, 231 F.3d 1207, 1210 (9th Cir. 2000) (explaining that a court should avoid an interpretation of a statute that would produce "an absurd and unjust result which Congress could not have intended") (quoting *Clinton v. City of New York*, 524 U.S. 417, 429 (1998)). The defendants, however, fail to address long-standing Supreme Court and Ninth Circuit case law that strictly limits the circumstances in which the absurdity canon may apply. *See, e.g.*, *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930) (explaining that the absurdity doctrine is applied "only under rare and exceptional circumstances," and that "the absurdity must be so gross as to shock the general moral or common sense"); *see also id.* (explaining that the application of the absurdity doctrine "so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter.).[16]

[16] *See also Public Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 470–71 (1989) (Kennedy, J., concurring) (citing *Church of the Holy Trinity v. United States*, 143, U.S. 457, 459 (1892)) (explaining that courts may invoke the absurdity canon only when statutory language leads to

As the Court explained in *Crooks*, Congress may enact legislation that "turn[s] out to be mischievous, absurd, or otherwise objectionable. But in such case the remedy lies with the lawmaking authority, and not with the courts." *Id*. (citations omitted); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 574–75 (1982) (concluding that an interpretation of federal maritime statute that resulted in $300,000 award to seaman for back wages penalty, when he had incurred only $412 in unpaid wages, did not present an "exceptional case" that allowed court to apply the absurdity doctrine); *see also id.* at 576 ("The remedy for any dissatisfaction with the results in particular cases lies with Congress and not with this Court. Congress may amend the statute; we may not.").

As we explain next, without even reaching the absurdity canon, the defendants' first argument—suggesting tax liability could be applied to bona fide purchasers of estate assets—fails based on the plain language of § 6324(a)(2) and other provisions of the tax code. The second argument fails because, even considering the absurdity canon, the result that defendants posit—that estate property could depreciate and result in tax liability that exceeds the property's value—does not meet the high bar for showing absurdity. *See United States v. Lopez*, 998 F.3d 431, 438–39 (9th Cir. 2021) (explaining that "the absurdity canon is 'confined to situations where it is *quite impossible* that Congress could

"patently absurd" results, such as shown by the "few examples of true absurdity . . . given in the *Holy Trinity* decision," of prosecuting a sheriff for obstruction of the mail when he was executing a warrant to arrest a mail carrier for murder, or applying "a medieval law against drawing blood in the streets" to a physician treating "a man who had fallen down in a fit").

have intended the result'") (quoting *In re Hokulani Square, Inc.*, 776 F.3d 1083, 1088 (9th Cir. 2015)).

1

The defendants' first argument fails because § 6324(a)(2) does not impose liability on "purchasers." Instead, it imposes liability for the unpaid estate taxes on the following six categories of persons listed in the statute: a "spouse, transferee, trustee . . . , surviving tenant, person in possession of the property by reason of the exercise . . . of a power of appointment, or beneficiary." 26 U.S.C. § 6324(a)(2). The tax code, in § 6324(a)(2) and elsewhere, distinguishes purchasers from others who receive estate property. *See id.* §§ 2037(a), 2038(a), (b), 6323(a), and 6324(a)(2), (3). Indeed, §§ 2037 and 2038 exempt from a decedent's gross estate any property that was transferred to a bona fide purchaser for adequate and full consideration. *Id.* §§ 2037(a), 2038(a), (b). And § 6324(a)(2) provides that a transfer of estate property "to a purchaser or holder of a security interest" divests the transferred property of the special estate lien in § 6324(a)(1).[17]

[17] We have previously explained, in the context of the special estate tax lien, that § 6324 "provides purchasers considerable, though not complete, protection." *Vohland*, 675 F.2d at 1075 (footnote omitted). We further explained that:

> Upon transfer of non-probate property to a purchaser, the property is divested of the lien, so that a purchaser of such property is fully protected. [26 U.S.C.] § 6324(a)(2). Property that was part of the 'probate' estate, i.e., [§] 2033 property, is divested of the lien when it is transferred to a subsequent purchaser, but

Moreover, the tax code provides different definitions for "transferees" and "purchasers." In § 6901, it defines a "transferee" as a "donee, heir, legatee, devisee, and distributee, and with respect to estate taxes, also includes any person who, under [§] 6324(a)(2), is personally liable for any part of such tax." *Id.* § 6901(h). Notably, while this definition includes the categories of persons listed in § 6324(a)(2), it does not include a "purchaser."

In § 6323, the tax code defines a "purchaser" as "a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice." 26 U.S.C. § 6323(h)(6). This definition requires more than the mere transfer or receipt of property; it requires adequate and full consideration to support the purchase. Therefore, for purposes of the tax code, the definition of transferee does not include a purchaser and the defendants' argument fails.[18]

> only if the estate's executor has been discharged from personal liability pursuant to [§] 2204.

Id. (footnote omitted) (citing 26 U.S.C. § 6324(a)(2), (3)). Moreover, there are means for a purchaser of probate property to avoid risks of loss "either by establishing that the executor or administrator has been released under [§] 2204 or by securing a certificate of discharge of the lien under [§] 6325(c)." *Id.* at 1076 (citation omitted).

[18] Moreover, defendants' interpretation of a "transferee" who receives estate property after the date of the decedent's death as including a "purchaser" is not consistent with statute's purpose of ensuring the collection of taxes, *Vohland*, 675 F.2d at 1076, because the transfer of property from the gross estate to a purchaser for "adequate and full consideration in money," 26 U.S.C. § 6323, does not divest the estate "of the assets necessary to satisfy its tax obligations," *Geniviva*, 16 F.3d at 524.

2

a

The defendants' second argument also fails. The defendants correctly state that the statutory language imposes estate tax liability "to the extent of the value, at the time of the decedent's death, of such property." *Id.* § 6324(a)(2). The modifier "at the time of the decedent's death" applies to "the extent of the value." *Id.* This language plainly means that tax liability is calculated based on the value of the estate property at the time of decedent's death. *Id.* As the government acknowledges, this provision favors the taxpayer by limiting liability for any unpaid estate taxes to the value of the property at the time of the decedent's death, even if the property increases in value after the decedent's death.[19] *See id.* Thus, the statutory language anticipates, and allows, a potential windfall for a person who receives estate property that increases in value after the date of the decedent's death.

The defendants, however, dispute that Congress could have also anticipated that estate property could depreciate after the date of the decedent's death and thus potentially result in tax liability for the recipient that exceeds the property's value.[20] The defendants argue that an

[19] In its briefing, the government stated that the "property is valued 'at the time of the decedent's death,'" and that "language *simply caps* potential liability under § 6324(a)(2) by preventing liability from exceeding the value of the non-probate property at the time of the decedent's death."

[20] If, as the defendants suggest, estate property continued to depreciate after the transferee or other beneficiary accepted it, such that the tax liability eventually exceeded the value of the property received, that risk

interpretation of § 6324(a)(2) that would allow the government to impose personal liability for the estate taxes "for a greater amount of money than they ever held," would lead to "a nonsensical result."[21] But "[t]o avoid absurdity, the plain text of Congress's statute need only produce 'rational' results, not 'wise' results." *Lopez*, 998 F.3d at 438 (citing *Hokulani Square*, 776 F.3d at 1088). Thus, a statute's text may lead to results that are "not wise," and that we may even consider "harsh and misguided," but a statute is not absurd if "it is at least rational." *Hokulani Square*, 776 F.3d at 1088 (rejecting the argument that bankruptcy code provision was absurd because whether trustee received a fee for his services or worked for free turned on trivialities). And "the bar for 'rational' is quite low." *Lopez*, 998 F.3d at 438 (citing *Griffin*, 458 U.S. at 575–76).

This is not a situation where it is "quite impossible" that Congress could have intended the result. *See Lopez*, 998 F.3d at 438 (citation omitted). Here, Congress clearly could have anticipated that the value of estate property could change after the date of the decedent's death—either by increasing or decreasing in value—and thus could have

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of loss would apply equally to those who receive estate property on the date of the decedent's death and to those who receive estate property after the date of the decedent's death. There is nothing about the risk of accepting property that may decline in value that would apply unfairly to those who receive such property after the date of the decedent's death.

[21] The hypotheticals defendants assert to support their arguments are speculative and are not supported by the record. For example, they argue that the value of the estate assets here "almost certainly" declined because the estate included "uniquely depreciative horses in the Trust's possession." But this argument does not account for the living trust provisions mandating that "upon the [decedent's] death" the trustee "shall sell promptly the entire interest of the trust" in certain assets, including "all horses."

anticipated that the value of some estate assets could depreciate below the amount of the estate tax liability. Indeed, as discussed more fully below, Congress included several provisions in the tax code that mitigate the risk that a transferee's, beneficiary's, or other person's tax liability could exceed the value of the property they received, including: 26 U.S.C. § 2001 (tax rate based on a percentage of the taxable estate),[22] § 2002, 26 C.F.R. § 20.2002-1 (executor's duty to pay the estate tax before distributing estate property and liability for failing to do so), § 2518 (disclaimer), and § 6502(a)(1) (statute of limitations).

And while it is "not our job to find reasons for what Congress has plainly done," *Lopez*, 998 F.3d at 447 (M. Smith, J., concurring) (internal quotation marks and citation omitted), Congress rationally could have concluded that such risk is acceptable or is effectively mitigated by other provisions of the tax code, and thus is outweighed by the benefit of ensuring the collection of estate taxes. This is not an irrational tax policy. Indeed, we have previously recognized that "[§] 6324 is structured to assure collection of the estate tax." *Vohland*, 675 F.2d at 1076. Moreover, even if it were to conclude that such a policy is "odd," or "not wise," *Lopez*, 998 F.3d at 447 (M. Smith, J., concurring) (citation omitted), or simply unfair, we cannot rewrite the statute to advance a different policy, *id*. at 440 (majority opinion). *See also Hokulani Square*, 776 F.3d at 1088 ("The absurdity canon isn't a license for us to disregard statutory text where it conflicts with our policy preferences . . . ."). And if Congress determines that its tax policy leads to

[22] The taxable estate is determined by deducting from the value of the gross estate the deductions provided in Title 26, Part IV. 26 U.S.C. § 2051.

unintended or unfair results, it is for Congress, not the courts, to rewrite the tax code. *See Crooks*, 282 U.S. at 60; *Griffin*, 458 U.S. at 576. Therefore, we conclude that applying the rule of the last antecedent to § 6324(a)(2) does not result in an absurd interpretation of the statute.

b

But our conclusion—that this is not the "exceptional" case where we can invoke the absurdity canon to reject the interpretation of a statute that is most consistent with its text, structure, punctuation, and other indicia of meaning—does not mean that the defendants' "the sky is falling"[23] arguments are based on anything other than remote hypotheticals. And even if the defendants could demonstrate that applying § 6324(a)(2) to those who receive estate property after the date of the decedent's death could result in what they characterize as an "absurd situation," that situation will not arise here.[24]

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[23] "Chicken Little," Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary, last visited May 10, 2023.

[24] When Madeleine Pickens received assets from the estate, including two residences, personal property, and cash, the value of those assets exceeded the estate tax liability. Indeed, the government asserts that when Madeleine Pickens received this property it was worth $19 million, and Vikki Paulson and Crystal Christensen assert it was worth $42 million. Madeleine Pickens does not dispute these valuations. Crystal Christensen received a non-depreciating bequest of cash, and the trustee distributed $990,125 to her. And even if Vikki Paulson and Crystal Christensen can establish that the estate's tax liability exceeded the value of the estate assets when they became trustees, they cannot establish that it is absurd or unfair to impose tax liability on successor trustees because, as the terms of the living trust make clear, trustees serve only if they are "willing."

As an initial matter, before those who receive estate property could be subjected to tax liability that exceeds the value of the property they received, all the following events, some of which are remote and unlikely, must occur.

First, the property must have depreciated after the date of the decedent's death to the point that it is worth less than the tax liability, which is calculated as a percentage of the amount of the taxable estate.[25] *See* 26 U.S.C. § 2001 (setting rate schedule of 18% to 40%, depending on the amount of the taxable estate).

Second, the executor must have failed to pay the estate tax before distributing estate property. *See* 26 U.S.C. §§ 2001(a), 2002; *id.* § 6324(a)(2) (imposing personal liability on transferee and others when "estate tax imposed by chapter 11 is not paid when due"); 26 C.F.R. § 20.2002-1 (imposing personal liability on executor for distributing any portion of the estate before all estate tax is paid).

Third, the estate must have "divest[ed] itself of the assets necessary to satisfy its tax obligations," *Geniviva*, 16 F.3d at 524, thus defeating the lien for estate taxes under that would apply under § 6324(a)(1).

Fourth, the statute of limitations must not have expired by the time the property is distributed or the government attempts collection. *See* 26 U.S.C. § 6502(a)(1).

[25] For example, in this case, at the time of Allen Paulson's death, although his estate reported a gross taxable estate of $187,729,626, his net taxable estate was reported at a substantially lower amount, $9,234,172, and the tax liability was initially reported as $4,459,051. After the IRS successfully asserted a deficiency, the Tax Court determined that the estate owed an additional $6,669,477 in estate taxes. Thus, the tax liability was a fraction of the gross taxable estate.

Fifth, a transferee, beneficiary, or other recipient of the estate property must not have disclaimed or refused the property. *See* 26 U.S.C. § 2518; 26 C.F.R. § 25.2518-2.[26]

Sixth, the government must successfully seek to impose tax liability on a transferee, beneficiary, or other recipient of estate property in an amount that exceeds the value of the property they received.

Focusing on the final factor—whether the government would later seek to impose tax liability that exceeds the value of the property received and would be successful in advancing that argument—we rely on the government's avowals in its briefing and at oral argument that estate tax liability cannot exceed the value of the property received. Specifically, the government asserted in its briefing that the language in § 6324(a)(2) that the estate property is valued at the time of the decedent's death, "does not expose a person to liability that exceeds the value of the property that he or she personally had or received." The government further emphasized this point, explaining that: "[i]nstead, a person will be liable under § 6324(a)(2) only to the extent that he or she actually 'receives' or 'has' non-probate property, *viz.*,

[26] A disclaimer must be in writing, made within nine months of the transfer creating the interest or when the recipient reaches age 21, whichever is later, and before the transferee accepts any of the interest or its benefits. 26 U.S.C. § 2518(b). The regulations further explain that the nine-month period for making a disclaimer "generally is to be determined with reference to the transfer creating the interest in the disclaimant." 26 C.F.R. § 25.2518-2(c)(3)(i). For transfers made by a decedent at death, the transfer creating the interest occurs on the date of the decedent's death. *Id.*

the person's liability is capped at the value of the property had or received."[27]

These representations, coupled with the doctrine of judicial estoppel, provide additional safeguards against the hypothetically unfair application of personal liability under § 6324(a)(2), which the defendants posit. Although the application of judicial estoppel is discretionary, it could be applied to bar the government from later arguing, in this case or a future case, that it can recover more than the value of the property that the taxpayer received.[28] *See New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (explaining that judicial estoppel "is an equitable doctrine invoked by a court at its discretion" (internal quotation marks and citation omitted)). The doctrine exists to "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the

[27] To support its position, the government cites *United States v. Marshall*, 798 F.3d 296, 315 (5th Cir. 2015) (holding that a donee's personal liability for gift tax under § 6324(b) "is capped by the amount of the gift"). Although the language of these subsections of § 6324 differ, with subsection (a)(2) limiting personal liability for estate taxes "to the extent of the value, at the time of the decedent's death," 26 U.S.C. § 6324(a)(2), and subsection (b) limiting gift tax liability "to the extent of the value of such gift," *id*. § 6324(b), estate and gift taxes "are in pari materia and must be construed together." *Sanford v. Comm'r*, 308 U.S. 39, 44 (1939); *see also Chambers v. Comm'r*, 87 T.C. 225, 231 (1986) (same). Thus, while the government's citation to *Marshall* is not authoritative, it does provide persuasive support for the government's position.

[28] We have long recognized that "[t]he application of judicial estoppel is not limited to bar the assertion of inconsistent positions in the same litigation, but is also appropriate to bar litigants from making incompatible statements in two different cases." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 783 (9th Cir. 2001) (citations omitted).

moment."[29] *Id*. at 749–50 (internal quotation marks and citations omitted).

The Court has identified three non-exclusive factors that should "inform" a court's decision whether to apply judicial estoppel: (1) "a party's later position must be 'clearly inconsistent' with its earlier position"; (2) "the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled'"; and (3) "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on

[29] Importantly, judicial estoppel differs significantly from other estoppel doctrines, such as equitable estoppel. *See Teledyne Indus., Inc. v. NLRB*, 911 F.2d 1214, 1219 (6th Cir. 1990) ("Although each of these doctrines deals with the preclusive effect of previous legal actions, the similarity ends there."). "Judicial estoppel exists to protect the *courts* from the perversion of judicial machinery through a party's attempt to take advantage of both sides of a factual issue at different stages of the proceedings." *Id.* at 1220 (internal quotation marks and citation omitted). "In contrast, equitable estoppel serves to protect *litigants* from unscrupulous opponents who induce a litigant's reliance on a position, then reverse themselves to argue that they win under the opposite scenario." *Id*. (citation omitted). And while the Supreme Court has explained, in the context of equitable estoppel, that "it is well settled that the Government may not be estopped on the same terms as any other litigant," *Heckler v. Cmty. Health. Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60 (1984), judicial estoppel may be applied to prevent the government from asserting inconsistent legal arguments, *United States v. Liquidators of Eur. Fed. Credit Bank*, 630 F.3d 1139, 1147–49 (9th Cir. 2011) (holding that judicial estoppel barred the government from arguing that defendant could not raise legal claims challenging forfeitability in ancillary proceedings, after earlier arguing that defendant could raise their arguments during ancillary proceedings).

the opposing party if not estopped." *Id.* at 750–51 (internal quotation marks and citations omitted).

If these considerations were applied to the government's representations here—that § 6324(a)(2) does not allow the government to impose personal liability for unpaid estate taxes in an amount that exceeds the value of the property received—judicial estoppel could be applied to prevent the government from taking a contrary position in later litigation. First, such a position would be contrary to the government's position in this case. Second, the government has succeeded in persuading us to accept its position, and judicial acceptance of an inconsistent position in a later proceeding would create the impression that either we, or the later court, were misled. Third, allowing the government to take a contrary position in later litigation would unfairly prejudice the taxpayers in the subsequent litigation, who may have relied on the government's position, and would also prejudice the second court. *See Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 604 (9th Cir. 1996) (explaining that "the interests of the second court are uniquely implicated and threatened by the taking of an incompatible position").

Moreover, there are cases that, while not directly addressing the issue before us now, include statements that lend support to the government's argument that it does not seek to impose liability for estate taxes that exceed the value of the property received. *See Geniviva*, 16 F.3d at 523 (construing § 6324(a)(2) and noting that "[t]his section provides that if estate taxes are not paid when due, the beneficiaries are liable up to the amount received from the estate"); *Schuster v. Comm'r*, 312 F.2d 311, 315 (9th Cir. 1962) (considering § 827(b), a predecessor statute that included the same language as § 6324(a)(2), and explaining

that the statute imposed some limitations on a transferee's liability because "it requires that a deficiency be due from the estate, and that his [or her] liability therefor is limited to the value of the estate corpus which he [or she] received").

Finally, defendants have not identified, and our research has not uncovered, any case in which the government has attempted to impose personal liability for estate taxes that exceeded the value of the property received. The absence of any case law on this point supports the conclusion that this situation has never been litigated because the government has never taken this position, which in turn, supports the conclusion that it is unlikely that the government will attempt to assert this argument in future litigation.

Thus, we conclude that applying the rule of the last antecedent does not lead to absurd results, but instead results in the most natural reading of the statute, consistent with its structure and context.

D

The defendants also argue that to interpret the statute we must consider its purpose and intent. Madeleine Pickens argues that "the purpose of [§] 6324(a)(2) is to provide the Government with the same avenue to collect taxes from non-probate property that it has with respect to probate property." She reasons that just as probate property must "pass[] through the hands of the executor," the "beneficiaries of a decedent's trust can only take possession of trust property after it has passed through the hands of the trustee." Thus, she concludes that the government's interests "are fully protected when [§] 6324(a)(2) imposes personal liability on a trustee of the decedent's trust who distributes property to a trust beneficiary without first paying the tax."

But nothing in the statutory text supports her argument that Congress's purpose in enacting §6324(a)(2) was to impose personal liability for unpaid estate taxes on those persons, "including trustees," who "stand in the same position as the executor." The statute does not impose personal liability for unpaid estate taxes based on the existence or exercise of a fiduciary duty to the estate.[30] Instead, § 6324(a)(b) imposes personal liability, based on receipt or possession of property from the gross estate, on the categories of persons listed in the statute, and that list does not include executors or administrators. And while the list includes trustees, it also includes transferees, spouses, beneficiaries, and others who do not act as fiduciaries or administrators of the estate. 26 U.S.C. § 6324(a)(2). We therefore find no basis to conclude that personal liability for unpaid estate taxes on non-probate property under § 6324(a)(2) is intended to mirror an executor's liability for distributions of probate property.

Vikki Paulson and Crystal Christensen also argue that we should interpret the statute based on Congress's intent. They baldly assert that "Congress did not intend that individuals who had no control over estate property at the date of the decedent's death be held liable for unpaid estate taxes." This argument, like Madeleine Pickens' "purpose of the statute" argument, fails because it has no support in the statutory text. There is nothing in the statute that suggests that liability for unpaid estate taxes is based on the opportunity to ensure that taxes are paid at a particular time; instead, the statute

[30] Indeed, other sections of the tax code and regulations address the collection of taxes from fiduciaries. *See* 26 U.S.C. § 6901 (providing methods of collection of taxes from transferees and fiduciaries); 26 C.F.R. § 20.2002-1 (explaining the liability of executors, administrators, and others).

imposes personal liability on those who receive or have estate property. § 6324(a)(2).

E

The defendants also argue that ambiguities in tax statutes must be resolved in favor of the taxpayer and against the government. However, as the United States argues, the "modern validity" of the "taxpayer rule of lenity" is "questionable." *See Colgate-Palmolive-Peet Co. v. United States*, 320 U.S. 422, 429–30 (1943) (resolving ambiguity in taxing statute in favor of the government); *Maloney v. Portland Assocs.*, 109 F.2d 124, 126 (9th Cir. 1940) ("[T]here is considerable doubt as to the present existence of the old rule to the effect that ambiguities in a taxing act are to be resolved in favor of the taxpayer."); SCALIA & GARNER, *supra,* at 299–300, & nn.17–19 (explaining that the Court previously construed tax laws "strict[ly]" and in "case[s] of doubt . . . against the government," but the rule "can no longer be said to enjoy universal approval." (footnotes omitted)); *see also Fang Lin Ai v. United States*, 809 F.3d 503, 507 (9th Cir. 2015) ("[W]e do not mechanically resolve doubts in favor of the taxpayer but instead resort to the ordinary tools of statutory interpretation.").

Vikki Paulson and Crystal Christensen acknowledge that "the rule of lenity is sometimes called into question," but they argue that the Ninth Circuit "still strictly construes tax provisions to resolve ambiguity in the taxpayer's favor." To support this broad assertion they cite our decision in *United States v. Boyd,* 991 F.3d 1077, 1085 (9th Cir. 2021). But defendants' arguments, if accepted, would require us to stretch *Boyd* beyond its language and reasoning—in *Boyd*, we did *not* state that the rule of lenity applies to all

ambiguous "tax provisions" or that all such provisions must be strictly construed. *See id*. at 1085–86. Instead, our discussion was limited to "tax provision[s] which impose[] a *penalty*." *Id.* at 1085 (emphasis added).

To be sure, we explained that "our circuit strictly construes tax *penalty* provisions independent of the rule of lenity." *Id.* at 1085–86 (emphasis added). Thus, we treated tax provisions that apply penalties, but not all other tax provisions, as akin to criminal statutes to which "the rule of lenity ordinarily applies." *Id.*; *see also* SCALIA & GARNER, *supra,* at 296 (explaining that the rule of lenity reflects the idea that penal statutes must "mak[e] clear what conduct incurs the punishment" (citations omitted)). Indeed, in *Fang Lin Ai*, we considered provisions imposing taxes and rejected the argument that doubts about such statutes should be resolved in favor of the taxpayer; instead we explained that we construe taxing statutes by applying the ordinary rules of statutory construction. 809 F.3d at 506–07 (citations omitted).

But we need not decide the modern validity of the rule of lenity as applied to all tax provisions because that rule does not apply to the statute at issue here. That is because "[t]he rule 'applies only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute.'" *Shular v. United States*, 140 S. Ct. 779, 787 (2020) (quoting *United States v. Shabani*, 513 U.S. 10, 17 (1991)); *see id.* at 788 (Kavanaugh, J., concurring) ("Of course, when a reviewing court employs all of the traditional tools of construction, the court will almost always reach a conclusion about the best interpretation, thereby resolving any perceived ambiguity. That explains why the rule of lenity rarely comes into play." (internal quotation marks and citation omitted)). As previously explained, after reviewing

the text of § 6324(a)(2), applying the canons of interpretation, and considering other indicia of its meaning, we are not "left with an ambiguous statute," *see Shular*, 140 S. Ct. at 787. Therefore, even if were to conclude that the rule of lenity remains a valid tool to construe statutes imposing taxes, it would not apply here.

F

Finally, the defendants argue that we must accept their interpretation of § 6324(a)(2) because the government's interpretation "has been rejected by every court that has ever considered it," and that "every court addressing [§] 6324(a)(2)" agrees with them. But the defendants grossly overstate the weight of the authority that supposedly supports their sweeping statements. Indeed, the scant authority upon which the defendants rely consists of one decades-old tax court case interpreting a predecessor statute to § 6324(a)(2), *Englert v. Commissioner*, 32 T.C. 1008 (1959),[31] and one unpublished district court decision relying on *Englert* to interpret § 6324(a)(2), *United States v. Johnson*, No. CV 11-00087, 2013 WL 3924087 (D. Utah July 29, 2013). We are not persuaded by the reasoning of these cases.

In both cases, without any attempt to construe the statutes by applying the traditional tools—namely the canons of statutory interpretation—the courts concluded that because the statutory language could support different interpretations, the statutes must be deemed ambiguous, and thus "any doubt as to the meaning of the statutes" must be

[31] In *Englert*, the tax court considered § 827(b) of the Internal Revenue Code of 1939, as amended by the Revenue Act of 1942. 32 T.C. at 1012, 1017 n.1 & n.4.

resolved in the taxpayer's favor.[32] *Englert*, 32 T.C. at 1016; *see also Johnson*, 2013 WL 3924087, at *5 ("Where there is ambiguity as to the meaning of a tax statute, the court must resolve the issue in favor of the taxpayer."). But, as discussed above, even if the rule of lenity validly applies to taxing statutes, it does so "only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute.'" *Shular*, 140 S. Ct. at 787 (internal quotation marks and citation omitted). Because the courts in *Englert* and *Johnson* made no attempt to "resolv[e] any perceived ambiguity," *see id.* at 788 (Kavanaugh, J., concurring), they erroneously concluded that they were required to construe the statutes at issue in the taxpayer's favor. Therefore, we decline the defendants' suggestion that we adopt the reasoning of these cases.

* * * *

After starting our analysis with the text of § 6324(a)(2), considering other indicia of its meaning including its structure and context, and applying the canons of statutory interpretation, we conclude that the statute imposes personal liability for unpaid estate taxes on the categories of persons listed in the statute who (1) receive estate property on or after the date of the decedent's death, or (2) have estate property on the date of the decedent's death. Therefore,

[32] Significantly, in the section of *Englert* finding § 827(b) ambiguous, the tax court misquoted the provision's punctuation by omitting a comma. *See* 32 T.C. at 1015–16. The court quoted the statute as stating that liability applies to a person "'who receives, or has on the date of the decedent's death the property included in the gross estate . . .'", but the text actually states that liability applies to a person "who receives, or has on the date of the decedent's death, property included in the gross estate . . . ." As discussed in Section III.A, changes in punctuation can change the meaning of the text.

§ 6324(a)(2) imposes personal liability for unpaid estate taxes on trustees, transferees, beneficiaries, and others listed in the statute, who receive or have estate property on or after the date of the decedent's death.

IV

Our holding that § 6324(a)(2) imposes personal liability on those listed in the statute, who have or receive estate property on or after the date of the decedent's death, does not completely resolve this matter. We must determine whether the defendants fall within the categories of persons listed in the statute and are thus liable for the unpaid estate taxes.

A

The government argues that the defendants are liable under the statute as trustees, transferees, and beneficiaries. Vikki Paulson and Crystal Christensen acknowledge that they are successor trustees, and James Paulson has not submitted a brief contesting the district court's finding that he was a successor trustee. Thus, these defendants do not dispute that, if § 6324(a)(2) applies to those who receive or have estate property *after* the date of the decedent's death, they are liable as "trustees" under § 6324(a)(2).

We therefore conclude that James Paulson, Vikki Paulson, and Crystal Christensen are liable, as trustees, for the unpaid estate taxes on property from the gross estate, held in the living trust, "to the extent of the value, at the time of the decedent's death, of such property." 26 U.S.C. § 6324(a)(2). But, as previously discussed and as conceded by the government, *see supra* Section III.C.2.b, that liability is capped at the value of estate property in the living trust at the time of Allen Paulson's death, and each defendants'

liability cannot exceed the value of the property at the time that they received or had it as trustees.

B

The government also argues that the ordinary meaning of "beneficiary" includes "trust beneficiaries" and therefore Crystal Christensen and Madeleine Pickens are liable as beneficiaries under § 6324(a)(2) for the unpaid estate taxes.[33] These defendants acknowledge that they are "trust beneficiaries," but they argue that they are not "beneficiar[ies]," as that term is used in § 6324(a)(2). Instead, they argue that "beneficiary" in § 6324(a)(2) has a narrow meaning and applies only to life insurance beneficiaries.[34]

Because the statute does not define "beneficiary," "we look first to the word's ordinary meaning." *See Schindler Elevator Crop. v. United States*, 563 U.S. 401, 407 (2011) (citing *Gross v. FBL Fin. Servs.*, 557 U.S. 167, 175 (2009) ("Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose" (internal quotation marks omitted)); *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning"). At this first step, we conclude that dictionary definitions support the government's broad interpretation,

[33] Because we conclude that Crystal Christensen and Madeleine Pickens are liable for the unpaid estate taxes as beneficiaries under § 6324(a)(2), we need not address whether they are also liable as "transferees," as that term is used in the statute.

[34] As we discuss later, *infra*, at n.36, Madeleine Pickens acknowledges that beneficiaries may also include beneficiaries of annuity payments.

rather than the defendants' narrow interpretation limiting liability to insurance beneficiaries. *See Beneficiary*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "beneficiary" as "[s]omeone who is designated to receive the advantages from an action or change; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument," and "[s]omeone designated to receive money or property from a person who has died"); *see also Beneficiary*, AMERICAN HERITAGE DICTIONARY (5th ed. 2018) ("One that receives a benefit" or "the recipient of funds, property, or other benefits, as from an insurance policy or trust"); *Beneficiary*, WEBSTER'S NEW WORLD COLLEGE DICTIONARY (5th ed 2014) ("[A]nyone receiving benefit" or "a person named to receive the income or inheritance from a will, insurance policy, trust, etc. . . . "); *Beneficiary*, WEBSTER'S NEW WORLD DICTIONARY (4th ed. 2003) ("[A]nyone receiving or to receive benefits, as funds from a will or insurance policy . . . ."); *Beneficiary*, 2 OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("[O]ne who receives benefits or favours; a debtor to another's bounty . . . ."). Therefore, we conclude that the ordinary meaning of "beneficiary" includes a "trust beneficiary."

C

But we must also consider whether "there is any textual basis for adopting a narrower definition" of "beneficiary." *See Schindler*, 63 U.S. at 409; *see also* SCALIA & GARNER, *supra*, at 70 ("One should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise. Sometimes there *is* reason to think otherwise, which ordinarily comes from context." (emphasis in original)). The government argues that the *text* of

§ 6324(a)(2) does not indicate that "beneficiary" has a narrower meaning than its ordinary meaning. The defendants, however, argue that the *context and structure* of the statute support a narrower interpretation.

The defendants rely on two cases interpreting predecessor versions of the statute, *Higley v. Commissioner*, 69 F.2d 160 (8th Cir. 1934), and *Englert*, 32 T.C. 1008 (1959), and two cases applying the reasoning of these earlier cases to interpret § 6324(a)(2), *Garrett v. Commissioner*, T.C. Memo. 1994-70 (1994), and *Johnson*, 2013 WL 3924087 (D. Utah 2013). As we explain next, we are not persuaded by these cases, or the defendants' arguments, that the structure or context of the statute support a narrow interpretation that overcomes the ordinary meaning of beneficiary.

We start with *Higley v. Commissioner*, in which the Eighth Circuit interpreted the word "beneficiary" in § 315(b) of the Revenue Act of 1926. 69 F.2d at 162. The text of this predecessor statute, however, differs significantly from the text of § 6324(a)(2), and so § 315(b)'s relevance to our analysis is limited. Section 315(b) provided:

> If (1) *the decedent makes a transfer*, *by trust or otherwise*, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death . . . or (2) *if insurance passes under a contract executed by the decedent in favor of a specific beneficiary*, and if in either case the tax in respect thereto is not paid when due, then *the*

> *transferee, trustee, or beneficiary shall be personally liable* for such tax[.]

Id. (quoting 26 U.S.C. § 1115(b) (emphasis added)). As the court recognized in its analysis of the statute, § 315(b) expressly addressed two types of property dispositions: (1) "transfers," including "trusts," and (2) "insurance," and imposed liability on the "transferee, trustee, or beneficiary." *Id.* Indeed, the statute specifically referred to "insurance . . . in favor of a specific beneficiary." *Id.* The court concluded that this structure meant that the word "trustee" was "employed in connection with trust only," and the word "beneficiary" "applies only to insurance policy beneficiaries." *Id.*

But this direct textual and structural correlation between (1) dispositions by "transfers" and" trusts" to the liability of a "transferee" or "trustee," and (2) dispositions of "insurance . . . in favor of a specific beneficiary" to the liability of a "beneficiary," is not present in § 6324(a)(2). We therefore conclude that the court's analysis in *Higley*, based on the text and structure of § 315(b), does not support the defendants' narrow interpretation of "beneficiary" in § 6324(a)(2).

We next consider *Englert v. Commissioner*, in which the Tax Court interpreted another predecessor statute, § 827(b) of the Internal Revenue Code of 1939, as amended by the Revenue Act of 1942. 32 T.C. at 1012-13, 1015. The structure of this predecessor statute also differs from § 6324(a)(2). Section 879(b), in relevant part, provided:

> If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise,

> nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811(b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

Id. at 1017, n.4 (quoting 26 U.S.C. § 827(b)).

As the Tax Court noted, § 827(b) "names six classes of persons who, . . . may be personally liable for the unpaid tax." *Id*. at 1012. These six classes—(1) spouse, (2) transferee, (3) trustee, (4) surviving tenant, (5) person in possession, and (6) beneficiary—correspond directly to, and in the same order as, the property included in the gross estate in §§ 811 (b), (c), (d), (e), (f), or (g). *Id*. at 1012, 1016 ("In a single sentence of section 827(b) it is provided that there may be liable six classifications of persons who hold property includible in the estate under six specific subsections of section 811 of the Code.").

The court stated its belief that Congress "studiously chose a classification applicable to each of such subsections and included them in section 827(b) in the same order as the related property interests appeal in subsections (b) through (g), inclusive, of section 811." *Id.* at 1016. Applying this reasoning, and as petitioner argued, the court concluded that a person liable under the statute as a beneficiary would be limited to the beneficiary of a life insurance policy under § 811(g). *See id*. at 1013, 1016.

But § 6324(a)(2) does not include § 827(b)'s precise correspondence between categories of liable persons and

types of property. As the defendants acknowledge, the statute now lists six categories of liable persons, but then incorporates nine categories of properties included in the gross estate. The defendants argue that these changes to the text and structure of the statute do not change the analysis, the differing statutory provisions are "substantially the same," and the differences in the text should be considered "minor adjustments." We are not persuaded by these arguments.

As an initial matter, in *Englert*, the tax court found compelling the direct correlation of the six categories of persons liable to the six categories of property included in the gross estate, and concluded it was the result of Congress's "studious[] cho[ice.]" *Id.* at 1016. That direct correlation is not present in § 6324(a)(2) and we cannot simply brush aside the differences in the statute's structure and text.[35] But even more importantly, § 6324(a)(2) differs substantively from its predecessor statutes by incorporating § 2039, which includes in the gross estate "an annuity of other payment receivable by any beneficiary," thus explicitly applying the word "beneficiary" beyond life insurance beneficiaries.[36] Therefore, the court's reasoning in *Englert*

[35] Madeleine Pickens suggests that Congress was aware of *Englert* when it enacted § 6324(a)(2) and if it had intended to change the meaning of the text "it would have stated as much explicitly." But *Englert* was decided in 1959, five years *after* Congress enacted § 6324(a)(2). *See* Internal Revenue Code of 1954, § 6324, 68A stat. i, 780 (1954).

[36] Madeleine Pickens acknowledges that although "prior cases have held that the term 'beneficiary' in section 6324(a)(2) means only the beneficiary of life insurance proceeds, the addition of section 2039 and its incorporation into section 6324(a)(2) likely means that a beneficiary of annuity payments would also be considered a 'beneficiary' under

does not provide a textual or structural basis for us to conclude that the word "beneficiary" in § 6324(a)(2) should be limited to beneficiaries of life insurance.

Despite the textual and structural differences between § 6324(a)(2) and its predecessor statutes, the defendants rely on two more recent cases, *Garrett* and *Johnson*, to argue that the reasoning of *Higley* and *Englert* "apply with equal force" to § 6324(a)(2). In *Garrett*, the court applied the reasoning of *Higley* and *Englert* to conclude that the word "beneficiary" in § 6324(a)(2) refers only to life insurance beneficiaries.[37] *Garrett*, T.C. Memo. 1994-70 at *12-*14. But the court did not provide any analysis of the text or structure of § 6324(a)(2), and instead concluded that it found "nothing in the current statutory language that would warrant a more expansive definition of 'beneficiary' or [a] departure from earlier precedent under section 827(b)." *Id.* at *14. This conclusion is refuted by the substantive differences between the predecessor statutes, § 315(b) and § 827(b), and the current statute, § 6324(a)(2), including the current statute's explicit expansion of the meaning of the word beneficiary through the incorporation of § 2039.

section 6324(a)(2)." She recognizes this is a "substantive" difference. But she suggests this is not important to our interpretation of the statute because "that question was not before the District Court, is not before this Court, and need not be decided in order to dispose of the appeal." We disagree. This substantive difference between the statutes is highly relevant and important to their interpretation.

[37] In *Johnson,* the court simply adopted the reasoning of *Garrett*, without any additional analysis, 2013 WL 3924087, at *8; we therefore reject its conclusions for the same reasons we reject the reasoning of *Garrett*.

D

We must also apply the presumption of consistent usage that "a word or phrase is presumed to bear the same meaning throughout a text." SCALIA & GARNER, *supra*, at 170; *see also id*. at 172 ("The presumption of consistent usage applies also when different sections of an act or code are at issue."). In this case, we note that the use of the term "beneficiary," in different sections of the tax code and in the regulations, supports the broader, ordinary meaning of the word.

First, the defendants argue that § 6324(a)(2), by incorporating § 2042, limits the word "beneficiary" to the beneficiaries of life insurance policies. However, as previously noted, § 6324(a)(2) also incorporates § 2039, which defines a "beneficiary" as one who receives "an annuity or other payment receivable . . . by reason of surviving the decedent under any form of contract or agreement," but explicitly excludes life insurance beneficiaries from that definition. 26 U.S.C. § 2039(a). Thus, by incorporating § 2039, the statute applies the term "beneficiary" beyond life insurance beneficiaries and thus its context and structure do not support the defendants' limited interpretation.

Second, the same is true for § 679, which is titled "Foreign trust having one of more United States beneficiaries." 26 U.S.C. § 679. This section explains, outside the context of estate taxes, when a "United States person" will be liable for taxes on property transferred to a foreign trust. Throughout this section, the statute refers to trusts with a "United States beneficiary," a "beneficiary of the trust," a "United States beneficiary for any portion of the trust," and when "making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as

having a beneficiary who is a United States person." *Id.* §§ 679(a)(1); (a)(3)(C), (b)(2), & (c). In this section, although the context differs from personal liability for estate taxes, the tax code does not limit a "beneficiary" to an insurance beneficiary.

Finally, the regulations addressing liability for estate taxes use the term "beneficiary" broadly to indicate those who receive distributions from the estate, or in other words, trust beneficiaries. *See* 26 C.F.R. § 20.2002-1. This section of the regulations imposes personal liability for unpaid estate taxes on the executor (or administrator, or any person in actual or constructive possession of the decedent's property), who pays a "debt" of the estate to any person before paying the debts due the United States. *Id.* The regulation explains that "the word debt includes a beneficiary's distributive share of an estate." *Id.* Thus, the regulation's references to a "beneficiary's distributive share of an estate," supports the conclusion that the term beneficiary in the tax code, including § 6324(a)(2), applies to trust beneficiaries. We conclude therefore that the presumption of consistent usage supports applying the ordinary meaning of the word "beneficiary" in § 6324(a)(2).

E

Finally, the defendants offer policy arguments to support their interpretation of the statute. Crystal Christensen argues that because trust beneficiaries have "no power to take estate property," or "to distribute it," they should not be liable for the estate taxes if a trustee mismanages the estate and distributes property before "ensuring the estate's taxes [are] paid in full." But the statute does not condition personal liability for the unpaid estate taxes on the power to take or distribute estate property. Instead, it imposes personal

liability on categories of persons who receive or have estate property, and those categories include persons who do not have the power to take or distribute estate property.

Indeed, the defendants recognize that life insurance beneficiaries are "beneficiaries" under § 6324(a)(2), and life insurance beneficiaries, like trust beneficiaries, lack to the power to take or distribute estate property. The same can be said for transferees, joint tenants, and spouses (who are not also the trustee or executor), yet the defendants do not suggest that these categories of persons listed in the statute are not liable for unpaid estate taxes. Thus, the plain text of the statute imposes personal liability for unpaid estate taxes on those who receive or have estate property, without regard to their ability to take or distribute such property.

The defendants also argue that we should reject the government's argument that § 6324(a)(2) employs the ordinary meaning of the word "beneficiary" because that interpretation would "render[] the term unlimited to the point of absurdity." They suggest that adopting the government's interpretation of beneficiary would leave no limits on liability. But the statute limits a beneficiary's liability (1) to the types of property included in the decedent's gross estate through §§ 2034–2042, *see* § 6324(a)(2), and (2) to the value of the property the beneficiary receives or has, *see supra* Section III.C.2.b.

* * * *

We conclude that the ordinary meaning of beneficiary, which includes trust beneficiaries, applies to § 6324(a)(2), and we are not persuaded that the structure or context of the statute, or policy considerations, require a narrower interpretation as the defendants argue. Moreover, applying the presumption of consistent usage further supports our

conclusion that the term beneficiary in the tax code includes trust beneficiaries. Therefore, we conclude that Crystal Christensen and Madeleine Pickens are liable for the unpaid estate taxes under § 6324(a)(2) as beneficiaries. However, the liability of each of these defendants cannot exceed the value of the estate property at the time of decedent's death, or the value of that property at the time they received it.

V

Because § 6324(a)(2) imposes personal liability for unpaid estate taxes on the categories of persons listed in the statute who receive or have estate property, either on the date of the decedent's death or at any time thereafter, subject to the applicable statute of limitations, and the defendants were within the categories of persons listed in the statute when they received or had estate property, we conclude that they are liable for the unpaid estate taxes as trustees and beneficiaries. We therefore reverse the district court's judgment in favor of the defendants on the United States' claims under § 6324(a)(2), and remand to the district court with instructions to enter judgment in favor of the government on these claims with any further proceedings necessary to determine the amount of each defendant's liability for the unpaid taxes.

REVERSED and REMANDED.

IKUTA, Circuit Judge, dissenting:

Our only task in interpreting 26 U.S.C. § 6324(a)(2) is to determine congressional intent. Because the language of the statute is ambiguous, we must consider the "most logical meaning" of the statute. *United States v. One Sentinel Arms Striker-12 Shotgun Serial No. 001725*, 416 F.3d 977, 979 (9th Cir. 2005) (*One Sentinel*) (citation and quotation marks omitted). The majority and the government effectively concede that their interpretation of § 6324(a)(2) is not logical because it would allow a person who receives estate property years after the estate is settled to be held personally liable for estate taxes that potentially *exceed* the current value of the property received. The taxpayers's reading of the statute, which also accords with the plain language of the text, is more logical: it would allow the government to impose personal liability for estate taxes only on a person who receives (or holds) estate property on the date of the decedent's death.

Rather than adopt a reasonable interpretation of the statute that is more likely to reflect congressional intent, the majority adopts a "hypertechnical reading" of statutory language that loses sight of the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) (citation omitted). In order to justify this approach, the majority and the government proffer a number of unpersuasive rationales. First, the government provides a non-responsive description of its litigating position: it states it "has consistently argued" that it would not impose liability greater than the value of the property received. The majority, in turn, suggests that the result of its

interpretation is not likely to occur. But neither the government's nor the majority's assurances about the future (that individuals are unlikely to be held personally liable for estate taxes that potentially exceed the current value of the property received from a decedent's estate) impacts the interpretation of the statute.

Because the taxpayers's reading is more plausible and avoids the majority's illogical result, it is a better indication of Congress's intent. The inquiry should end there. Therefore, I respectfully dissent.

I

A

When an individual dies, an estate tax lien automatically arises and attaches to the decedent's gross estate. 26 U.S.C. § 6324(a)(1). Such a lien attaches for a period of ten years from the date of the decedent's death, and then automatically expires. *Id.* Although the estate tax lien expires after ten years, the executors of qualifying estates can elect to pay estate tax payments in installments over a period of fourteen years. 26 U.S.C. §6166. As a result, the government's interest in the last installments is not fully secured by the ten-year tax lien under § 6324(a)(1). Addressing this issue, the tax code provides the government with various options to protect its interests beyond the ten-year § 6324(a)(1) period, including the option to require a surety bond pursuant to 26 U.S.C. § 6165, *see* 26 U.S.C. § 6166(k)(1), and the option to require a special lien pursuant to 26 U.S.C. § 6324A. *See United States v. Spoor*, 838 F.3d 1197, 1205 (11th Cir. 2016) (noting that a § 6324A lien is a means of requiring "full collateral" for a § 6166 deferral); *see also* 26 U.S.C. § 6166(k)(2).

In addition to a lien, § 6324(a)(2) imposes personal liability for estate taxes on individuals listed in the statute. A listed individual "who receives, or has on the date of the decedent's death, property included in the [decedent's] gross estate . . . shall be personally liable" for the unpaid estate tax up to "the extent of the value" of such property "at the time of the decedent's death." 26 U.S.C. § 6324(a)(2). Like the substantially similar language in the predecessor statute, § 827(b) of the 1939 Internal Revenue Code,[1] this language imposes personal liability only on "the person who 'on the date of the decedent's death' receives or holds the property of a transfer made in contemplation of, or taking effect at, death." *Englert v. Comm'r*, 32 T.C. 1008, 1016 (1959); *see also Garrett v. Comm'r*, 67 T.C.M. (CCH) 2214, at *14 (1994); *United States v. Johnson*, 2013 WL 3924087, at *5 (D. Utah July 29, 2013). In this context, the words "receives" and "has" at the date of death refer to two different situations. The phrase "has on the date of decedent's death" refers to a person who holds property transferred within three years before the decedent's death, which is considered part of the decedent's gross estate for

[1] Section 827(b) provided:

> If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, *who receives, or has on the date of the decedent's death,* property included in the gross estate under section 811(b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

26 U.S.C. § 827(b) (1939) (emphasis added).

tax purposes. *See* 26 U.S.C. § 2035(c)(1). The phrase "receives . . . on the date of decedent's death," refers to "property received by persons solely because of decedent's death," and "which was not in the possession of one of the persons . . . at the moment of decedent's death, but who immediately received such property solely because of decedent's death." *Garrett*, 67 T.C.M. (CCH) at *13 (citing *Englert,* 32 T.C. 1016). Thus, a taxpayer who becomes trustee of a trust on the date of decedent's death is "personally liable as a transferee for the estate tax because it was in possession of property includable in decedent's gross estate at the date of death." *Id.* at *14 (citing *Estate of Callahan v. Comm'r,* 42 T.C.M. (CCH) 362 (1981)). Although Congress amended § 6324 in 1966, it did not change the syntax of § 6324(a)(2). This indicates that Congress intended to keep the then-current judicial interpretation. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." (citations omitted)).

B

In this case, the estate elected to defer payments over fourteen years. But the government failed to use the options available to protect its unsecured interests in deferred payments. *See supra*, at 59. It also failed to hold Michael Paulson, the trustee of the decedent's trust on the date of the decedent's death, personally liable for the estate taxes due, *United States v. Paulson*, 445 F. Supp. 3d 824, 831 (S.D. Cal. 2020), even though such liability may extend after the expiration of the ten-year estate tax lien provided for in § 6324(a)(1). *See, e.g.,* Internal Revenue Manual 5.5.8.3 (June 23, 2005) (stating that 26 U.S.C. § 6502 applies to

assess personal liability under § 6324(a)(2)); 26 U.S.C. § 6502(a) (providing for ten-year period after assessment of taxes for collection); *Id.* § 6503(d) (tolling ten-year period when 26 U.S.C. § 6166 election is made).

To compensate for its failures to use the available statutory options to collect estate taxes, the government here adopted a novel reading of § 6324(a)(2). Although the accepted reading of this language (as noted in *Garrett*, 67 T.C.M. (CCH) at *14) is that it imposes personal liability for estate taxes on any person who receives (or has) property on the decedent's date of death, the government for the first time reads this language as imposing liability on a person "who receives" property of the estate at any time, even years after the decedent's death. Under this interpretation, the government calculates the estate tax based on the value of property on the date of decedent's death, and then imposes personal liability for this tax on a person who receives the property years later. This means that the individual's tax liability may be completely disproportionate to the value of the property when the individual eventually receives it.

The majority justifies its adoption of the government's novel reading based on the lack of a comma after the word "has." The majority views the absence of a comma as triggering the doctrine of the last antecedent, a rule of statutory construction which states that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (citation omitted). But while "[p]unctuation is a permissible indicator of meaning," *Navajo Nation v. U.S. Dep't of Interior*, 819 F.3d 1084, 1093 (9th Cir. 2016) (citing Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 161–65 (2012)), it "can assuredly be overcome by

other indicia of meaning," *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (citation omitted). The "last antecedent principle is merely an interpretive presumption based on the grammatical rule against misplaced modifiers." *Payless Shoesource, Inc. v. Travelers Cos., Inc.*, 585 F.3d 1366, 1371–72 (10th Cir. 2009). "At the same time, though, we know that grammatical rules are bent and broken all the time," and we should not rely solely on grammar in interpreting a text "when evident sense and meaning require a different construction." *Id.* (citation and internal quotation marks omitted).

Like other circuits, we have acknowledged that the last antecedent canon is inapplicable when it creates illogical results and the statute's plain language gives rise to a more logical reading. *See One Sentinel*, 416 F.3d at 979. In *One Sentinel*, the government brought a civil forfeiture action against a Sentinel Arms Striker-12 shotgun on the ground that it was "a 'destructive device' possessed in violation of the National Firearms Act." *Id.* at 978. The Act defined a destructive device as

> any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, *except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes*[.]

Id. at 979 (citing 26 U.S.C. § 5845(f)(2)) (emphasis and alteration in original).

The claimant argued that "according to the doctrine of the last antecedent, the clause 'which the Secretary finds is generally recognized as particularly suitable for sporting purposes,' modifies 'shotgun shell,' but not 'shotgun.'" *Id*. In other words, due to the lack of a comma after "or shotgun shell" the doctrine of the last antecedent required the statute to be read as defining a destructive device as "any type of weapon . . . except a shotgun." *Id*.

We rejected that argument because following the last antecedent doctrine would have created the illogical result that no shotgun could be a "destructive device." *Id.* We explained that "the doctrine of the last antecedent must yield to the most logical meaning of a statute that emerges from its plain language and legislative history." *Id.* at 979 (citation and quotation marks omitted). Therefore, we declined to apply the last antecedent canon and interpreted the relevant clause as if an omitted comma after "shell" were included. *Id.*

The same principle applies here. The government and majority implicitly concede that the government's reading of the statute potentially results in allowing the government to impose personal liability for unpaid estate taxes on trust asset recipients in excess of the value of the assets received. This could occur under the government's interpretation, for instance, if property of the estate had a high value at the time of the decedent's death but decreased precipitously by the time it was received by a beneficiary. In such a case, the beneficiary would nevertheless be personally liable for the unpaid estate taxes based on the value of the property on the date of death, even if the property were worth mere cents on the dollar when received by the beneficiary. Congress could not have intended to make a person who receives property

many years after a settlor's death personally liable for estate taxes that exceed the value of the property received.

The majority claims the taxpayers "are impliedly invoking the canon against absurdity," and then refutes this strawman argument by pointing to the "high bar" for invoking this canon. But because the canon against absurdity applies only when a court departs from the plain meaning of a statute, *see, e.g.*, *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004); *Taylor v. Dir., Off. of Workers Comp. Programs*, 201 F.3d 1234, 1241 (9th Cir. 2000), it is not implicated here. The taxpayers do not ask the court to disregard the text of § 6324(a)(2). Rather, the taxpayers offer an interpretation of its text that is superior to the government's, in that it avoids an illogical reading based solely on the lack of a comma after the word "has." *See Tovar v. Sessions*, 882 F.3d 895, 904–05 (9th Cir. 2018).

C

While the majority primarily focuses on the doctrine of the last antecedent to support its interpretation of § 6324(a)(2), it makes an additional textual argument. First, it correctly notes that the statute refers to a person who receives "property included in the gross estate under sections 2034 to 2042, inclusive." Likewise, it correctly notes that §§ 2034 to 2042 refer to property such as annuities, life insurance proceeds, or property subject to a general power of appointment given to transferees listed in § 6324(a)(2). From these undisputed premises, the majority erroneously concludes that a transferee could not receive the sort of property described in §§ 2034 to 2042 on the date of the decedent's death, and therefore "personal liability for the estate tax applies to those who receive estate property, on or after the date of the decedent's death."

But the taxable property in the decedent's gross estate, which includes the *interest* in the annuity, insurance proceeds, or property subject to a power of appointment, can be transferred on the date of decedent's death. Indeed, as a leading treatise explains, "[n]on-probate assets under Section 6324(a)(2) [the assets identified in §§ 2034 to 2042] are primarily those assets of the decedent, includable in the gross estate, that were transferred prior to death, or were held in such a way that ownership transferred automatically upon death." William Elliott, FEDERAL TAX COLLECTIONS, LIENS & LEVIES, at § 27:23 Transferee Liability (Dec. 2022). A taxpayer receives the interest in the property "immediately" on the date of death, and is liable for estate taxes on its value, even if the assets at issue are not distributed until later. *Garrett*, T.C.M. (CCH) at *13 ("Congress used the word 'receives' to take care of property solely because of decedent's death such as insurance proceeds or property which was not in the possession of one of the persons described [in the predecessor to § 6324(a)] at the moment of decedent's death, but who immediately received such property solely because of decedent's death." (citation omitted)). The transferees are personally liable to the extent of the value of their interest in these assets on the date of death. *See* Elliott, *supra* at § 27:23 Transferee Liability. And the present value of such interest is determined as of the date of death even if the actual annuity payments or insurance proceeds are not distributed until some later date. *See Magill v. Comm'r,* 43 T.C.M. (CCH) 859, at n.21 (1982), *aff'd sub nom. Berliant v. Comm'r*, 729 F.2d 496 (7th Cir. 1984) (holding that a taxpayer's "liability under section 6324(a)(2) is measured by the value of the property at date of death," and so the taxpayers would normally be personally liable for the value of their interest

in the annuity at the date of death, "rather than the lesser amount of the subsequent cash distributions"); *see also Baptiste v. Comm'r*, 63 T.C.M. (CCH) 2649 (1992), *aff'd*, 29 F.3d 1533 (11th Cir. 1994) ("[P]etitioner is liable at law for the unpaid estate tax to the extent of the value, at the time of decedent's death, of petitioner's interest in the proceeds of insurance on decedent's life.").

D

As an alternative to its textual arguments, the majority attempts to defend its interpretation by predicting that its illogical results are unlikely to occur.[2] But the majority cites no support for its approach of interpreting statutes based on predictions regarding future events. Nor can it, because our job is merely to discern the most reasonable interpretation of the statute, which requires us to take into account its "most logical meaning." *One Sentinel*, 416 F.3d at 979 (citation and quotation marks omitted).

In any event, the majority's assurances are unpersuasive, even on their own terms. First, the majority claims that the illogical result caused by the government's interpretation can be avoided because an individual poised to receive trust assets "must not have disclaimed or refused [trust] property." In other words, according to the majority, prospective recipients of trust assets are amply protected because they can simply refuse assets that will suffer too great a decrease in value.

The majority's argument does not survive scrutiny. Federal disclaimer law applies in this context. *See* 26 U.S.C. § 2518 (disclaimers); Treasury Reg. § 25.2518-2(c)(5); *see*

[2] Once again, the government does not raise this argument.

also Borris Bittker & Lawrence Lokken, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ch. 121.7 Disclaimers, 1997 WL 440123, at 14 (July 2022). Under federal law, in order to make an effective disclaimer of an interest in property, a person must comply with strict requirements. 26 U.S.C. § 2518; Treasury Reg. § 25.2518-2. With some minor exceptions not applicable here, the person must make, in writing, "an irrevocable and unqualified" refusal to accept an interest in property, no later than nine months after the date of the decedent's death regardless whether the person has received the property.[3] *See* Treasury Reg. § 25.2518-2(a)–(c); *see also id.* § 25.2518-2(c)(3)(i) ("With respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the transfer); *see also Barker v. Jackson Nat. Life Ins. Co.*, 888 F. Supp. 1131, 1133–34 (N.D. Fla. 1995) ("Section 25.2518–2(c)(3) key[s] the disclaimer time (9 months) to run from the taxable transfer occurring at the date of death." (cleaned up)). The person must make this disclaimer within the nine month period even if the person has only a contingent interest in the property. Treasury Reg. § 25.2518-2(c)(3)(i) ("If the transfer is for the life of an income beneficiary with succeeding interests to other persons, both the life tenant and the other remaindermen,

[3] There are two exceptions to this rule. A beneficiary who is under 21 years of age has until nine months after his twenty-first birthday in which to make a qualified disclaimer of his interest in property. 26 C.F.R. § 25-2518-2(d)(3). And a person who receives the property as the result of another party disclaiming the property interest must disclaim the interest within nine months after the date of the transfer creating the interest in the preceding disclaimant. 26 C.F.R. § 25-2518-2(c)(3).

whether their interests are vested or contingent, must disclaim no later than 9 months after the original transfer creating an interest."); *see also Breakiron v. Gudonis*, 2010 WL 3191794, at *1 (D. Mass. Aug. 10, 2010) ("Under Treasury Regulation 26 C.F.R. § 25.2518-2(c)(3)(i), . . . a disclaimer must be made within this nine-month 'window' even if the disclaimant's interest in the disclaimed property is not then vested or is then contingent." (cleaned up)). This requirement applies regardless whether the person had actual knowledge that such a transfer had been made. *See* Bittker & Lokken, at 7 ("The disclaimant's knowledge of the interest or lack thereof is irrelevant, and the time thus can expire before the disclaimant even knows of the existence of the interest.").

The majority fails to explain how a person would have the prescience to know within nine months from the date of decedent's death that the value of the interest in property to be transferred to that person at some point in the future will dramatically decline many years later (assuming that person even knows of the existence of such an interest). Without this prescience, the person would not be able to disclaim such an asset within the required time frame. At bottom, a person's right to disclaim an asset within nine months of decedent's death does not avoid the result caused by the government's and majority's interpretation of the statute.

The majority also contends that it "rel[ies] on the government's avowals in its briefing and at oral argument that estate tax liability cannot exceed the value of the property received." According to the majority, this promise, coupled with "judicial estoppel, provides additional safeguards" against the unfair application of personal liability under §6324(a)(2). But the government's actual statement on appeal—that it "has consistently argued in this

case that liability under § 6324(a)(2) is limited to the lesser of the unpaid estate tax liability or the value of the non-probate property that the liable person had or received,"—is merely a description of how the government has argued this case. It does not represent the government's interpretation of § 6324(a)(2) or any promise regarding its future actions.

But even if the government had offered an authoritative interpretation, the majority misunderstands how the doctrine of judicial estoppel (which the government does not raise) would apply in this case. Judicial estoppel is an equitable doctrine that generally "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Pegram v. Herdrich*, 530 U.S. 211, 227 n.8 (2000)). "Courts apply the doctrine where a party's 'later inconsistent position' presents a 'risk of inconsistent court determinations.'" *New Edge Network, Inc. v. FCC*, 461 F.3d 1105, 1114 (9th Cir. 2006). The doctrine is "invoked by a court at its discretion" to "protect the integrity of the judicial process." *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990).

Judicial estoppel is not applicable here. In future cases, a court would be bound only by the majority's interpretation of § 6324(a)(2) as imposing estate tax liability on a person who receives property from the decedent's estate, regardless when it is received. The majority rejected an interpretation of the statute that would prevent the imposition of estate tax liability that exceeded the value of the property received, and so should the government change its position to argue the statute allows that, the government's "later inconsistent position [would] introduce[] no 'risk of inconsistent court determinations.'" *New Hampshire v. Maine*, 532 U.S. at 751

(citation omitted); *see also New Edge Network, Inc.*, 461 F.3d at 1114. Therefore, ordinary principles of judicial estoppel would not apply.

But even if the government had provided (and the majority had adopted) an interpretation of § 6324(a)(2) limiting the government's ability to impose excessive estate tax liability, such an interpretation would still not be binding in future cases. "[I]t is well settled that the [g]overnment may not be estopped on the same terms as any other litigant" because public policy considerations allow the government to change its positions in ways private parties cannot. *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60–61 (1984). The government may readily change its interpretation of a statute; "it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Because the government is free to make changes "in response to changed factual circumstances, or a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005) (citation omitted), we have held that judicial estoppel does not preclude a government agency from changing its interpretation of an ambiguous statute, *see New Edge Network*, 461 F.3d at 1114. Accordingly, principles of judicial estoppel would not avoid the illogical results caused by the government's (and majority's) interpretation of the statute.

Finally, instead of explaining why its statutory interpretation does not lead to a nonsensical result, the majority also argues that historically, the government has not "attempted to impose personal liability for estate taxes that exceeded the value of the property received." Even if this

were true, it indicates only that the government has managed up until now to use special liens or surety bonds to secure its interest, but does not establish that the government's interpretation of § 6324(a)(2) is reasonable.

II

The majority has overemphasized a single canon of statutory construction—the rule of the last antecedent—to ignore that "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citing *Davis*, 489 U.S. at 809). Although the punctuation chosen by Congress is important, we must also give due regard to sense and meaning. As our sister circuit has explained, "while the rules of English grammar often afford a valuable starting point to understanding a speaker's meaning, they are violated so often by so many of us that they can hardly be safely relied upon as the end point of any analysis of the parties' plain meaning." *Payless Shoesource, Inc.*, 585 F.3d at 1372. Our binding precedent requires this approach; we may not read a statute as defining a "destructive device" to include shotgun shells but not shotguns merely because of a misplaced comma. *One Sentinel*, 416 F.3d at 979. And the Tenth Circuit offers an example that speaks volumes: "Groucho Marx could joke in *Animal Crackers*, 'One morning I shot an elephant in my pajamas. How he got into my pajamas I'll never know,' leaving his audience at once amused by the image of a pachyderm stealing into his night clothes and yet certain that Marx meant something very different." *Payless Shoesource, Inc.*, 585 F.3d at 1372. Because I would interpret the statute according to the most likely intent of Congress, rather than

adopt the majority's mechanical adherence to the rule of the last antecedent, I respectfully dissent.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MICHAEL PAULSON, et al.,

Defendants.

Case No.: 15-cv-2057 AJB (NLS)

ORDER DENYING DEFENDANTS' EX PARTE APPLICATION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING SUMMARY JUDGMENT

(Doc. No. 174)

Presently before the Court is Defendants Vikki E. Paulson and Crystal Christensen's (collectively referred to as "Defendants") ex parte application for a motion for reconsideration of the Court's order granting summary judgment. (Doc. No. 174.) As explained below, the Court **DENIES** Defendants' ex parte application.

BACKGROUND

On September 16, 2015, the United States of America instituted an action to recover unpaid estate taxes, penalties, and interest from the Estate of Allen E. Paulson. (Doc. No. 1.) On February 20, 2018, multiple motions for summary judgment were filed. Relevant for the purposes of this instant ex parte application is Plaintiff's motion for summary judgment against Defendants. (Doc. No. 123.) On September 7, 2018, the Court granted in

part and denied in part Plaintiff's motion for summary judgment. (Doc. No. 172.) On October 9, 2018, Defendants filed the present matter, their ex parte application for reconsideration. (Doc. No. 174.) This Order follows.

LEGAL STANDARD

Pursuant to FRCP 60(b), courts may only reconsider a final order on certain enumerated grounds. These grounds include: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b)(1)–(6). A motion made under the first three subsections of Rule 60(b) must be brought within a year, but a motion made under the other subsections need only be brought within a "reasonable time after entry of the order sought to be set aside." *Id.*; *see also United States v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982).

In addition, Local Civil Rule 7.1(i)(1) states that a party may apply for reconsideration "[w]henever any motion or any application or petition for any order or other relief has been made to any judge and has been refused in whole or in part . . . ." S.D. Cal. CivLR 7.1. The party seeking reconsideration must show "what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon such prior application." *Id.* Additionally, it provides that a motion for reconsideration must include an affidavit or certified statement of a party or attorney "setting forth the material facts and circumstances surrounding each prior application, including inter alia: (1) when and to what judge the application was made, (2) what ruling or decision or order was made thereon, and (3) what new and different facts and circumstances are claimed to exist which did not exist, or were not shown upon such prior application." A court has discretion in granting or denying a motion for reconsideration. *Navajo Nation v. Norris*, 331 F.3d 1041,

1046 (9th Cir. 2003); *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1441 (9th Cir. 2001).

DISCUSSION

Defendants seek reconsideration of the Court's Order partially granting the Government's motion for summary judgment. (Doc. No. 174-1 at 1.)

First, Defendants cite no authority to support their construction of Section 19001. Nor do Defendants provide any authority that challenges the Court's construction of Section 19001. Second, Defendants simply re-allege their same arguments that they presented in their Opposition to Plaintiff's motion for summary judgment. (*See generally* Doc. No. 138.) Defendants have failed to show "what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon such prior application." S.D. Cal. CivLR 7.1.

Further, Defendants allege that the Court engaged in erroneous analysis by implying legislative intent. (Doc. No. 174-1 at 8–10.) The Court was not implying legislative intent in its Order. Rather, the Court was commenting on the reasonableness, or lack thereof, of Defendants' interpretation of Section 19001. Accordingly, the Court **DENIES** Defendants' ex parte application.

CONCLUSION

Based on the foregoing, the Court **DENIES** Defendants' ex parte application for reconsideration. *See Navajo Nation*, 331 F.3d at 1046 ("Whether or not to grant reconsideration is committed to the sound discretion of the court.").

IT IS SO ORDERED.

Dated: November 13, 2018

Hon. Anthony J. Battaglia
United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MICHAEL PAULSON, as the Executor or Statutory Executor of the Estate of Allen E. Paulson, and Individually; JAMES D. PAULSON, as Statutory Executor of the Estate of Allen E. Paulson; VIKKI E. PAULSON, as Statutory Executor of the Estate of Allen E. Paulson, as Trustee of Allen E. Paulson Living Trust, and Individually; et al.,

Defendants.

AND RELATED ACTIONS

Case No.: 15cv2057-AJB-NLS

ORDER:

(1) GRANTING IN PART AND DENYING IN PART DEFENDANT PICKENS' MOTION FOR SUMMARY JUDGMENT;

(2) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT JOHN MICHAEL PAULSON;

(3) DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AGAINST MS. PICKENS;

(4) DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT JAMES D. PAULSON;

(5) DENYING JOHN MICHAEL PAULSON'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF;

(6) GRANTING IN PART AND DENYING IN PART DEFENDANT JOHN MICHAEL PAULSON'S MOTION FOR SUMMARY JUDGMENT AGAINST MADELEINE PICKENS;

(7) DENYING JOHN MICHAEL PAULSON'S MOTION FOR SUMMARY JUDGMENT AGAINST CO-TRUSTEES;

(8) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST VIKKI PAULSON AND CRYSTAL CHRISTENSEN;

(9) DENYING DEFENDANT JOHN MICHAEL PAULSON'S MOTION TO STRIKE;

(10) DENYING DEFENDANT VIKKI PAULSON'S MOTION TO STRIKE

(Doc. Nos. 98, 111, 114 118, 119, 121, 122, 123, 143, 153)

Pending before the Court are eight motions for summary judgment. (Doc. Nos. 98, 111, 114, 118, 119, 121, 122, 123.) Additionally, Defendants John Michael Paulson and Vikki E. Paulson and Crystal Christensen filed two motions to strike. (Doc. Nos. 143, 153.) On August 3, 2018, the Court held a hearing on the motions and then submitted the

matters.[1] (Doc. No. 170.) As will be explained in greater detail below, the Court **GRANTS IN PART AND DENIES IN PART** Plaintiff's motion for summary judgment against Michael Paulson, (Doc. No. 111), **DENIES** John Michael Paulson's cross-motion for summary judgment, (Doc. No. 119), **GRANTS IN PART AND DENIES IN PART** Ms. Pickens' motion for summary judgment against Plaintiff, (Doc. No. 98), **DENIES** Plaintiff's cross-motion for summary judgment against Ms. Pickens, (Doc. No. 114), **DENIES** Plaintiff's motion for summary judgment against James Paulson, (Doc. No. 118), **GRANTS IN PART AND DENIES IN PART** John Michael Paulson's summary judgment motion against Ms. Pickens, (Doc. No. 121), **DENIES** John Michael Paulson's motion for summary judgment against Vikki Paulson and Crystal Christensen, (Doc. No. 122), and **GRANTS IN PART AND DENIES IN PART** Plaintiff's motion for summary judgment against Vikki Paulson and Crystal Christensen, (Doc. No. 123). Additionally, the Court **DENIES** both motions to strike. (Doc. Nos. 143, 153.)

BACKGROUND

A. Factual Background

On December 23, 1986, Allen Paulson ("Mr. Paulson") established the Allen E. Paulson Living Trust (hereafter referred to as "Living Trust"). (Doc. No. 1 ¶ 9.) In 1988, Mr. Paulson entered into an antenuptial agreement with Madeleine Pickens ("Ms. Pickens") in anticipation of marriage. (*Id.* ¶ 10.) The agreement defined their respective separate property and established certain gifts for Ms. Pickens in the event of Mr. Paulson's death. (*Id.*) The Living Trust was subsequently amended and restated several times in early 2000. (*Id.* ¶ 11.) On July 19, 2000, Mr. Paulson died. (*Id.* ¶ 21.) Mr. Paulson was survived by several heirs, including his third wife Ms. Pickens, his three sons from a prior marriage, Richard Paulson, James Paulson, and Michael Paulson, and a granddaughter Crystal Christensen. (Doc. No. 111-1 at 9.)

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[1] Defendant James. D. Paulson, who is not represented by counsel, did not appear at the motion hearing.

The Living Trust provided Ms. Pickens with the power to elect between receiving property under the antenuptial agreement or under the Living Trust, but not under both. (Doc. No. 1 ¶¶ 10, 12–15.) The Living Trust also created a Marital Trust for Ms. Pickens' benefit. (*Id.* ¶¶ 13–15.) Under the terms of the Living Trust, the Marital Trust was to receive a residence and all personal property located at 14497 Emerald Lane in Rancho Sante Fe, California. (*Id.* ¶ 13.) The Living Trust also gave Ms. Pickens the right to receive a second residence located in Del Mar, California, as well as all household furnishings, furniture, and all insurance policies related to the Del Mar property. (*Id.* ¶ 14.) Finally, the Living Trust provided that the Marital Trust was to receive 25% of the residue of the Living Trust. (*Id.* ¶ 15.) The Living Trust named Ms. Pickens, John Michael Paulson, and Edward White (or alternatively, Edward White and Nicholas Diaco), as the co-trustees of the Marital Trust. (*Id.* ¶ 16.) The Marital Trust created by the Living Trust was never funded. (Doc. No. 98-51 at 2.)

At the time of Mr. Paulson's death, all of Mr. Paulson's assets were held by the Living Trust except for his shares in the Gold River Hotel & Casino Corporation. (Doc. No. 1 ¶ 24.) The Living Trust's assets, as reported at the time of Mr. Paulson's death included approximately $24,764,500 in real estate, $113,761,706 in stocks and bonds, $23,664,644 in cash and receivables, and $31,243,494 in miscellaneous assets. (*Id.*) Accordingly, the Estate's assets totaled approximately $193,434,344 at the time of Mr. Paulson's death. (*Id.*)

John Michael Paulson ("Michael Paulson") is the son of Mr. Paulson, and served as the executor of the Estate of Allen E. Paulson ("Estate") until his purported resignation on January 15, 2013. (*Id.* ¶¶ 4, 54.) Michael Paulson also served as a co-trustee of the Living Trust with Edward White until White's resignation on October 8, 2001. (*Id.* ¶ 25.) Shortly thereafter, Nicholas Diaco consented to act as co-trustee of the Living Trust with Michael Paulson. (*Id.*) In April 2001, the Estate filed a Form 4768 with the IRS, and requested an extension of time to file its Form 706 Estate tax return until October 19, 2001. (*Id.* ¶ 26.)

Additionally, the Estate requested an extension of time to pay its taxes until April 19, 2002. (*Id.*) The IRS approved both of the Estate's extension requests. (*Id.*)

On October 23, 2001, the IRS received the Estate's Form 706 Estate tax return, which was signed by Michael Paulson as co-executor of the Estate. (*Id.* ¶ 27.) In completing the tax return, the Estate elected to use an alternate valuation date of January 19, 2001, under 26 U.S.C. § 2032(a). (*Id.*) The Estate reported a total gross estate of $187,729,626, a net taxable estate of $9,234,172, and an estate tax liability of $4,459,051. (*Id.* ¶¶ 27–28.) On November 26, 2001, the IRS assessed the originally reported tax of $4,459,051. (*Id.* ¶ 28.) The Estate elected to pay part of its taxes and defer the other portion under a fifteen-year payment plan pursuant to 26 U.S.C. § 6166 of the Internal Revenue Code.[2] (*Id.* ¶ 29.) Accordingly, the Estate paid $706,296 as the amount unqualified for deferral under § 6166, leaving a deferred balance of $3,752,755 to be paid under the installment election. (*Id.*) On November 15, 2001, the IRS selected the Estate tax return for examination. (*Id.* ¶ 31.)

While the Estate's tax return was under review, several personal disputes arose between Michael Paulson, Ms. Pickens, and the other beneficiaries of the Living Trust. (*Id.* ¶ 32.) On February 2, 2003, the parties reached a settlement agreement, which the California Probate Court approved on March 14, 2003 ("2003 Settlement"). (*Id.* ¶¶ 33, 34; Doc. No. 15-5.) Under the 2003 Settlement, Ms. Pickens forewent property under both the antenuptial agreement and the Living Trust, instead choosing to receive direct distributions from the Living Trust. (Doc. No. 1 ¶¶ 33–34.) The 2003 Settlement resulted in Ms. Pickens receiving the Emerald Lane Residence, the Ocean Front Residence, and the stock in the Del Mar County Club, Inc. (*Id.* ¶ 33.) As approved by the Probate Court, these distributions were made directly to Ms. Pickens as trustee of the Madeleine Anne Paulson Separate Property Trust. (*Id.* ¶ 35.) During 2004, Michael Paulson, acting as trustee of the Living

[2] 26 U.S.C. § 6166(a)(1) provides a deferral and payment plan for the value of the tax imposed by a closely held business on the adjusted gross estate, under 26 U.S.C. § 2001.

Trust, distributed approximately $5,921,887 in trust assets to various individuals. (*Id.* ¶ 36.)

On January 16, 2005, the IRS issued a notice of deficiency to Michael Paulson as executor of the estate, which proposed a $37,801,245 deficiency in the estate tax reported on the return. (*Id.* ¶ 38.) Michael Paulson petitioned Plaintiff's Tax Court challenging the additional estate tax proposed by the IRS. (*Id.* ¶ 39.) On December 2, 2005, pursuant to the parties' stipulation, the Tax Court determined that the Estate owed $6,669,477 in additional estate taxes. (*Id.* ¶ 40.) The Estate elected to pay this additional tax amount under the same fifteen-year installment period permitted by 26 U.S.C. § 6166. (*Id.*)

During 2006, Michael Paulson, acting as trustee of the Living Trust distributed an additional $1,250,000 from the Living Trust. (*Id.* ¶ 43.) In March of 2009, the Probate Court removed Michael Paulson as trustee for misconduct. (*Id.* ¶ 44.) Vikki Paulson and James Paulson were then appointed as co-trustees. (*Id.*) In August 2009, Vikki Paulson and James Paulson reported that the Living Trust had assets worth $13,738,727. (*Id.*)

On May 7, 2010, in response to one or more missed installment payments, the IRS issued the Estate a notice of final determination stating that the extension of time for payment under § 6166 no longer applied to the Estate's tax obligations. (*Id.* ¶ 45.) On June 10, 2010, the Probate Court removed James Paulson as a co-trustee for breach of court orders. (*Id.*¶ 46.) Accordingly, Vikki remained as the sole trustee of the Living Trust. (*Id.*)

On August 5, 2010, the Estate filed a petition in United States Tax Court challenging the IRS's proposed termination of the Estate's § 6166 installment payment election. (*Id.* ¶ 47.) On February 28, 2011, Crystal Christensen was appointed as co-trustee of the Living Trust. (*Id.* ¶ 48.) At that time, the Living Trust held assets worth approximately $8,802,034. (*Id.*) In May 2011, the Tax Court entered a stipulated decision sustaining the IRS's decision to terminate the Estate's installment payment election. (*Id.* ¶ 49.)

Between June 28, 2011 and July 7, 2011, Plaintiff recorded notices of federal tax liens against the Estate in the property records of San Diego and Los Angeles Counties. (*Id.* ¶ 50.) On April 16, 2012, Vikki Paulson and Crystal Christensen (herein referred to as

"Co-Trustees"), as successor co-trustees of the Living Trust, filed a petition for review of the Estate's collection due process rights with the United States Tax Court. (*Id.* ¶ 51.) The Tax Court dismissed the petition on April 18, 2013, for lack of jurisdiction because Michael Paulson, who was the court-appointed executor at the time the petition was filed, had not signed the petition. (*Id.*)

From approximately 2007 through 2013, several disputes arose between Michael Paulson, Vikki Paulson, Crystal Christensen, James Paulson, and other interested parties in the Living Trust. (*Id.* ¶ 52.) The parties eventually settled the disputes, and on June 3, 2013, the California Superior Court formalized the settlement through issuance of an order and a general release ("2013 Settlement"). (*Id.*)

As part of the 2013 Settlement, Michael Paulson obtained the Living Trust's ownership interest in Supersonic Aerospace International, LLC, as well as its ownership interests in the Gold River Hotel & Casino Corporation and the Gold River Operation Corporation. (*Id.* ¶ 53.) Additionally, as part of the 2013 Settlement, Michael Paulson attempted to resign as executor of the Estate. (*Id.* ¶ 54.) As of July 10, 2015, the Estate had an unpaid estate tax liability of $10,261,217. (*Id.* ¶ 55.)

B. Factual Backgrounds as Presented in the Cross-Claims

a. Michael Paulson's Cross-Claim

Michael Paulson filed a cross-claim against Ms. Pickens on January 15, 2016. (*See generally* Doc. No. 38.) Michael Paulson states that pursuant to the 2003 Settlement Agreement, Ms. Pickens agreed that liability for any estate tax or gift tax payable to her as a result of any distribution pursuant to the Agreement would be borne entirely by her. (*Id.* at 21.) Thus, Michael Paulson asserts that should he be subject to liability for estate tax, he is entitled to judgment against Ms. Pickens. (*Id.*)

Additionally, Michael Paulson filed a cross-claim against Vikki Paulson and Crystal Christensen. (*Id.* at 22.) Michael Paulson argues that pursuant to the 2013 Settlement Agreement, Co-Trustees agreed to indemnify and hold him harmless for any claims filed or brought by the IRS arising from the settlement. (*Id.* at 23.) Accordingly, should Michael

Paulson be subject to liability for estate tax, "solely arising from [the 2013 Settlement] and the terms of the Agreement," he argues that he is entitled to judgment against Co-Trustees. (*Id.*)

On September 6, 2016, the Court denied both Ms. Pickens and Co-Trustees' motions to dismiss Michael Paulson's cross-claim. (Doc. No. 54 at 21–23.)

b. Ms. Pickens' Cross-Claim Against Michael Paulson

Ms. Pickens asserts that pursuant to section 41 of the 2003 Settlement Agreement, Michael Paulson is liable to her for all costs and expenses, including reasonable attorney's fees, she incurs in connection with any litigation relating to the settlement in which she prevails. (Doc. No. 57 at 6.) Further, Ms. Pickens argues that the actions of Michael Paulson, including his refusal to pay the estate tax liability from the assets of the Living Trust, his choice to distribute $1,250,000 to another beneficiary, paying himself more than $ 3 million in trustee's fees, and his imprudent investment of $ 28.5 million of the Living Trust's assets in Supersonic Aerospace International, LLC, are actions that breached his fiduciary duties to the Estate, including Ms. Pickens. (*Id.* at 7–8.) Thus, if Ms. Pickens is ultimately held liable for unpaid estate taxes, it will have been due to Michael Paulson's misconduct and breach of fiduciary duties to her. (*Id.* at 11.) Ms. Pickens also claims that she is not liable for any estate tax under the indemnity provision because none of the estate tax resulted from distributions to her under the 2003 Settlement Agreement. (*Id.*)

c. Ms. Pickens' Cross-Claim Against Co-Trustees[3]

Ms. Pickens argues that the 2003 Settlement was meant to resolve prolonged litigation regarding her right to certain properties pursuant to the Living Trust and the Antenuptial Agreement, which Michael Paulson refused to transfer to her.[4] (Doc. No. 76

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[3] The allegations from Ms. Pickens' cross-claim are taken from her first amended cross-claim. (Doc. No. 76.) Ms. Pickens' original cross-claim was against Co-Trustees and James D. Paulson. (Doc. No. 55.)

[4] According to the tax court decision, all of the transfers to Ms. Pickens qualified for the marital deduction. (*Id.* ¶ 29.)

¶¶ 19, 20.) Specifically, the 2003 Settlement provides that Ms. Pickens is entitled to receive those trust properties free and clear of any liabilities for estate tax. (*Id.* ¶ 21.) Furthermore, Ms. Pickens alleges that until she receives all of the trust property to which she is entitled under the 2003 Agreement free of any estate taxes, her interest in the Living Trust continues. (*Id.* ¶ 41.)

On January 15, 2013, Vikki E. Paulson and Crystal Christensen as co-trustees of the Living Trust, entered into a settlement agreement with Michael Paulson to which they distributed substantially all of the remaining assets of the Living Trust to Michael Paulson free of any encumbrances. (*Id.* ¶ 37.) Ms. Pickens claims that the Living Trust still has properties that could be applied to reduce the outstanding balance of the estate tax. (*Id.* ¶ 38.) However, Co-Trustees allegedly continue to refuse to apply such properties to the payment of estate tax. (*Id.*)

In sum, Ms. Pickens argues that pursuant to California Probate Code §§ 16000-16015, Co-Trustees have a duty to administer the Living Trust according to its terms, to act impartially in investing, to refrain from using or dealing with the property of the Living Trust for his or her own profit, and to take reasonable steps to control and preserve the property of the Living Trust for the benefit of all beneficiaries. (*Id.* ¶ 46.) However, Ms. Pickens claims that Co-Trustees breached their fiduciary duties to her by failing to pay the estate tax from the Living Trust, and by distributing the remaining properties of the Living Trust to Michael Paulson, thereby wrongfully subjecting Ms. Pickens to liabilities for estate tax. (*Id.* ¶¶ 47–48.)

C. Procedural Background

On September 16, 2015, Plaintiff filed a complaint against Defendants. (*See generally* Doc. No. 1.) Thereafter, several motions to dismiss were filed. (Doc. Nos. 15, 19, 36, 40, 44.) On September 6, 2016, the Court issued an order granting in part and denying in part Ms. Pickens' motion to dismiss, granting in part and denying in part Co-Trustees' motion to dismiss, denying James Paulson's motion to dismiss, denying Ms. Pickens' motion to dismiss the cross-claim, and denying Co-Trustees' motion to dismiss

the cross-claim. (*See generally* Doc. No. 54.) On September 20, 2016, Ms. Pickens filed a cross-claim against Co-Trustees and James Paulson. (Doc. No. 55.) On October 14, 2016, Co-Trustees filed a motion to dismiss the cross-claim, (Doc. No. 63), which was granted in part and denied in part on January 4, 2017, (Doc. No. 75). On January 18, 2017, Ms. Pickens filed her first amended cross-claim. (Doc. No. 76.)

On February 1, 2017, Co-Trustees filed their second motion to dismiss Ms. Pickens' cross-claims, (Doc. No. 77), which was granted in part and denied in part on April 11, 2017, (Doc. No. 82). Thereafter, the instant summary judgment motions were filed in January and February of 2018, and the two motions to strike were filed in April and May of 2018. (Doc. Nos. 98, 111, 114, 118, 119, 121, 122, 123, 143, 153.)

LEGAL STANDARD

Summary judgment is appropriate under Federal Rule of Civil Procedure 56 if the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party. *Id.*

A party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. The moving party can satisfy this burden in two ways: (1) by presenting evidence that negates an essential element of the nonmoving party's case; or (2) by demonstrating the nonmoving party failed to establish an essential element of the nonmoving party's case on which the nonmoving party bears the burden of proving at trial. *Id.* at 322–23. "Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to set forth facts showing a genuine issue of a disputed fact remains. *Celotex Corp.*, 477 U.S. at 330. When ruling on a summary

judgment motion, a court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

DISCUSSION

A. Motions to Strike

Defendants Michael Paulson and Co-Trustees each filed a motion to strike. (Doc. Nos. 143, 153.) Michael Paulson moves to strike the Declaration of Stephenson Dechant in support of Co-Trustees' opposition to his motion for summary judgment. (*See generally* Doc. No. 143-1.) Co-Trustees move to strike Plaintiff's motions for summary judgment against Defendants Pickens and James D. Paulson. (*See generally* Doc. No. 153-1.)

Rule 12(f) provides that the court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial . . . ." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517 (1994)). Accordingly, "[a] defense may be struck if it fails to provide 'fair notice' of the basis of the defense." *Qarbon.com Inc. v. eHelp Corp.*, 315 F. Supp. 2d 1046, 1048 (N.D. Cal. 2004) (citation omitted).

"Motions to strike are 'generally disfavored because they are often used as delaying tactics and because of the limited importance of pleadings in federal practice.'" *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174, 1182 (S.D. Cal. 2015) (citation omitted). "[M]otions to strike should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." *Colaprico v. Sun Microsystems, Inc.*, 758 F. Supp. 1335, 1339 (N.D. Cal. 1991).

The Court first turns to Michael Paulson's motion to strike Mr. Dechant's declaration and exhibits based on Rules 37 and 56. (Doc. No. 143-1 at 3.) Specifically, Michael Paulson argues that Co-Trustees did not disclose Mr. Dechant as a witness or

disclose the existence of his March 24, 2009 balance sheet. (*Id.*) In opposition, Co-Trustees assert that Mr. Dechant was disclosed as a witness in supplemental Rule 26 disclosures dated August 25, 2017, and there was an additional disclosure regarding the discoverable information of Mr. Dechant on August 30, 2017. (Doc. No. 151 at 3.) Moreover, Co-Trustees point out that the balance sheet was produced on October 31, 2017. (*Id.*; Huang Decl. ¶¶ 2–3, Doc. No. 151-6.) In his reply brief, Michael Paulson concedes to the facts produced in Co-Trustees' opposition brief and acknowledges that his motion to strike should be denied. (Doc. No. 152 at 2–3.) Accordingly, Michael Paulson's motion to strike is **DENIED**.

Next, Co-Trustees object and move to strike Plaintiff's motions for summary judgment against Defendants Pickens and James Paulson as they "improperly seek[] reconsideration of a prior ruling of this Court in favor of the Co-Trustees." (Doc. No. 153-1 at 2.) Specifically, Co-Trustees assert that early in this case, the Court granted their motion to dismiss Plaintiff's claims against them under 26 U.S.C. § 6324(a)(2). (*Id.*) Thus, according to Co-Trustees, the summary judgment motions at issue seek reconsideration of that ruling without noting a motion for such relief, violating the Local Rules, and prejudicing them by depriving them of a reasonable opportunity to respond. (*Id.* at 2–3.) Plaintiff retorts that it was candid in its motions that the Court had previously ruled on similar claims, that it does not move the Court to change its prior rulings on its § 6324(a)(2) claims, and that Co-Trustees were provided notice. (Doc. No. 157 at 6.)

In the order at issue, the Court concluded that:

> The Court similarly finds *Johnson* and the reasoning set forth therein persuasive with respect to whether Plaintiff must allege that the transferee received property immediately upon the date of decedent's death . . . The complaint does not allege that Co-Trustees were in possession of Estate property or received such property immediately after Ms. Paulson's death. For these reasons, Plaintiff has failed to state a claim against Co-Trustees as trustees or transferees under § 6234(a)(2). Accordingly, those claims are **DISMISSED**.

(Doc. No. 54 at 18.)

As evidenced by the portion of the order referenced above, the Court does not find that Plaintiff is currently seeking reconsideration of the Court's ruling. The Court notes that the previous ruling was made under the lens of Rule 12(b)(6) and was related to Co-Trustees' motion to dismiss. Accordingly, as the present motion relates to Ms. Pickens and James Paulson under a Rule 56 standard, the Court finds a motion to strike unwarranted. Accordingly, Co-Trustees' motion to strike is **DENIED**. *See Bureerong v. Uvawas*, 922 F. Supp. 1450, 1478 (C.D. Cal. 1996) (noting that motions to strike are "disfavored").

B. The Parties' Motions for Summary Judgment

a. Plaintiff's Motion for Summary Judgment against Michael Paulson and Michael Paulson's Cross Motion for Summary Judgment

As Michael Paulson's status as the statutory executor of the Estate is a source of contention in a majority of the motions for summary judgment currently pending before this Court, the Court directs its attention to Plaintiff's summary judgment motion against Michael Paulson first. Plaintiff brings its summary judgment motion on three points: (1) Michael Paulson is a statutory executor liable to Plaintiff in his representative capacity; (2) Michael Paulson is personally liable to Plaintiff under 26 U.S.C. § 6324(a)(2); and (3) Michael Paulson was not discharged of his personal liability for the estate tax due to his capacity as trustee of the Living Trust. (*See generally* Doc. No. 111-1.) Michael Paulson opposes the motion. (Doc. No. 134.) Michael Paulson also filed a motion for summary judgment against Plaintiff on the same issues. (Doc. No. 119-1.)

i. Michael Paulson is the Statutory Executor Liable to Plaintiff in his Representative Capacity

Plaintiff argues that it is undisputed that Michael Paulson was the court appointed executor before his purported resignation. (Doc. No. 111-1 at 22.) However, as there was no executor appointed by the probate court after his resignation in 2013, Michael Paulson is still the statutory executor. (*Id*. at 23.) In opposition, Michael Paulson simply states that he is currently not the appointed, qualified, or acting executor. (Doc. No. 134 at 20.) Thus,

as this lawsuit was filed in 2015, two years after his resignation, he is not liable for any estate tax. (*Id.*)

Section 2203 provides:

> The term "executor" wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.

26 U.S.C. § 2203.

Having reviewed the parties' legal arguments and the evidence in light of the legal authority addressing this issue, and for the following reasons, the Court finds there is no genuine issue of material fact that Michael Paulson is currently the acting statutory executor. Significant to the Court's determination is the fact that Michael Paulson is unable to prove that he completed the requisite procedural steps to resign as the executor.

Relevant case law and the California Probate Code require several procedural tasks to be completed before the discharge of an executor is complete. For instance,

> It is very clear that before an executor can resign his trust, and before the Probate Court can accept the resignation, so as to relieve him from his duties and responsibilities as such executor, two things must plainly appear to have been done. First--A full settlement of the executor's accounts, showing the true condition of the estate, and how much and what part of it is unadministered. Second--That the Court has appointed some other person competent and qualified to receive the estate and finish the administration and execute the trusts.

Lucas v. Todd, 28 Cal. 182, 184 (1865). Moreover, after a personal representative has complied with the terms of the order for final distribution and filed the appropriate receipts, the court must "on ex parte petition, make an order discharging the personal representative from all liability incurred thereafter." Cal. Prob. Code § 12250(a). Additionally, a personal representative who resigns must "file an account not later than 60 days after termination of authority." Cal. Prob. Code § 10952.

The court in *Waterland v. Superior Court in and for Sacramento Cty.*, 15 Cal. 2d 34, 39–40 (1940), puts into greater detail the proper procedures for discharge.

> An executor or administrator may resign his appointment at any time, by a writing filed *in the superior court, to take effect upon the settlement of his accounts* . . . The liability of the outgoing executor, or administrator, or of the sureties on his bond, shall not in any manner be discharged, released, or affected by such resignation or appointment, but shall continue until the executor or administrator has delivered up *all* the estate to the person whom the court shall appoint to receive the same. The provision that his resignation shall take effect upon the settlement of his accounts, can mean nothing else than that his resignation shall not become effective prior to the settlement of his accounts. It is true that there is language in *Estate of Grafmiller*, *supra*, which may be construed to mean that the resignation of an executor becomes effective immediately upon the filing of his written resignation . . . If it was intended to imply that the resignation become effective *for all purposes* at the moment of its filing, such holding is directly contrary to the express language of section 520 of the Probate Code which provides that said resignation is "to take effect upon the settlement of his accounts."

Presently, the record demonstrates that Michael Paulson was the court appointed executor. (Doc. No. 111-1 ¶ 15.) To refute his status, Michael Paulson argues that he resigned as the executor through the 2013 Settlement approved on January 15, 2013. (Doc. No. 134 at 20.) However, this settlement was filed with the California Superior Court and not the Probate Court in charge of the underlying matter involving the Living Trust. (Doc. No. 1 ¶ 52; Doc. No. 111-32 at 1.) Moreover, Michael Paulson does not establish that he settled all of the accounts at issue or that the Probate Court appointed another executor after his supposed resignation. Most notably, there is no order from the Probate Court discharging him as the statutory executor. *See* Cal. Prob. Code § 11753(a) ("Distribution in compliance with the court order entitles the personal representative to a full discharge with respect to property included in the order.").

Without providing evidence of his proper withdrawal, Michael Paulson cannot now seek to argue that he is not liable as the statutory executor pursuant to § 2203. *Neustadter v. United States*, 90 F.2d 34, 37–38 (9th Cir. 1937) ("Until the entry of a decree discharging

a representative the trust still continues in contemplation of law and the representative remains clothed with the duty and authority of the office."). The Court accordingly **GRANTS** Plaintiff's summary judgment motion on this matter, (Doc. No. 111-1 at 21–23), and **DENIES** Michael Paulson's motion on this issue, (Doc. No. 119-1 at 12–13).

Michael Paulson's motion also argues that he is not personally liable as a statutory executor. (Doc. No. 119-1 at 13.) In opposition, Plaintiff states that it has never sought personal liability against Michael Paulson in this case arising from his role as executor. (Doc. No. 139 at 14.) Accordingly, Michael Paulson's motion in this respect is **DENIED AS MOOT**.

ii. Michael Paulson's Personal Liability to Plaintiff Under 26 U.S.C. 6324(a)(2)

Plaintiff asserts that Michael Paulson is a trustee who held property of the Estate at the time of Decedent's death. (Doc. No. 111-1 at 24–26.) Thus, Plaintiff contends that he is personally liable under 26 U.S.C. § 6324(a)(2). (*Id.*) Michael Paulson retorts that the trust assets were not included in the gross estate, that no property was transferred pursuant to section 2038, and that even if the trust property was included in the gross estate it would be unjust and inequitable to hold him personally liable for estate taxes beyond the period when he was trustee. (Doc. No. 134 at 12–17.)

Section 6324(a)(2) provides:

> If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee . . . or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

26 U.S.C. § 6324(a)(2). Thus, for tax liability to attach, the property must be part of the gross estate pursuant to 26 U.S.C. §§ 2034 through 2042. (*Id.*)

Plaintiff's main contention is that Michael Paulson is personally liable for any unpaid estate tax because he took possession of trust assets upon Mr. Paulson's death. (Doc. No. 111-1 at 24 (*see United States v Johnson*, No. 2:11-CV-00087, 2013 WL 3924087, at

*5 (D.Utah July 29, 2013) ("The court concludes that in order for a person to be a transferee under section 6324(a)(2), the person must have or receive property from the gross estate immediately upon the date of the decedent's death rather than at some point thereafter.")).) Michael Paulson does not refute this argument, but instead argues that the transfer of property in a living trust from a decedent to a successor trustee does not fall within § 2038. (Doc. No. 134 at 12.) Instead, he argues that the Trust assets should have been included in the gross estate under § 2033. (*Id.* at 13.)

Section 2038 provides that the value of the gross estate includes the value of all property:

> To the extent of any interest therein of which the decedent has at any time made a transfer . . . by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power . . . by the decedent alone or by the decedent in conjunction with any other person . . . to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

26 U.S.C. § 2038(a)(1). In comparison, § 2033 provides that "[t]he value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death." 26 U.S.C. § 2033.

In *Estate of Tully v. United States*, 528 F.2d 1401, 1403 (Ct. Cl. 1976), a case referenced by Michael Paulson, the court explained the seminal differences between §§ 2033 and 2038. Explicitly, §§ 2033 and 2038 "both impose a tax on property transferred at death. However, they are directed at two different situations." *Id.* Section 2038(a)(1) "is specific in its terms" and "taxes property which an individual has given away while retaining enough 'strings' to change or revoke the gift." *Id.* In contrast, § 2033 "is more general in its approach, and taxes property which has never really been given away at all." *Id.* However, § 2033 is not a catchall—

> [it] applies to situations where decedent kept so much control over an item of property that in substance he still owns the property. 'Interest' as used in section 2033 connotes a stronger control than 'power' as used in section

> 2038(a)(1). If controls over property cannot rise to the dignity of section 2038(a)(1) 'powers' they equally cannot create section 2033 'interests.'

Id. at 1406.

Here, unpersuaded by Michael Paulson's arguments, the Court is satisfied that there is no genuine dispute of material fact that the trust assets are properly included under § 2038. The Living Trust at issue in the present matter is a revocable living trust. (Doc. No. 111-4 at 44.) The particular nature of a revocable living trust allows a settlor to retain an "unlimited right to revoke any conveyance to the revocable living trust[.]" *Amonette v. IndyMac Bank, F.S.B.*, 515 F. Supp. 2d 1176, 1184 (D. Haw. 2007). In other words, when a settlor "sets up a revocable trust, he or she has the right to recall or end the trust at any time, and thereby regain absolute ownership of the trust property." *Id.* (citation omitted). This power to "revoke" a trust is the essence of § 2038. *See Estate of Bowgren v. C.I.R.*, 105 F.3d 1156, 1160 (7th Cir. 1997) ("Section 2038(a)(1) requires inclusion of the value of the property transferred in trust in the settlor's gross estate if, at the time of his death, the settlor retains the discretionary power to terminate the trust.").

Moreover, the principles behind a revocable living trust demonstrate its proper inclusion under § 2038. A living trust agreement defines the circumstances when a trust's property can be distributed as well as defines how the properties should be maintained. A revocable trust allows the grantor the ability to unilaterally change the terms of the trust and withdraw property from the trust at any time. *See Florida Nat'l Bank of Palm Beach Cty. v. Genova*, 460 So.2d 895, 897 (Fla. 1984) ("This retention of control over property distinguishes a revocable trust from the other types of conveyances[.]").

Here, the Living Trust clearly states that Mr. Paulson as Trustor was authorized to amend the Trust. (Doc. No. 111-4 at 6.) Further it stated that during the Trustor's lifetime and specifically when Mr. Paulson was acting as the Trustee, he was authorized to have the broadest investment discretion, to buy, sell, and trade in securities of any nature, to borrow money, and to "take any and all other actions, without limitation, which are incident to or in the Trustee's discretion" to carry out any actions in the Living Trust. (*Id.* at 36–37.) Additionally, Mr. Paulson explicitly delineated in the Trust that he reserved the power to amend the trust. (*Id.* at 44.) In fact, Mr. Paulson executed this right on several occasions,

including a second amendment where he appointed Edward White as a co-trustee and a third amendment where Mr. Paulson changed the cash bequest to each beneficiary. (Doc. No. 111-2 at 8–9.)

In sum, the Court finds Mr. Paulson's ability to amend, revoke, or terminate the Living Trust triggers § 2038. *See In re Lumpkin's Estate*, 474 F.2d 1092, 1096 (5th Cir. 1973) ("The court held that retention of this right rendered the value of the trust property includible in [the] gross estate under the forerunner to § 2038[.]"); *see also Mathey v. United States*, 491 F.2d 481, 483–84 (3rd Cir. 1974) ("The taxpayers concede that, under the trust agreements involved here, a power in the grantor to name herself as trustee would amount to a power to 'alter, amend, revoke or terminate.'"); *Crile v. United States*, 212 Ct. Cl. 47, 49–51 (Ct. Cl. 1976) ("The retained power to vary shares among named beneficiaries and the included power to eliminate a named beneficiary have been held to be sufficient powers to include the trust property in the donor's estate [under § 2038].").

Michael Paulson argues that Schedule G demonstrates that no property was transferred pursuant to § 2038. (Doc. No. 134 at 15.) However, though the Form answers the question "[d]id the decedent make any transfer described in section 2035, 2036, 2038" in the negative, the question also states "If 'Yes,' you must complete and attach Schedule G." (Doc. No. 111-10 at 10.) Here, Schedule G was completed. (*Id.* at 28.) Thus, Michael Paulson's reliance on this document is misplaced.

Moreover, Michael Paulson argues that even if the trust property is included in the gross estate pursuant to § 6324, it would be unjust and inequitable to hold him personally liable for estate taxes beyond the period he was trustee. (Doc. No. 134 at 16.) This argument is meritless. Nothing in § 6324 states that liability under § 6324 depends on factors related to equity.

Accordingly, as the trust assets were properly included under § 2038 and Michael Paulson was in actual possession of the Decedent's property at the time of his death, (Doc. No. 111-1 ¶ 17; Doc. No. 111-2 at 6), Plaintiff's motion for summary judgment on its §

6324(a) claim is **GRANTED**. (Doc. No. 111-1 at 24–26.) Michael Paulson's cross-motion for summary judgment is thus **DENIED**. (Doc. No. 119-1 at 9–15.)[5]

iii. Michael Paulson Was Not Personally Discharged in All his Fiduciary Capacities under 26 U.S.C. § 2204

Plaintiff contends that though Michael Paulson was discharged from personal liability arising out of his position as executor, he was not discharged from personal liability arising out of his role as Trustee of the Living Trust pursuant to 26 U.S.C. § 2204. (Doc. No. 111-1 at 26.) In opposition, Michael Paulson argues that he followed all of the required procedures to be discharged as both executor of the Estate and trustee of the Trust. (Doc. No. 134 at 17.)

Section 2204 states:

> **(b) Fiduciary other than the executor.**—If a fiduciary other than the executor makes written application to the Secretary for determination of the amount of any estate tax for which the fiduciary may be personally liable, and for discharge from personal liability therefor, the Secretary upon the discharge of the executor from personal liability under subsection (a), or upon the expiration of 6 months after the making of such application by the fiduciary, if later, shall notify the fiduciary (1) of the amount of such tax for which it has been determined the fiduciary is liable, or (2) that it has been determined that the fiduciary is not liable for any such tax. Such application shall be accompanied by a copy of the instrument, if any, under which such fiduciary is acting, a description of the property held by the fiduciary, and such other information for purposes of carrying out the provisions of this section as the Secretary may require by regulations. . . .

26 U.S.C. § 2204(b).

After careful review of the parties' arguments and the record, the Court finds that there are still genuine issues of material fact as to whether Michael Paulson successfully requested discharge as the trustee of the Living Trust. As mentioned above, § 2204 has several layers of procedural requirements including, a letter to the Secretary that includes

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[5] The Court notes that Michael Paulson's cross motion relies heavily on *United States v. Johnson*, 224 F. Supp. 3d 1220 (D. Utah 2016) ("Johnson II"). (Doc. No. 119-1 at 19.) However, *Johnson II* is currently on appeal—*United States v. Johnson*, 17-4093.

a copy of the instrument at issue. *Id.* In the present matter, the letter Michael Paulson argues demonstrates his proper resignation is titled: "Request for discharge of fiduciaries from personal liability." (Doc. No. 111-10 at 7.) The foregoing letter was included in a packet of documents that included (1) a copy of federal form 4768; and (2) co-executor's section 6166 election for deferral of federal estate tax. (*Id.* at 3.) The letter that purportedly discharged Michael Paulson as executor is signed as "J. Michael Paulson, Co-Executor of the Will of Allen E. Paulson, Deceased." (*Id.* at 7.)

In sum, the letter on its face does not demonstrate that Michael Paulson followed the proper procedures. First, the letter is ambiguous as it does not specify that Michael Paulson is seeking discharge as the executor, trustee, or both. It only requests "discharge of fiduciaries." (*Id.*) Thus, the application lacks sufficient information as to Michael Paulson's intent to discharge his personal liability as a Trustee. Moreover, the letter requests a notification of any estate tax due within **nine months** of the date of the letter. (*Id.* at 7.) In contrast, § 2204 requires notification after **six months**. 26 U.S.C. § 2204(b).

Michael Paulson argues that substantial compliance with regulatory requirements is sufficient. (Doc. No. 119-1 at 23.) He then cites to *Johnson II* to argue that "[n]either section 2204 nor any applicable authorities or regulations require a specific format, form, or wording to make an application for discharge." (*Id.*) (internal quotation marks omitted) (citing *Johnson II*, 224 F. Supp. 3d 1237). However, as already mentioned, *Johnson II* is currently on appeal and thus its conclusions are unpersuasive.

Consequently, as there are genuine issues of material fact as to whether Michael Paulson followed § 2204(b)'s listed procedures to properly resign as Trustee of the Living Trust, the Court **DENIES** Plaintiff's motion for summary judgment and Michael Paulson's cross-motion for summary judgment on this issue.

Finally, Michael Paulson's cross-motion for summary judgment argues that as he was discharged from personal liability, he has no liability under 31 U.S.C. § 3713. (Doc. No. 119-1 at 25.) Plaintiff states in opposition that it does not seek personal liability against

Michael Paulson under § 3713. (Doc. No. 139 at 31.) Accordingly, this point is **DENIED AS MOOT**.

In sum, Plaintiff's summary judgment motion against Michael Paulson is **GRANTED IN PART AND DENIED IN PART** and Michael Paulson's corresponding cross-motion for summary judgment is **DENIED**. (Doc. Nos. 111, 119.)

b. Ms. Pickens' Summary Judgment Motion against Plaintiff

Ms. Pickens brings her motion based on three points: (1) she is not a statutory executor under 26 U.S.C. § 2002 and 2203; (2) she is indemnified under the 2003 Settlement Agreement; and (3) she is not liable for the estate tax under 26 U.S.C. § 6324(a)(2) as the Trustee of the Madeleine Anne Paulson Separate Property Trust. (*See generally* Doc. No. 98-1.) The Court previously dismissed the claims that were asserted against Ms. Pickens under 26 U.S.C. § 6324(a)(2) as both a beneficiary of the Living Trust and as a trustee of the Marital Trust. (Doc. No. 54 at 12–13.) Thus, the claims pled above are the only remaining claims against Ms. Pickens. Plaintiff opposes the motion. (Doc. No. 100.)[6]

i. Liability as a Statutory Executor

Ms. Pickens asserts that she is not the statutory executor because Michael Paulson's resignation as executor was not effective under California law and because she is not in possession of property belonging to the decedent's estate. (Doc. No. 98-1 at 14–18.) As discussed, *supra* pp. 13–16, this Order finds that there are no genuine issues of material fact regarding Michael Paulson's status as the statutory executor. Accordingly, both Ms. Pickens and Plaintiff's motions for summary judgment as to their 26 U.S.C. § 2203 claims are **DENIED AS MOOT**. (Doc. No. 98-1 at 14–18; Doc. No. 114-1 at 18–24.)

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[6] The Court notes that Michael Paulson also filed an opposition to Ms. Pickens' motion for summary judgment. (Doc. No. 116.) However, this brief was filed after the scheduled deadline. (Doc. No. 99.)

ii. Ms. Pickens' Liability for the Estate Tax Under the 2003 Settlement Agreement

Ms. Pickens argues that she is not liable for estate tax under the 2003 Settlement Agreement because the agreement clearly and unambiguously provides that she is limited to the estate tax that is attributable to the property distributed to her and payable as a result of any distribution made to her. (Doc. No. 98-1 at 18.) Plaintiff in its opposition brief concedes this point. (Doc. No. 100 at 23.) Accordingly, the Court **GRANTS** Ms. Pickens' summary judgment motion on this matter and **DENIES** Plaintiff's cross-motion for summary judgment. (Doc. No. 114-1 at 24.)

iii. Ms. Pickens' Liability as a Trustee under Section 6324(a)(2)

Ms. Pickens contends that as she did not receive the properties at issue until nearly three years after the Decedent's death, she is not liable for estate tax under § 6324(a)(2). (Doc. No. 98-1 at 21–22.) In response, Plaintiff asserts that Ms. Pickens is liable as a trustee under § 6324(a)(2) because the statute provides for liability for assets held on the date of death and assets that are received later. (Doc. No. 100 at 25–26.)

Section 6324 states in pertinent part that an individual is personally liable for taxes if they "receive[], or ha[ve] on the date of the decedent's death, property included in the gross estate." 26 U.S.C. § 6324(a)(2). Thus, the present issue before the Court is whether the phrase "who receives, or has on the date of the decedent's death" requires an individual to receive property on the date of the decedent's death, or if the comma in the phrase signifies that an individual can receive the property at any time to be liable for taxes.

The Court already addressed this issue in Co-Trustees' motion to dismiss filed in 2016. (*See generally* Doc. No. 54.) In this order, Co-Trustees argued that they were not liable for estate taxes because they did not receive any property of the Estate at the date of Mr. Paulson's death. (*Id.* at 18.) Ultimately, the Court held that as the complaint did not allege that both of the Defendants were in possession of Estate Property or received such property immediately after Mr. Paulson's death that Plaintiff had failed to state a claim against them. (*Id.* (*see Johnson*, 2013 WL 3924087, at *5).) Specifically, the court in

Johnson stated:

> Because section 6324(a)(2) may be interpreted in multiple ways, it is ambiguous and must be interpreted in favor of the Heirs. The court concludes that in order for a person to be a transferee under section 6324(a)(2), the person must have or receive property from the gross estate immediately upon the date of decedent's death rather than at some point thereafter.

Id.

Plaintiff argues that it would make no sense to require an immediate receipt of non-probate property as no life insurance company ever pays the beneficiary of a life insurance policy before the decedent's death or immediately on the date of the decedent's death. (Doc. No. 100 at 26–27.) Plaintiff then delves into an in-depth analysis of the statute to demonstrate that the use of the comma to separate the two phrases "receives" and "or has on the date of the decedent's death" demonstrate that the term "receives" is much broader and not ambiguous. (*Id.* at 27.)

Despite Plaintiff's vehement belief that the syntax in § 6324(a)(2) demonstrates that it is an error to arrive at the conclusion that § 6324(a)(2) applies only to persons who "on the date of death" held or legally received included non-probate assets, the Court is still unpersuaded based on the holding in *Johnson*. Accordingly, as Ms. Pickens received property on March 21, 2003, (Doc. No. 98-1 at 22), nearly three years after Mr. Paulson's death, she is not liable as a trustee under § 6324(a)(2). Thus, the Court **GRANTS** Ms. Pickens' summary judgment motion on her claims under § 6324(a)(2). *See Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932) (noting that ambiguities as to the meaning of the tax statute are interpreted in favor of the taxpayer). Plaintiff's cross-motion for summary judgment is thus **DENIED**. (Doc. No. 114-1 at 24–32.)

In sum, Ms. Pickens' summary judgment motion is **GRANTED IN PART AND DENIED IN PART**, (Doc. No. 98), and Plaintiff's cross-motion for summary judgment is **DENIED**, (Doc. No. 114).

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c. Plaintiff's Motion for Summary Judgment Against James Paulson

Plaintiff argues that James Paulson is liable to it under 26 U.S.C. § 6324(a)(2) as a "trustee" who received assets that were included in the gross estate under § 2038. (Doc. No. 118-1 at 25.) Defendant James Paulson, who is not represented by counsel, did not file an opposition brief.

As already discussed above, pursuant to *Johnson*, James Paulson would need to be in possession of the Decedent's assets at his passing to be liable under § 6324(a)(2). *See Johnson*, 2013 WL 3924087, at *5 Here, it is undisputed that James Paulson held possession of all of the assets of the Living Trust in his capacity as trustee on March 24, 2009, (Doc. No. 118-1 at 25), nine years after Mr. Paulson died. Accordingly, finding that the property passed on to James Paulson after the date of the Decedent's death, the Court **DENIES** Plaintiff's motion for summary judgment under § 6324(a)(2).

d. Michael Paulson's Summary Judgment Motion Against Ms. Pickens

Michael Paulson argues that he is entitled to summary judgment on the following matters: (1) Ms. Pickens' cross-claim for breach of fiduciary duty; and (2) Ms. Pickens' cross-claim based on the indemnity agreement. (*See generally* Doc. No. 121-1.) Ms. Pickens opposes the motion in its entirety. (*See generally* Doc. No. 136.)

i. Breach of Fiduciary Duty

Michael Paulson argues that pursuant to the 2003 Settlement Agreement, Ms. Pickens released any rights to the Estate and Trust, "acknowledg[ing] and confirm[ing] that the distribution of assets to her under the terms of [the] Agreement constitutes full and complete satisfaction of any and all rights she has to the distribution of assets under the Trust or . . . in the Estate." (Doc. No. 121-1 at 13 (citing Doc. No. 121-6 ¶ 6).) Thus, as the 2003 Settlement extinguished any interest Ms. Pickens had in the Trust and Estate, Michael Paulson does not owe her any fiduciary duties. (*Id.*) Ms. Pickens contends that she agreed to the language in Paragraph 6, and the release in paragraph 22, as consideration for Michael Paulson's obligation to distribute the property to her free and clear of all debts. (Doc. No. 136 at 7.) Thus, if Michael Paulson breaches his promise to distribute the

property "free and clear of all debts, liens, and encumbrances," her release will have no consideration and no effect. (*Id.*)

In order to successfully claim a breach of fiduciary duty, the claimant must establish (1) the existence of a fiduciary relationship giving rise to a fiduciary duty, (2) breach of that duty, and (3) damage proximately caused by the breach. *Pierce v. Lyman*, 1 Cal. App. 4th 1093, 1101 (1991). Whether a fiduciary relationship exists in any given situation is a question of fact. *Michelson v. Hamada*, 29 Cal. App. 4th 1566, 1575–76 (1994).

After reviewing the parties' briefs, the record, and applicable case law, the Court finds that Ms. Pickens has failed to satisfy her burden in demonstrating genuine issues of material fact that Michael Paulson breached his fiduciary duty to her. As highlighted by Michael Paulson, Section 6 of the 2003 Settlement confirms that the distribution of assets under the agreement constitutes "full and complete satisfaction of any and all rights [Ms. Pickens] has to the distribution of assets under the Trust." (Doc. No. 77-3 at 27(emphasis added).) Thus, the 2003 Settlement extinguished any fiduciary relationship between Michael Paulson and Ms. Pickens.

To refute the clear terms of the Settlement, Ms. Pickens argues that she agreed to the language in Paragraph 6, and the release in Paragraph 22, as consideration "for Michael's obligation to distribute the property to her free and clear of all debts, liens and encumbrances." (Doc. No. 136 at 7.) Thus, according to Ms. Pickens, if she is liable for estate taxes, Michael will have breached his promise to her and her release will have no consideration. (*Id.*) Unfortunately, Ms. Pickens still does not support her arguments with any relevant case law, nor points to a provision in the 2003 Settlement that repeats her assertions.

Further, the Court finds that Ms. Pickens' breach of fiduciary duty claim against Michael Paulson is time-barred. A breach of trust and breach of fiduciary duty claim must be brought within three-years under California Probate Code Section 16460. *Critchlow v. Critchlow*, No. C 12-01198 LB, 2012 WL 5519212, at *8 (N.D. Cal. Nov. 14, 2012). Ms. Pickens argues that the four year statute of limitations applies. (Doc. No. 136 at 8.) The

Court disagrees. Section 16460 "applies to claims by beneficiaries against trustees[.]" *See Critchlow*, 2012 WL 5519212, at *8. Here, Ms. Pickens alleges breaches of trust and fiduciary duties under California Probate Code §§ 16000–16015. (Doc. No. 57 at 8.) Thus, § 16460 applies. *See AEG Concerts, LLC v. Hulett*, 217 F. App'x 596, 598 (9th Cir. 2007).

The issue then is whether the claim is barred. Michael Paulson states that Ms. Pickens had actual and constructive notice of any alleged breaches no later than March 24, 2009, when the court issued its decision to remove him as Trustee of the Trust. (Doc. No. 121-1 at 14.) In contrast, Ms. Pickens asserts that the claims giving rise to her breach of fiduciary duty cause of action against Michael Paulson could not have been discovered until Plaintiff brought suit against her for payment of estate taxes on September 16, 2015. (Doc. No. 136 at 8.) In assessing the time of accrual of a cause of action against a trustee under § 16460, the general inquiry is "who knew what and when was it known." *Noggle v. Bank of America*, 70 Cal. App. 4th 853, 860 (1999). A duty to inquire, as stated in the statute, arises when sufficient information is received to put a beneficiary on notice of a claim. *Id.* at 860.

Presently, Ms. Pickens should have been put on notice of her claim on March 24, 2009, when the court issued its order removing Michael Paulson as Trustee of the Living Trust for "wrongful" conduct. (Doc. No. 123-23.) It is undisputed that Michael Paulson was removed for misusing Trust funds. Thus, it would have been easy for Ms. Pickens to ascertain that Trust funds were not being used to pay estate taxes. Accordingly, as Ms. Pickens' cross-claim was filed in 2016, nearly five years after she could have been put on notice or discovered her claim, her breach of fiduciary duty cause of action is time-barred. *See Critchlow*, 2012 WL 5519212, at *10–11 (finding that the plaintiff was alerted to his breach of fiduciary duty claims by November 6, 2008, based on a memo where the plaintiff asked the court to rule that he could bring legal action against the other party for violating the no contest clause of the will); *see also Noggle*, 70 Cal. App. 4th at 858 (noting that statute of limitations under § 16460 occurs when "the beneficiary reasonably should have discovered[] the subject of the claim.").

Based on the foregoing, Michael Paulson's summary judgment motion on this issue is **GRANTED.**

ii. Indemnification from Liability

Michael Paulson asserts that until Plaintiff's § 3713 claim against him is resolved by this Court, he has a viable claim for indemnification against Ms. Pickens. (Doc. No. 121-1 at 15.) In opposition, Ms. Pickens argues that Michael Paulson's contention that paragraph 21 obligates her to indemnify him for any personal liability he incurs under § 3713 is based on the mistaken belief that Plaintiff has asserted a claim against him for personal liability. (Doc. No. 136 at 3.) However, Ms. Pickens argues that Plaintiff has conceded this claim. (*Id*.) The Court agrees with Ms. Pickens.

Plaintiff admits that it has not sued Michael Paulson under 31 U.S.C. § 3713. (Doc. No. 111-1 at 22 ("The United States has not sued John Michael Paulson under 31 U.S.C. § 3713 in this case.").) Accordingly, as Michael Paulson is mistaken as to Plaintiff's desire to find him liable under § 3713, his summary judgment claim under § 3713 is **DENIED AS MOOT**.

e. Michael Paulson's Summary Judgment Motion Against Co-Trustees

Michael Paulson argues that in the event this Court enters judgment against the Estate and determines that he is a statutory executor of the Estate, he will be liable for the estate tax to the extent of the Decedent's property that is in his possession. (Doc. No. 122-1 at 13.) However, pursuant to the 2013 Settlement Agreement, Michael Paulson asserts that Co-trustees agreed to indemnify him from this estate tax liability. (*Id.*) In opposition, Co-Trustees assert that summary judgment on Michael Paulson's indemnity claim would be premature and that he is not entitled to indemnity. (Doc. No. 137 at 12–14.)

The specific portion of the 2013 Settlement Agreement cited to by Michael Paulson is:

> **Co-Trustees Indemnity Re: Claims against Michael by IRS or any other party resulting from the Agreement.** Except for the matters for which liability is assigned to or indemnity is to be provided by Michael under this Agreement and any claim arising in whole or in part from Michael's own

> legally determined wrongful actions or wrongful conduct, from and after the Settlement Date, the Co-Trustees shall indemnify, defend (including the payment of reasonable attorneys fees) and hold Michael harmless from, against, or with respect to any and all claims filed, made, asserted, brought, or prosecuted by the IRS, solely arising from this settlement and the terms of this Agreement, including transfer to Michael of the entities noted in paragraph two.

(Doc. No. 111-32 at 17.)

After reviewing the parties' arguments and the evidence on the record, the Court finds that Michael Paulson has failed to demonstrate the absence of a genuine issue of material fact in regards to his claim for indemnification against Co-Trustees. First, the Court notes that the indemnification portion of the 2013 Settlement requires that Michael Paulson be held harmless with regards to all claims "solely arising from [the] settlement." (*Id.*) In his motion, Michael Paulson broadly argues that in the event that he is determined to be the statutory executor, he will be liable for estate tax to the extent of the Decedent's property that is in his possession. (Doc. No. 122-1 at 13.) However, this broad conclusion does not establish that his status as the executor and the claims against him exclusively arise from the 2013 Settlement nor that the claims stemmed from conduct "from and after the Settlement date" as required by the settlement. (Doc. No. 111-32 at 17.) Instead, Michael Paulson argues that his liability is "traceable to the 2013 Settlement." This is inadequate. In sum, Michael Paulson's general request for indemnification does not adequately satisfy his burden as the moving party at summary judgment.

Moreover, the indemnity section of the settlement also explicitly delineates that claims arising from Michael Paulson's own "legally determined wrongful actions or wrongful conduct" would not be indemnified. (Doc. No. 111-32 at 17.) In the instant action, Michael Paulson was removed as a trustee for "wrongful" conduct on March 24, 2009. (Doc. No. 123-23.) Specifically, the Probate Court stated:

> The gifts made by [Michael Paulson] to his family members remain unpaid while [he] is using the trust assets for his own personal benefit and pleasures, including purchases of race horses, attending horse races in the United States and abroad, payment of substantial trustee fees, the use of trust assets for international travel, and other questionable activities. This is the primary

> reason for removing the trustee. The Court finds that the trustee has put his own personal interests ahead of the interests of the trust beneficiaries. The Court finds that the trustee has misused trust assets for his own personal benefit, and has used his position as trustee to harm, or seek to harm, other beneficiaries as to whom he bears ill will.

(*Id*. at 4.) Thus, in sum, as Michael Paulson was determined by the Probate Court to have misused funds, he cannot now seek indemnity when his actions may have left the Living Trust in the position it is now—unable to pay its federal estate taxes. Accordingly, Michael Paulson's summary judgment motion on his claim of indemnification against Co-Trustees is **DENIED**.

f. Plaintiff's Motion for Summary Judgment Against Co-Trustees

Plaintiff brings this summary judgment motion against Co-Trustees arguing that they are liable to Plaintiff in their representative capacity as statutory executors under 26 U.S.C. § 2203. (Doc. No. 123-1 at 22–25.) Additionally, Plaintiff contends that Vikki and Crystal are liable under California Probate Code § 19001, the express terms of the Trust, and that Plaintiff is entitled to enforce its tax liens against any obligation the Trust owes to the Estate for estate taxes. (*Id*. at 25–31.) Co-Trustees oppose Plaintiff's motion on all counts. (*See generally* Doc. No. 138.)

i. Liability as Statutory Executors

As already discussed *supra* pp. 13-16, the Court finds there is no genuine issue of material fact that Michael Paulson is the statutory executor. Accordingly, Plaintiff's motion is **DENIED AS MOOT**. Nonetheless, if Michael Paulson had properly resigned and the Probate Court did not appoint a qualified individual to fill the position, Co-Trustees could have been categorized as statutory executors. Plaintiff states that it is undisputed that Vikki Paulson and Crystal Christensen as Co-Trustees of the Living Trust are persons who have actual and constructive possession of Mr. Paulson's probate and non-probate assets. (Doc. No. 123-1 at 24.) Co-Trustees do not deny this allegation in their opposition brief, instead they focus on Michael Paulson's failure to resign as executor. (Doc. No. 138 at 15–17.) Accordingly, had the situation arose where there was no executor appointed, Vikki Paulson

and Crystal Christensen as current Co-Trustees of the Living Trust could have been considered statutory executors.

ii. Co-Trustees' Liability under § 19001

Section 19001 of the California Probate Code provides:

> (a) Upon the death of a settlor, the property of the deceased settlor that was subject to the power of revocation at the time of the settlor's death is subject to the claims of creditors of the deceased settlor's estate and to the expenses of administration of the estate to the extent that the deceased settlor's estate is inadequate to satisfy those claims and expenses.
> (b) The deceased settlor, by appropriate direction in the trust instrument, may direct the priority of sources of payment of debts among subtrusts or other gifts established by the trust at the deceased settlor's death. Notwithstanding this subdivision, no direction by the settlor shall alter the priority of payment, form whatever sources, of the matters set forth in Section 11420 which shall be applied to the trust as it applies to a probate estate.

Cal. Prob. Code § 19001.

Plaintiff contends that Co-Trustees are liable for the unpaid estate tax pursuant to California Probate Code § 19001 as taxes are expenses of administration of the estate. (Doc. No. 123-1 at 26.) In opposition, Co-Trustees argue that § 19001 does not provide a mechanism to collect federal estate taxes from the Living Trust, does not provide a remedy against trust assets for "Debts" of a probate estate generally, and does not create a remedy of any kind. (Doc. No. 138 at 17–22.) After reviewing both parties' legal arguments and the relevant statutory code, the Court finds that there is no genuine issue of material fact as to Plaintiff's claims under § 19001.

The Court first notes that this matter was analyzed in the Court's September 6, 2016 order. (Doc. No. 54 at 19.) Specifically, the Court stated "[c]onsidering the cited statutory text and the allegations in the complaint, the Court concludes Plaintiff has adequately stated a claim under § 19001 . . .Whether the estate tax constitutes an expense of administration, a debt, or a claim as encompassed by section 19001, can be appropriately determined when the Court is not bound by the allegations in the complaint." (*Id.*)

Currently, the Court continues to find that Plaintiff has established liability under § 19001. The Court notes that Co-Trustees forge a good attempt at precluding Plaintiff's

claim, but Co-Trustees disregard the implied legislative intent in the statute. Section 19001(b) recognizes that Probate Code Section 11420 prioritizes government collection of taxes above administration expenses and creditor claims. *See* Cal. Prob. Code § 190001(b). This specific provision shows that legislators do not enact statutes that provide for creditor's claims without prioritizing the government's claims above all else. Further, although § 19001(a) only includes "creditor's claims" and "expenses of administration," Plaintiff's right to pursue estate tax is impliedly included in this provision because such has been prioritized in state and federal statutes. *See* Cal. Probate Code § 11420; 31 U.S.C. § 3713. Thus, the Court is not convinced that Congress would enact a statute or pursue policy that will allow private creditors to collect on a decedent's trust estate, while excluding the United States of America from its own claims.

Further, the plain meaning behind the statute supports the Court's conclusion. First, it is undisputed that the Living Trust is revocable. Second, a "creditor" under the Code "means a person who may have a claim against the trust property." *Id.* at (c). Finally, "debts" as referenced in section (b) of Probate Code 19000, means all claims, as defined in subdivision (a), all expenses of administration, and all other proper charges against the trust estate, including taxes." *Id.* at (f) (emphasis added). Consequently, it is clear to the Court that the estate taxes is a debt for which Plaintiff has a claim against the estate.

Ultimately, the Court concludes that there is no genuine dispute over any material facts in regards to Plaintiff's claim under California Probate Code § 19000 and thus its motion is **GRANTED**. *See Dobler v. Arluk Med. Ctr. Indus. Grp., Inc.*, 89 Cal. App. 4th 530, 534 (2001) ("[Section 19001] provides the assets of a revocable trust are subject to the claims of creditors of the deceased settlor's probate estate to the extent the probate estate insolvent.").

iii. Enforcement of the Unpaid Estate Tax Under the Express Terms of the Trust

Plaintiff contends that Vikki Paulson and Crystal Christensen as current Co-Trustees of the Living Trust are liable to Plaintiff for the unpaid estate tax under the express terms of the Living Trust. (Doc. No. 123-1 at 28–30.) In opposition, Co-Trustees contend that

Plaintiff is not a third-party beneficiary to the Declaration of Trust and thus Plaintiff is not entitled to enforce the express terms of the Trust for its benefit. (Doc. No. 138 at 24–26.)

To allege the existence of a contract, a plaintiff must plead mutual consent, sufficiently definite contractual terms, and consideration. *Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp. 2d 1110, 1142 (N.D. Cal. 2013). In contrast, a trust is defined as "an equitable estate committed to the charge of a fiduciary (trustee) for a beneficiary[.]" Bryan A. Garner, A Dictionary of Modern Legal Usage 892 (1995).

"Before a third party can recover under a contract, it must show that the contract was made for its direct benefit—that it is an intended beneficiary of the contract." *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999). To sue as a third-party beneficiary of a contract, the third party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third party. *See Montana v. United States*, 124 F.3d 1269, 1273 (Fed. Cir. 1997). One way to determine if the intent behind the contract was to benefit a specific party is to "ask whether the beneficiary would be reasonable in relying on the promise as manifesting an intention to confer a right on him or her." *Klamath Water Users*, 204 F.3d at 1211.

Ultimately, Plaintiff's failure to demonstrate how the Living Trust is a contract and how it is a third-party beneficiary to the supposed contract at issue torpedoes its claim. Presently, Plaintiff tries to concoct liability by arguing that under the terms of the trust, the Living Trust was required to pay all estate taxes. (Doc. No. 123-4 at 11, 13.) Plaintiff then leaps to the conclusion that under the terms of the Trust, "payment of the estate tax by the Living Trust to the Estate so the Estate can pay [Plaintiff], or payment of the estate tax directly to [Plaintiff] results in the same obligation of the Trust being fulfilled." (*Id.* at 29.) Thus, Plaintiff argues in a broad manner that as it is a creditor, it is entitled to enforcement of the contractual provision in the trust agreement as an intended third-party beneficiary. (*Id.*)

However, Plaintiff makes this assumption without establishing that the Living Trust is a contract. Without such information, Plaintiff cannot establish an absence of genuine issue of material fact that it is third-party beneficiary to the Living Trust. *See United States*

v. City of Los Angeles, Cal., 288 F.3d 391, 404 (9th Cir. 2002) ("A promise creates no duty to a beneficiary unless a contract is formed between the promisor and the promise[.]") (citation omitted); *see also Ansanelli v. JP Morgan Chase Bank, N.A.*, No. C 10-0389 WHA, 2011 WL 1134451, at *7 (N.D. Cal. Mar. 28, 2011) ("All in all, plaintiffs have not shown that the servicer participation agreement reflects the express or implied intention of Chase and the United States to benefit third-party borrowers via their contract.").

Consequently, as the moving party, Plaintiff has failed to satisfy its burden in demonstrating an absence of a genuine issue of material fact that it is a third-party beneficiary to the Living Trust. Thus, the motion is **DENIED**.

iv. Enforcement of the Tax Liens

Plaintiff asserts that to the extent that the Trust is obligated to make payments to the Estate so that it can then pay the estate taxes, rather than making a direct payment to Plaintiff, it has federal tax liens against all property and rights to property of the Estate under 26 U.S.C. §§ 6321, 6322, 6323. (Doc. No. 123-1 at 30.) In opposition, Co-Trustees argue that the tax lien provides no recourse to the assets of the Living Trust. (Doc. No. 138 at 26.) Specifically, Co-Trustees contend that as California Probate Code § 19001 does not create any interest in the Living Trust to pay for Paulson's estate taxes and Article IV of the Living Trust does not create an obligation for the Living Trust to pay for the Estate taxes, Plaintiff cannot enforce its tax liens. (*Id.* at 27–28.)

Unfortunately, Co-Trustees arguments in opposition fail to demonstrate genuine issues of material fact over Plaintiff's right to enforce its liens if and when an amount of estate taxes is determined. This is especially in light of the fact that this Order concludes that § 19001 does create an interest in the Living Trust for the Estate's taxes. Accordingly, based on this, the § 6321 lien the Government has against the "property" of the Paulson estate does extend to assets of the Living Trust pursuant to 26 U.S.C. § 7403. Thus, Plaintiff's motion is **GRANTED.**

CONCLUSION

Based on the foregoing, the Court **GRANTS IN PART AND DENIES IN PART** Plaintiff's motion for summary judgment against Michael Paulson, (Doc. No. 111),

DENIES Michael Paulson's cross-motion for summary judgment, (Doc. No. 119), **GRANTS IN PART AND DENIES IN PART** Ms. Pickens' motion for summary judgment against Plaintiff, (Doc. No. 98), **DENIES** Plaintiff's cross-motion for summary judgment against Ms. Pickens, (Doc. No. 114), **DENIES** Plaintiff's motion for summary judgment against James Paulson, (Doc. No. 118), **GRANTS IN PART AND DENIES IN PART** Michael Paulson's summary judgment motion against Ms. Pickens, (Doc. No. 121), **DENIES** Michael Paulson's motion for summary judgment against Co-Trustees, (Doc. No. 122), and **GRANTS IN PART AND DENIES IN PART** Plaintiff's motion for summary judgment against Co-Trustees, (Doc. No. 123). Additionally, Michael Paulson and Co-Trustees' motions to strike are **DENIED**. (Doc. Nos. 143, 153.)

IT IS SO ORDERED.

Dated: September 7, 2018

Hon. Anthony J. Battaglia
United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MICHAEL PAULSON, as the Executor or Statutory Executor of the Estate of Allen E. Paulson, and Individually; JAMES D. PAULSON, as Statutory Executor of the Estate of Allen E. Paulson; VIKKI E. PAULSON, as Statutory Executor of the Estate of Allen E. Paulson, as Trustee of the Allen E. Paulson Living Trust, and Individually; CRYSTAL CHRISTENSEN, as Statutory Executor of the Estate of Allen E. Paulson, as Trustee of the Allen E. Paulson Living Trust, and Individually; MADELEINE PICKENS, as Statutory Executor of the Estate of Allen E. Paulson, as Trustee of the Marital Trust created under the Allen E. Paulson Living Trust, as Trustee of the Madeleine Anne Paulson Separate Property Trust, and Individually,

Defendants.

Case No.: 15cv2057 AJB (NLS)

ORDER:

(1) GRANTING IN PART AND DENYING IN PART MADELEINE PICKENS' MOTION TO DISMISS (Doc. No. 15);

(2) GRANTING IN PART AND DENYING IN PART VIKKI PAULSON AND CRYSTAL CHRISTENSEN'S MOTION TO DISMISS (Doc. No. 19);

(3) DENYING JAMES PAULSON'S MOTION TO DISMISS (Doc. No. 36);

(4) DENYING MADELEINE PICKENS' MOTION TO DISMISS CROSS-CLAIM (Doc. No. 40); AND

(5) DENYING VIKKI PAULSON AND CRYSTAL CHRISTENSEN's MOTION TO DISMISS CROSS-CLAIM (Doc. No. 44)

The United States of America ("Plaintiff"), seeking to recover unpaid estate taxes, penalties, and interest, filed the above action on September 16, 2015. Presently before the Court are motions to dismiss the complaint filed by Defendants Vikki Paulson, Crystal Christensen, Madeleine Pickens, and James Paulson. (Doc. No. 15, 19, and 36.) Also pending are motions to dismiss Defendant John Michael Paulson's cross-claim, (Doc. No. 38), filed by Defendants Vikki Paulson, Crystal Christensen, and Madeleine Pickens. (Doc. Nos. 40 and 50.)

For the reasons set forth below, Madeleine Pickens' motion to dismiss the complaint is **GRANTED IN PART** and **DENIED IN PART**; Vikki Paulson and Crystal Christensen's motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**; and James Paulson's motion to dismiss is **DENIED**. Additionally, Madeleine Pickens' motion to dismiss John Michael Paulson's cross-claim is **DENIED**; and Vikki Paulson and Crystal Christensen's motion to dismiss the cross-claim is **DENIED**.

I. FACTUAL BACKGROUND

The following facts are taken from the complaint and construed as true for the limited purpose of resolving the pending motions. *See Moyo v. Gomez*, 40 F.3d 982, 984 (9th Cir. 1994). On December 23, 1986, Allen Paulson ("Mr. Paulson") established the Allen E. Paulson Living Trust (hereafter referred to as "Living Trust"). (Doc. No. 1 ¶ 9.) In 1988, Mr. Paulson entered into an antenuptial agreement with Madeleine Pickens ("Ms. Pickens") in anticipation of marriage. (*Id.* ¶ 10.) The agreement defined their respective separate property and established certain gifts for Ms. Pickens in the event of Mr. Paulson's death. (*Id.*) The Living Trust was subsequently amended and restated several times in early 2000. (*Id.* ¶ 11.) On July 19, 2000, Mr. Paulson died. (*Id.* ¶ 21.)

The Living Trust provided Ms. Pickens with the power to elect between receiving property under the antenuptial agreement or under the Living Trust, but not under both. (*Id.* ¶¶ 10, 12–15.) The Living Trust also created a Marital Trust for Ms. Pickens' benefit. (*Id.* ¶¶ 13–15.) Under the terms of the Living Trust, the Marital Trust was to receive a residence and all personal property located at 14497 Emerald Lane in Rancho Sante Fe,

California. (*Id.* ¶ 13.) The Living Trust also gave Ms. Pickens the right to receive a second residence located in Del Mar, California, as well as all household furnishings, furniture, and all insurance policies related to the Del Mar property. (*Id.* ¶ 14.) Finally, the Living Trust provided that the Marital Trust was to receive 25% of the residue of the Living Trust. (*Id.* ¶ 15.) The Living Trust named Ms. Pickens, John Michael Paulson, and Edward White (or alternatively, Edward White and Nicholas Diaco), as the co-trustees of the Marital Trust. (*Id.* ¶ 16.)

At the time of Mr. Paulson's death, all of Mr. Paulson's assets were held by the Living Trust except for his shares in the Gold River Hotel & Casino Corporation. (*Id.* ¶ 24.) The Living Trust's assets, as reported at the time of Mr. Paulson's death included approximately $24,764,500 in real estate; $113,761,706 in stocks and bonds; $23,664,644 in cash and receivables, and $31,243,494 in miscellaneous assets. (*Id.*) Accordingly, the Estate's assets totaled approximately $193,434,344 at the time of Mr. Paulson's death. (*Id.*)

John Michael Paulson ("Michael Paulson") is the son of Mr. Paulson, and served as the executor of the Estate of Allen E. Paulson ("Estate") after Mr. Paulson's death on July 19, 2000. (*Id.* ¶¶ 4, 54.) Nicholas Diaco consented to act as co-trustee of the Living Trust with Michael Paulson. (*Id.* ¶ 25.) In April 2001, the Estate filed a Form 4768 with the IRS, and requested an extension of time to file its Form 706 Estate tax return until October 19, 2001. (*Id.* ¶ 26.) Additionally, the Estate requested an extension of time to pay its taxes until April 19, 2002. (*Id.*) The IRS approved the Estate's request for both extensions. (*Id.* ¶ 26.)

On October 23, 2001, the IRS received the Estate's Form 706 Estate tax return, which was signed by Michael Paulson, as co-executor of the Estate. (*Id.* ¶ 27.) In completing the tax return, the Estate elected to use an alternate valuation date of January 19, 2001, under 26 U.S.C. § 2032(a). (*Id.*) The Estate reported a total gross estate of $187,729,626, a net taxable estate of $9,234,172, and an estate tax liability of $4,459.051. (*Id.* ¶¶ 27–28.) On November 26, 2001, the IRS assessed the originally reported tax of

$4,459,051. (*Id.* ¶ 28.) The Estate elected to pay part of its taxes and defer the other portion under a fifteen-year payment plan pursuant to 26 U.S.C. § 6166 of the Internal Revenue Code.[1] (*Id.* ¶ 29.) Accordingly, the Estate paid $706,296 as the amount unqualified for deferral under § 6166, leaving a deferred balance of $3,752,755 to be paid under the installment election. (*Id.*) On November 15, 2001, the IRS selected the Estate tax return for examination. (*Id.* ¶ 31.)

While the Estate's tax return was under review, several personal disputes arose between Michael Paulson, Ms. Pickens, and the other beneficiaries of the Living Trust. (*Id.* ¶ 32.) On February 2, 2003, the parties reached a settlement agreement, which the California Probate Court approved on March 14, 2003 ("2003 Settlement"). (Doc. No. 1 ¶ 33); (Doc. No. 15-5.) Under the 2003 Settlement, Ms. Pickens forewent property under both the antenuptial agreement and the Living Trust, instead choosing to receive direct distributions from the Living Trust. (*Id.* ¶¶ 33–34.) The 2003 Settlement resulted in Ms. Pickens receiving the Rancho Sante Fe residence, the Del Mar residence, and the stock in the Del Mar County Club, Inc. (*Id.* ¶ 33.) As approved by the Probate Court, these distributions were made directly to Ms. Pickens as trustee of the Madeleine Anne Paulson Separate Property Trust. (*Id.* ¶ 35.) During 2004, Michael Paulson, acting as trustee of the Living Trust, distributed approximately $5,921,887 in trust assets to various individuals. (*Id.* ¶ 36.)

On January 15, 2005, the IRS issued a notice of deficiency to Michael Paulson as executor of the estate, which proposed a $37,801,245 deficiency in the estate tax reported on the return. (*Id.* ¶ 38.) Michael Paulson petitioned the United States Tax Court challenging the additional estate tax proposed by the IRS. (*Id.* ¶ 39.) On December 2, 2005, pursuant to the parties' stipulation, the Tax Court determined that the Estate owed $6,669,477 in additional estate taxes. (*Id.* ¶ 40.) The Estate elected to pay this additional

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[1] 26 U.S.C. § 6166(a)(1) provides a deferral and payment plan for the value of the tax imposed by a closely held business on the adjusted gross estate, under 26 U.S.C. § 2001.

tax amount under the same fifteen-year installment period permitted by 26 U.S.C. § 6166. (*Id.*)

During 2006, Michael Paulson, acting as trustee of the Living Trust distributed an additional $1,250,000 from the Living Trust. (*Id.* ¶ 43.) In March 2009, the Probate Court removed Michael Paulson as trustee for misconduct. (*Id.* ¶ 44.) Vikki Paulson and James Paulson were appointed as co-trustees. (*Id.* ¶ 44.) In August 2011, Vikki Paulson and James Paulson reported that the Living Trust had assets worth $13,738,727. (*Id.* ¶ 44.)

On May 7, 2010, in response to one or more missed installment payments, the IRS issued the Estate a notice of final determination stating that the extension of time for payment under § 6166 no longer applied to the Estate's tax obligations. (*Id.* ¶ 46.) On June 10, 2010, the Probate Court removed James Paulson as a co-trustee for breach of court orders. (*Id.*) Accordingly, Vikki remained as the sole trustee of the Living Trust. (*Id.*)

On August 5, 2010, the Estate filed a petition in United States Tax Court challenging the IRS's proposed termination of the Estate's § 6166 installment payment election. (*Id.* ¶ 47.) On February 28, 2011, Crystal Christensen ("Ms. Christensen") was appointed as co-trustee of the Living Trust. (*Id.* ¶ 48.) At that time, the Living Trust held assets worth approximately $8,802,034. (*Id.*) In May 2011, the Tax Court entered a stipulated decision sustaining the IRS's decision to terminate the Estate's installment payment election. (*Id.* ¶ 49.)

Between June 28, 2011, and July 7, 2011, the United States recorded notices of federal tax liens against the Estate in the property records of San Diego and Los Angeles Counties. (*Id.* ¶ 50.) On April 16, 2012, Vikki Paulson and Ms. Christensen, as successor co-trustees of the Living Trust filed a petition for review of the Estate's collection due process rights with the United States Tax Court. (*Id.* ¶ 51.) The Tax Court dismissed the petition on April 18, 2013, for lack of jurisdiction because Michael Paulson, who was the court-appointed executor at the time the petition was filed, had not signed the petition. (*Id.*)

From approximately 2007 through 2013, several disputes arose between Michael Paulson, Vikki Paulson, Ms. Christensen, James Paulson, and other interested parties in the Living Trust. (*Id.* ¶ 52.) The parties eventually settled the disputes, and on June 3, 2013, the California Superior Court formalized the settlement through issuance of an order and a general release ("2013 Settlement"). (*Id.*)

As part of the 2013 Settlement, Michael Paulson obtained the Living Trust's ownership interest in Supersonic Aerospace International, LLC, as well as its ownership interests in the Gold River Hotel & Casino Corporation and the Gold River Operation Corporation. (*Id.* ¶ 53.) Additionally, as part of the 2013 Settlement, Michael Paulson resigned as executor of the Estate, effective January 15, 2013. (*Id.* ¶ 54.)

As of July 10, 2015, the Estate had an unpaid estate tax liability of $10,261,217. (*Id.* ¶ 55.) On September 16, 2016, the United States filed a complaint seeking judgment against the Estate for the unpaid estate taxes, penalties, and interest. (Doc. No. 1.) The United States seeks judgment against the defendants in either their representative or individual capacities, or both, for unpaid estate taxes. Several defendants named in the complaint have filed motions to dismiss. (*See* Doc. Nos. 13, 19, 36.) Michael Paulson filed an answer to the complaint, in addition to cross-claims for indemnification against Ms. Pickens, Vikki Paulson, and Ms. Christensen. (Doc. No. 38.) Ms. Pickens, Vikki Paulson, and Ms. Christensen then moved to dismiss the cross-claims. (Doc. Nos. 40, 44.) Following briefing on all pending motions, the Court determined the motions were suitable for determination on the papers.

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff's complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "A court may dismiss a complaint as a matter of law for (1) lack of cognizable legal theory or (2) insufficient facts under a cognizable legal claim." *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (internal citation omitted). However, a complaint will survive a motion to dismiss if it contains "enough facts to state a claim to

relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In making this determination, a court reviews the contents of the complaint, accepting all factual allegations as true, and drawing all reasonable inferences in favor of the nonmoving party. *Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007).

Notwithstanding this deference, the reviewing court need not accept legal conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a court to assume "the [plaintiff] can prove facts that [he or she] has not alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. A "motion to dismiss is not the appropriate procedural vehicle to test the merits of Plaintiff's complaint." *Walker v. City of Fresno*, No. 1:09cv1667, 2010 WL 3341861, at *4 (E.D. Cal. Aug. 23, 2010) (citing *Navarro*, 250 F.3d at 732).

III. DISCUSSION

A. Judicial Notice

As an initial matter, the parties moving to dismiss the complaint attach numerous documents to their respective motions. (*See, e.g.*, Doc. Nos. 15-2–15-14; 19-2–19-7.) Only Vikki Paulson and Ms. Christensen formally request the Court take judicial notice of certain documents attached, (Doc. No. 19-2), although Ms. Pickens similarly argues consideration of the attached documents is appropriate. (*See* Doc. No. 25, n.3.)

In opposition, Plaintiff argues that consideration of documents extrinsic to the complaint is improper on a motion to dismiss, and converts a motion to dismiss into one for summary judgment. (Doc. Nos. 21 at 11–13; 27 at 15.) Plaintiff requests the Court permit a reasonable time for discovery prior to ruling on the present motion if the Court is inclined to consider the attached materials. (*Id.*) Plaintiff also contests whether the documents attached to Ms. Pickens, Vikki Paulson, and Ms. Christensen's motions are

the most recent versions of, and amendments to, relevant Trust documents. (Doc. No. 21 at 11) (arguing Ms. Pickens failed to attach amendments to the Living Trust that are "critical to her status as trustee of the Marital Trust").

Federal Rule of Evidence 201 allows a court to take judicial notice of facts that can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *Hohu v. Hatch*, 940 F. Supp. 2d 1161, 1166 (N.D. Cal. 2013). The court may take judicial notice of documents that are matters of public record. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (noting a district court may take "judicial notice of matters of public record outside the pleadings" when determining whether a complaint fails to state a claim); *Grant v. Aurora Loan Servs., Inc.*, 736 F. Supp. 2d 1257, 1264 (C.D. Cal. 2010) ("Matters of public record are generally proper subjects of judicial notice.").

Judicial notice of the Probate Court documents is appropriate, as documents publicly available and not subject to reasonable dispute. *See In re Tower Park Properties, LLC*, 803 F.3d 450, 452 (9th Cir. 2015) (taking judicial notice of documents filed in probate court proceedings); *Gillette v. Wilson Sonsini Grp. Welfare Ben. Plan*, No. 3:14CV00222, 2014 WL 5511337, at *2 (D. Or. Oct. 31, 2014) (taking judicial notice of various documents filed in probate court); *In re Tower Park Properties, LLC*, No. CV 13-1518, 2013 WL 3791462, at *1 (C.D. Cal. July 18, 2013) (same). Accordingly, the Court will take judicial notice of the Probate Court documents attached to the present motions to dismiss.[2] However, for the reasons detailed below, the Court declines to interpret or

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[2] Documents properly the subject of judicial notice include Appendix C, the Estate's Tax Return dated October 19, 2001, (Doc. No. 15-4); Appendix E-1, the Grant Deed to the Del Mar Residence, (Doc. No. 15-6); Appendix E-2, the Grant Deed to the Rancho Sante Fe Residence; (Doc. No. 15-7); Appendix G, the IRS Tax Audit dated October 13, 2004, (Doc. No. 15-9); Appendix H, the tax court decision reflecting the stipulated additional tax liability in excess of six million dollars, (Doc. No. 15-10); Appendix I, the memorandum decision removing Michael Paulson as trustee, (Doc. No. 15-11); and

otherwise determine the applicability or validity of those documents in the context of a motion to dismiss. The remaining formal or informal requests for judicial notice are therefore **DENIED**.[3]

B. Ms. Pickens' Motion to Dismiss

Ms. Pickens asserts several grounds in support of dismissal, the majority of which are directed at the merits of Plaintiff's claims. "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 970 (9th Cir. 2009) (citing *Iqbal*, 555 U.S. at 664.) Additionally, all reasonable inferences must be drawn in favor of the nonmoving party. *Western Reserve Oil & Gas Co. v. New*, 765 F.2d 1428, 1430 (9th Cir. 1985); *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). As such, "[t]he issue is not whether the plaintiff ultimately will prevail, but whether he is entitled to offer evidence to support his claim." *Usher*, 828 F.2d at 561 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). Accordingly, challenges to whether a party may ultimately be held liable or whether Plaintiff will succeed in establishing liability under various theories of recovery are not appropriate at this stage in the

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Appendix L, the tax court order reflecting Michael's role as court appointed executor, (Doc. No. 15-14).

[3] These documents include Appendix A, Amendment to and Complete Restatement of Declaration of Trust, Allen E. Paulson Living Trust, (Doc. No. 15-2); Appendix B, Amendment to Declaration of Trust, Allen E. Paulson Living Trust, (Doc. No. 15-3); Appendix D, the 2003 Settlement and Release to the extent the parties dispute the application and meaning of provisions contained therein, (Doc. No. 15-5); Appendix F, Amended and Restated Declaration of Trust of the Madeleine Anne Paulson Separate Property Trust, (Doc. No. 15-8); Appendix J, the 2013 Settlement Agreement to the extent the parties dispute the application and meaning of the provisions contained therein, (Doc. No. 15-12); and Appendix K, the stipulation and release reflecting the 2013 Settlement, (Doc. No. 15-13). Vikki Paulson and Crystal Christensen's request for judicial notice of the reporter's transcript of March 21, 2011, proceeding is similarly **DENIED**. The transcript supports the contention that Plaintiff delayed in seeking a tax lien against Defendants, but is otherwise irrelevant to resolution of the pending motions.

proceedings. Accordingly, what Defendants cite to as "uncontested facts" throughout their moving papers are not dispositive of Plaintiff's claims. *Cf.*, Fed. R. Civ. P. 12(b)(6) *with* Fed. R. Civ. P. 56. As noted below, the Court will refrain from adjudicating the merits of Plaintiff's claims in resolving the pending motions.[4]

As a further preliminary matter, Plaintiff's opposition to Ms. Pickens' motion narrows the issues raised in the motion to dismiss. For example, Ms. Pickens argues that the Government's claim as to tax assessed in November 2001 is time barred by the applicable ten-year statute of limitations. (Doc. No. 15 at 22–25.) In opposition, Plaintiff argues that it is not seeking to collect any of the estate tax initially assessed in November 2001. (Doc. No. 21 at 31) (noting the complaint "makes no claim against any Defendant for th[e] original tax assessed on November 26, 2001"). Instead, Plaintiff acknowledges that the original tax and related interest were paid through previous partial payments made by the Estate and the Living Trust. (*Id.*) Plaintiff's present claim stems from the additional estate tax assessed on January 30, 2006, in the amount of $6,669,477. (*Id.*) Since the Plaintiff's action is not based on the estate tax assessed in 2001, Ms. Pickens' request to dismiss Plaintiff's claims as untimely is **DENIED**.

Ms. Pickens also argues she is not personally liable for the estate tax under 31 U.S.C. § 3713. (Doc. No. 15-1 at 14.) In response, Plaintiff indicates it is not presently pursuing a claim against Ms. Pickens for personal liability under § 3713. Accordingly, to the extent the complaint can be read as stating a claim against Ms. Pickens under § 3713, that claim is **DISMISSED**.

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[4] Plaintiff concedes the scope of liability established is likely to decrease following discovery and resolution of factual disputes. (*See* Doc. No. 27 at 16) (noting the "United States does not care which of the Defendants is deemed to be the executor or administrator so long as someone appears in this case as a representative of the Estate of Allen E. Paulson so that a judgment can be sought and entered against the Estate").

Having addressed the correct scope of review in resolving the present motions, as well as those issues rendered moot through the parties' briefing, the Court now turns to Ms. Pickens' remaining arguments advanced in support of dismissal.

1. 26 U.S.C. § 2002

Ms. Pickens argues that she is not liable for estate tax under 26 U.S.C. § 2002 in her capacity as a "statutory executor" of Mr. Paulson's Estate because she was never appointed, and never served as the executor of the Estate. (Doc. No. 15-1 at 13.) As support for this position, Ms. Pickens notes that Michael Paulson was the court-appointed executor and the 2013 decision of the tax court rejected Vikki Paulson and Ms. Christensen's claim that they were "executors" under § 2203. (*Id.*)

In opposition, Plaintiff argues that Michael Paulson was the court-appointed executor, but resigned from that position as of January 15, 2013. (Doc. No. 21 at 13); (*see also* Doc. No. Doc. No. 1 ¶¶ 53, 54) (noting that as part of the 2013 Settlement Michael Paulson resigned as executor of the estate, effective January 15, 2013).

26 U.S.C. § 2001 imposes tax liability on the executor of an estate in that individual's representative capacity. Section 2203 defines the term "executor" as "the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent."

Here, the complaint alleges that although Michael Paulson was once the court-appointed executor of the Estate, he resigned in 2013, with his resignation effective January 15, 2013. (Doc. No. 1 ¶¶ 53, 54.) Additionally, the complaint alleges that Ms. Pickens currently possesses property that belonged to Mr. Paulson. (*Id.* ¶¶ 87–92.) Ms. Pickens' reliance on the 2013 tax court order noting that Michael Paulson was the court-appointed executor was based on Michael Paulson's status as the executor at the time the

petition was filed.[5] Following Michael Paulson's resignation, there was no court-appointed executor, thus making "any person in actual or constructive possession of any property of the decedent" the "executor" for the purposes of imposing representative liability under § 2002.

In reply, Ms. Pickens argues the position advanced by Plaintiff would render every beneficiary of an estate the "statutory executor" when the appointed, qualified, and acting executor resigns. (Doc. No. 25 at 5.) Ms. Pickens also contends that Michael Paulson never resigned and that Plaintiff fails to allege that Michael Paulson resigned. (*Id.*)

Considering the allegations in the complaint, including that Michael Paulson resigned as the court-appointed executor, and that Ms. Pickens received property from Mr. Paulson's estate, Plaintiff has sufficiently stated a claim under § 2002. Ms. Pickens' assertion that Michael Paulson never actually resigned as the court-appointed executor is contrary to the allegations in the complaint, which are entitled to a presumption of truth at this stage in the proceedings.[6] Accordingly, Ms. Pickens' request that the § 2002 claim against her in her representative capacity as statutory executor be dismissed is **DENIED**.

2. 26 U.S.C. § 6324(a)(2)

Ms. Pickens next argues that she is not liable for estate tax under 26 U.S.C. § 6324(a)(2) as a trustee of the Marital Trust. (Doc. No. 15-1 at 15.) Ms. Pickens contends that it is undisputed that although she was nominated to serve as co-trustee of the Marital Trust, she never accepted that nomination. (*Id.*) Additionally, because Ms. Pickens chose

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[5] Vikki Paulson and Ms. Christensen filed the petition on April 16, 2012, nearly eight months before Michael Paulson's January 2013, effective date of resignation. (*See* Doc. No. 1 ¶¶ 51, 54.)

[6] Presumably, Ms. Pickens takes issue with Michael Paulson's alleged failure to provide an accounting as required when a court-appointed executor resigns. (*See* Doc. No. 44-1 at 18) (Vikki Paulson and Ms. Christensen's motion to dismiss arguing Michael Paulson's resignation was never completed because he failed to provide an accounting as required by California Probate Code section 10952). However, such challenges are more appropriately considered following the opportunity for discovery, and at a time when the Court is not required to assume the truth of Plaintiff's factual allegations.

to bypass the Marital Trust altogether, the Marital Trust was never funded. (*Id.*) Accordingly, Ms. Pickens asserts that Plaintiff has failed to state a claim against her in her capacity as the trustee of the Marital Trust. (*Id.*)

Plaintiff argues the complaint alleges that the Living Trust "names" Ms. Pickens as a co-trustee of the Marital Trust and that the version of the Living Trust attached to Ms. Pickens' motion supports this contention. (Doc. No. 21 at 17–18.) Plaintiff also argues that the Living Trust does not require Ms. Pickens to formally accept her nomination as co-trustee of the Marital Trust. (*Id.*)

Although Plaintiff and Ms. Pickens dispute the terms of the Living Trust as related to the creation and designation of trustee(s) for the Marital Trust, as alleged in the complaint, the Marital Trust was never funded. Accordingly, it is unclear how Plaintiff can plausibly articulate a claim for relief against Ms. Pickens based on a role that she never assumed by virtue of the Marital Trust never being funded.[7] Thus, Plaintiff has failed to state a claim against Ms. Pickens based on her role as the trustee of the Marital Trust. Accordingly, that claim is **DISMISSED**.

Next, Ms. Pickens asserts that she is not liable under § 6324(a)(2) as a beneficiary of the Living Trust. (Doc. No. 15-1 at 16.) Ms. Pickens contends that governing law is well-settled, and trust beneficiaries are not liable for estate taxes under § 6324(a)(2). (Doc. No. 15 at 16.) In support of this position, Ms. Pickens cites cases finding that trust beneficiaries are not "transferees" or "beneficiaries" as those terms are defined by § 6324(a)(2). (*Id.*) Plaintiff argues § 6324 encompasses beneficiaries of trusts that are included in the gross estate, and disagrees with the line of authority cited by Ms. Pickens. (Doc. No. 21 at 22–26.)

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[7] The Court notes that the parties disagree about what was required of Ms. Pickens to become the trustee of the Marital Trust. However, because that Trust was never funded, the Court need not interpret her obligations under the Living Trust with respect to her role as trustee of the Marital Trust.

26 U.S.C. § 6324(a)(2) imputes personal liability for federal estate taxes to certain individuals who receive property from an estate at the time of a decedent's death. Under § 6324(a)(2), "if the estate tax. . . is not paid when due, then the spouse, transferee, trustee. . . person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate" is personally liable for the tax "to the extent of the value, at the time of the decedent's death, of such property[.]" To establish personal liability under § 6324, a plaintiff must demonstrate that the estate tax was not paid when due, and the person against whom liability is asserted is one described in the section. *See Garrett v. C.I.R.*, T.C. Memo. 1994-70, 1994 WL 52379 at *12; *Groetzinger v. Commissioner*, 69 T.C. 309, 316 (1977). Definitions for the enumerated categories are not provided in the statute, so federal courts have developed a body of federal law for analyzing liability under § 6324(a)(2). *U.S. v. Johnson*, Case 2:11cv00087, 2013 WL 3925078, at *5 (D. Utah, July 29, 2013) (quoting *Schuster v. C.I.R.*, 312 F.2d 311, 315 (9th Cir. 1962)).

The complaint alleges that Ms. Pickens is a either trustee or beneficiary. A trustee is understood to be the trustee of a trust, within the common use of the term. *Johnson*, 2013 WL 3925087 at *5 (defining trustee as the person who received the estate's property and held legal title, control, or possession of such property). The term "beneficiary" within the meaning of § 6324, however, has been more narrowly construed to include only the beneficiary of a life insurance policy. *See id.* at *8 (citing *Garrett v. C.I.R.*, T.C., 1994 WL 52379 at *12–14 (examining the legislative history and case law of § 6324(a)(2) to conclude "beneficiary" identifies the beneficiary of a life insurance policy). Plaintiff disputes this definition, providing its own analysis of the statutory text (Doc. No. 21 at 23–26); (Doc. No. 27 at 31–32.)

Despite the arguments advanced by Plaintiff, the Court finds *Johnson* persuasive and declines to depart from the reasoning articulated therein. Although Plaintiff argues that *Johnson* is incorrectly decided and contrary to Congressional intent, there is little

authority supporting Plaintiff's position. (*See* Doc. No. 21 at 24) (citing *United States v. Bevan*, Case No 07cv1944, 2008 WL 5179299 (E.D. Cal. Dec. 10, 2008)). However, the position advanced by Ms. Pickens is consistent with other court's interpretations of a "beneficiary" under § 6324. *See Baptiste v. C.I.R.*, 63 T.C.M. (CCH) 2649 (T.C. 1992), *aff'd*, 29 F.3d 1533 (11th Cir. 1994); *Schuster v. Commissioner*, 312 F.2d 311 (9th Cir. 1962).

The complaint does not allege that Ms. Pickens is a beneficiary of a life insurance policy, or any insurance policy, at the time of Mr. Paulson's death. The bare assertion of Ms. Pickens is a "beneficiary" is insufficient in light of authority defining who constitutes a beneficiary under § 6324. For these reasons, the arguments advanced by Plaintiff regarding statutory construction, numerical symmetry within the statute and congressional intent are unpersuasive. (*See* Doc. No. 21 at 24–26.) Accordingly, Plaintiff has failed to allege facts sufficient to state a claim against Ms. Pickens as a beneficiary under § 6324.

The same is true with respect to any allegation that Ms. Pickens is liable as a trustee under § 6324. (*Id.* at 24–25 n.8) (arguing that if Ms. Pickens is not a beneficiary of the trust, "the trustee will always be personally liable under Section 6324(a)(2) for the date of death value of the trust assets held on the date of the decedent's death or received later by such trustee"). To the extent Plaintiff argues Ms. Pickens is a trustee of the Living Trust, the complaint lacks plausible factual allegation to support such a theory. (*See* Doc. No. 15-1 at 16 n.13.) Accordingly, Plaintiff's claims for liability against Ms. Pickens based on her role as a beneficiary or trustee of the Living Trust are **DISMISSED**.

Finally, with respect to alleged liability under § 6324(a)(2), Ms. Pickens argues that she is not liable as the trustee of the Madeleine Anne Paulson Separate Property Trust. (Doc. No. 15-1 at 20.) Ms. Pickens contends property from the Estate was transferred to her in her capacity as a creditor or beneficiary of the Madeleine Anne Paulson Separate Property Trust. (*Id.*) Thereafter, Ms. Pickens relies on the same

arguments set forth above predicated on her contention that she is neither a "transferee" nor a "beneficiary" as those terms are defined by § 6324. (*Id.*)

Plaintiff argues that Ms. Pickens received assets that were transferred from the Living Trust to the Madeleine Anne Paulson Separate Property Trust. (Doc. No. 21 at 20.) As the trustee of that Trust, Plaintiff contends Ms. Pickens is liable in her individual capacity for the value of the transferred assets. (*Id.*)

The complaint clearly alleges that Ms. Pickens was the trustee of the Madeleine Anne Paulson Separate Property Trust, and that she received assets from the Living Trust. (*See* Doc. No. 1 ¶¶ 33–35.) This is sufficient to state a claim against Ms. Pickens based on her alleged role as the trustee of the Madeleine Anne Paulson Separate Property Trust. As such, Ms. Pickens request for dismissal of the § 6324(a)(2) claim based on her receipt of assets from the Living Trust as the trustee of her separate property trust is **DENIED**.

3. Indemnification

Ms. Pickens also moves to dismiss Plaintiff's claim for indemnification, arguing that she is not liable to the Estate for any estate taxes based on the indemnification provision of the 2003 Settlement. (Doc. No. 15-1 at 21.) Additionally, Ms. Pickens argues that Plaintiff is not a third-party beneficiary to the 2003 Settlement and Plaintiff's claim for breach of that agreement necessarily fails. (*Id.* at 21–22.) Plaintiff argues Ms. Pickens' interpretation of the 2003 Settlement is self-serving and insufficient to conclude, as a matter of law, that Plaintiff is not a third party beneficiary. (Doc. No. 21 at 27.) As support for its position, Plaintiff cites portions of the 2003 Settlement, under which Ms. Pickens is responsible for payment of estate taxes stemming from the distribution of assets to her from the Living Trust. (*Id.* at 28.)

As alleged in the complaint, and assumed as true for the purposes of this motion, Plaintiff has stated a claim for indemnification against Ms. Pickens, either directly under the 2003 Settlement or through a third-party beneficiary theory. The Court will not engage in the contractual interpretation and determination of the merits as urged by the

parties. *See Gardner v. RSM & A Foreclosure Servs., LLC*, No. 12CV2666, 2013 WL 1129392, at *3 (E.D. Cal. Mar. 18, 2013) ("It is inappropriate at the motion to dismiss stage for this Court to interpret the parties' contract and evaluate the viability of Plaintiff's claims based on the terms of the contract."). For these reasons, Ms. Pickens' motion to dismiss the claims for indemnification in the complaint is **DENIED**.

4. Interest

Lastly, Ms. Pickens argues that she is not liable for prejudgment and post-judgment interest under 26 U.S.C. §§ 6901, 6601, and 6621. (Doc. No. 15-1 at 22.) This argument is predicated on Ms. Pickens' contention that she has no liability for estate tax under 26 U.S.C. § 6324(a)(2). (*Id.*) Because the Court has not yet adjudicated whether Ms. Pickens is liable for the estate tax, it would be premature to dismiss Plaintiff's claims for interest. Accordingly, Ms. Pickens' request to dismiss the claims for prejudgment and post-judgment interest is **DENIED**.

For the reasons detailed above, Ms. Pickens' motion to dismiss is **GRANTED** as to any purported claim under § 3713, as well as any claim under § 6234(a)(2) stemming from Ms. Pickens' role as trustee of the Marital Trust, as beneficiary of the Living Trust, or as transferee of the Living Trust. As to all other asserted grounds, the motion to dismiss is **DENIED**.

C. Vikki Paulson and Ms. Christensen's Motion to Dismiss

Vikki Paulson and Ms. Christensen assert several of the same arguments as Ms. Pickens in support of dismissal. (*See generally* Doc. No. 19-1.) Plaintiff similarly opposes dismissal. (Doc. No. 27.) To the extent the parties' arguments with respect to this motion mirror those presented above, they are incorporated by reference as if fully restated herein.

1. 26 U.S.C. § 2002

Vikki Paulson and Ms. Christensen argue they were never "statutory executors" of the Estate and cannot be held liable under § 2002. (*See* Doc. No. 19-1 at 10–11.) Having already concluded the complaint sufficiently alleges Michael Paulson resigned as

executor of the Estate, and for the reasons set forth more full above, this argument is rejected. Accordingly, Vikki Paulson and Ms. Christensen's request to dismiss the § 2002 claim is **DENIED**.

2. 28 U.S.C. § 6324(a)(2)

Vikki Paulson and Ms. Christensen argue that they are not liable for estate taxes as either transferees or trustees because they did not have or receive any property of the Estate on the date of Mr. Paulson's death. (Doc. No. 19-1 at 13.) Vikki Paulson and Ms. Christensen similarly rely on *Johnson*, but focus on the requirement that a transferee or trustee be in possession of the Estate property or receive Estate property "on the date of the decedent's death." (*Id.* at 14.) Plaintiff argues the clear language of § 6324 does not require that a transferee receive property on the date of the decedent's death under the statute. (Doc. No. 27 at 24–25.)

The Court similarly finds *Johnson* and the reasoning set forth therein persuasive with respect to whether Plaintiff must allege that the transferee received property immediately upon the date of decedent's death. *See Johnson*, 2013 WL 3925078, at *5 ("Because section 6324(a)(2) may be interpreted in multiple ways, it is ambiguous and must be interpreted in favor of the Heirs. The court concludes that in order for a person to be a transferee under section 6324(a)(2), the person must have or receive property from the gross estate immediately upon the date of decedent's death rather than at some point thereafter."); *see also Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932) (noting that ambiguities as to the meaning of a tax statute are interpreted in favor of the taxpayer). The complaint does not allege that Vikki Paulson or Ms. Christensen were in possession of Estate property or received such property immediately after Ms. Paulson's death. For these reasons, Plaintiff has failed to state a claim against Vikki Paulson or Ms. Christensen as trustees or transferees under § 6234(a)(2). Accordingly, those claims are **DISMISSED**.

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3. California Probate Code § 19001

Vikki Paulson and Ms. Christensen move to dismiss Plaintiff's claim predicated on California Probate Code section 19001. (Doc. No. 19-1 at 19.) In support of dismissal, Vikki Paulson and Ms. Christensen argue that § 19001(a) does not apply to estate taxes, and therefore cannot serve as a basis for liability for unpaid estate taxes incurred after a settlor's death. (*Id.* at 19–20.) Plaintiff argues that it has stated a claim because § 19001 includes "expenses of administration of the estate" as well as "all other proper charges against the trust estate, including taxes." (Doc. No. 27 at 21) (quoting Cal. Prob. C. § 19001(f), (b).) Lastly, Plaintiff cites California Probate Code Section 11420, which states the priority to be assigned to debts, claims, and costs of administration to argue the estate taxes owed are entitled to the highest preference in order of payment. (*Id.* at 22.)

California Probate Code section 19001(a) states, "Upon the death of a settlor, the property of the deceased settlor . . . is subject to the claims of creditors of the deceased settlor's probate estate and to the expenses of administration of the probate estate to the extent that the deceased settlor's probate estate is inadequate to satisfy those claims and expenses." The portion of statutory text relied upon by Vikki Paulson and Ms. Christensen, Section 19000(a)(2) defines a "claim" as "a demand for payment for . . . [l]iability for taxes incurred before the deceased settlor's death, whether assessed before or after the deceased settlor's death[.]"

Considering the cited statutory text and the allegations in the complaint, the Court concludes Plaintiff has adequately stated a claim under § 19001. (*See* Doc. No. 1 ¶¶ 7, 18, 66.) Whether the estate tax constitutes an expense of administration, a debt, or a claim as encompassed by section 19001, can be appropriately determined when the Court is not bound by the allegations in the complaint. Therefore the request to dismiss the claims based on California Probate Code § 19001 is **DENIED**.

4. Third-Party Contractual Claims

Vikki Paulson and Ms. Christensen lastly move to dismiss the claim that they are liable for breach of a third party contract. (Doc. No 19-1 at 20.) Vikki Paulson and Ms.

Christensen contend the complaint alleges that they breached an unspecified third party contract, but lacks factual allegations to support that theory of liability. (*Id.*)

Plaintiff's opposition clarifies that the third party beneficiary theory stems from Vikki Paulson and Ms. Christensen's roles as the current trustees of the Living Trust. (Doc. No. 27 at 19.) Plaintiff cites the terms of the Living Trust, which obligate the trustees to pay all estate taxes owed by the Estate as support for its position. (*Id.*)

Considering the allegations in the complaint as a whole, including the allegations that Vikki Paulson and Ms. Christensen are the current co-trustees of the Living Trust, Plaintiff has stated a claim under a third party beneficiary theory. Accordingly, the motion to dismiss is **DENIED** as to this claim.

D. James Paulson's Motion to Dismiss

Defendant James Paulson is proceeding pro se in this litigation, and has similarly moved to dismiss the complaint. (*See* Doc. No. 36.) James Paulson challenges the propriety of the deferred payment election pursuant to § 6166, as well as the timeliness of Plaintiff's actions to collect the estate taxes owed.[8] (*Id.*) James Paulson also argues there is no evidence that he was ever the executor of the Estate. (*Id.* at 7.)

Like the other defendants, the complaint asserts a claim against James Paulson in his representative capacity as a potential statutory executor of the Estate under 26 U.S.C. § 2203. In opposition to James Paulson's motion, Plaintiff acknowledges that it "merely seeks to obtain a judgment against the Estate by naming its executor or administrator in a representative capacity" to "reduce the estate tax liability to a judgment under 26 U.S.C. § 7402, and to extend the statute of limitations for collection of that tax under 26 U.S.C. § 6502." (Doc. No. 42 at 5) Plaintiff also acknowledges that the defendant deemed to be the

[8] Whether the § 6166 election was proper is not appropriate for consideration in the instant context as it is not a challenge to the adequacy of the factual allegations in the complaint. Additionally to the extent James Paulson's motion challenges the truth of the factual allegations underlying Plaintiff's complaint, those arguments are premature for consideration in the instant context.

actual executive or administrator is of little consequence, so long as someone appears in the case as a representative of the Estate. (*Id.* at 6.)

As with the other defendants, the Court finds there are sufficient facts alleged, when taken as true, to state a plausible claim for relief against James Paulson as the statutory executor of the Estate. In addition to alleging Michael Paulson resigned as the court-appointed executor, the complaint alleges James Paulson acted as a co-trustee of the Living Trust. (Doc. No. 1 ¶ 44.) These allegations are sufficient to state a claim against James Paulson as a statutory executor.

Plaintiff also asserts a claim against James Paulson for personal liability under § 6324(a)(2), because he served as a co-trustee of the Living Trust and received assets that were included in the gross estate. (Doc. No. 1 ¶¶ 73–77); (Doc. No. 42 at 7.)[9] Upon review, the Court finds the claim for personal liability under § 6324(a)(2) based on James Paulson's role as a co-trustee of the Estate is sufficiently alleged.

For these reasons, James Paulson's motion to dismiss is **DENIED**.

E. Ms. Pickens' Motion to Dismiss Cross-Claim

Defendant Michael Paulson did not move to dismiss the claims asserted in the complaint, instead filing an answer and cross-claim. (Doc. No. 38.) Michael Paulson asserts he is entitled to indemnification from Ms. Pickens based on a provision in 2003 Settlement agreement. (*Id.* at 21.)[10] Ms. Pickens has moved to dismiss the cross-claim citing various sections of the 2003 Settlement, arguing that any indemnification by Ms. Pickens relates only to estate tax payable because of distributions made pursuant to the 2003 Settlement. (Doc. No. 40-1 at 3.) Ms. Pickens contends that Michael Paulson's cross-claim fails to state a claim because there has been no estate tax liability assessed because of distributions made to Ms. Pickens, as all distributions qualified for the marital

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[9] James Paulson does not address this claim in his motion to dismiss, but Plaintiff addresses it in opposition. (*See* Doc. No. 42 at 10.)

[10] Additionally, Michael Paulson asserts he is entitled to indemnity as trustee of the Living Trust and as co-executor of the Estate. (*Id.*)

deduction. (*Id.* at 4.) In opposition, Michael Paulson urges the Court not to dismiss the cross-claim until liability for the estate taxes at issue has been determined.

The Court agrees that dismissal of Michael Paulson's cross-claim for indemnification would be premature at this stage. Additionally, the parties rely on different provisions of the 2003 Settlement agreement as support for their respective positions regarding indemnification. For example, Ms. Pickens relies on paragraph 21 of the 2003 Settlement, while Michael Paulson suggests indemnification is appropriate under paragraph 4.[11] In the limited context of ruling on a motion to dismiss, the Court declines to decide which provision governs. For these reasons, Ms. Pickens' motion to dismiss the cross-claim is **DENIED**.

F. Vikki Paulson and Ms. Christensen's Motion to Dismiss Cross-Claim

Michael Paulson similarly asserts a cross-claim against Vikki Paulson and Ms. Christensen for indemnification stemming from the 2013 Settlement. (Doc. No. 38 at 21.) In opposition, Michael Paulson similarly requests the Court decline to dismiss the claim for indemnification until liability has been established. (Doc. No. 51 at 5.)

Vikki Paulson and Ms. Christensen assert several grounds for dismissal, including that they are not executors of the Estate, that Michael Paulson released any claim for indemnification as part of the 2013 Settlement, and that the portion of the Settlement relied upon by Michael Paulson omits crucial language. (Doc. No. 44 at 7.) Vikki Paulson and Ms. Christensen also filed a second request for judicial notice with their motion to dismiss the cross-claim and seek judicial notice of several documents pursuant to Rule 201 or the doctrine of incorporation by reference. (Doc. No. 44-2.) The arguments in support of dismissing Michael Paulson's claim for indemnification rely largely on

[11] Michael Paulson alternatively argues paragraph 21 of the 2003 Settlement is ambiguous and cannot be interpreted as a matter of law to preclude his claim for indemnification.

testimony before the Probate Court regarding the 2013 Settlement and the terms of the agreement itself. (*See, e.g.*, Doc. No. 44-1 at 9–11.)

For many of the same reasons articulated above, the Court declines to dismiss Michael Paulson's claim for indemnification against Vikki Paulson and Ms. Christensen at this time. First, Michael Paulson objects to the request for judicial notice, arguing the documents are irrelevant in ruling on the motion to dismiss. (Doc. No. 51 at 6 n.4.) Michael Paulson also argues that the Probate Court transcript has been highly edited in an attempt to demonstrate that Michael Paulson knew he was releasing any claim for indemnification. (*Id.*) Although the Court could properly consider the transcript in its entirety, it declines to do so where the meaning and effect of 2013 Settlement agreement is disputed. As noted in opposition, "it is unclear whether any of the [Plaintiff's] claims against Michael Paulson arise out of the 2013 Settlement Agreement." (*Id.*) If liability is determined, then a claim for indemnification could possibly arise based on the facts alleged in the cross-claim. Dismissal of the claim when the underlying grounds for liability have not yet been adjudicated is premature.

Additionally, Vikki Paulson and Ms. Christensen rely on the argument that they are not statutory executors of the Estate in support of dismissal. As set forth above, the complaint states plausible grounds for finding they were executors of the Estate following Mr. Paulson's resignation. With respect to resignation, Vikki Paulson and Ms. Christensen now assert Michael Paulson never completed his resignation because he did not file an accounting or deliver the Estate to a successor personal representative. (Doc. No. 44-1 at 18.) Again, factual allegations contrary to those in the complaint and that are directed at the merits of a claim are not appropriate for consideration. For these reasons, the Court declines to dismiss Michael Paulson's cross-claim, and Vikki Paulson and Ms. Christensen's motion is therefore **DENIED**. Because the Court will not consider the documents attached to the request for judicial notice to the extent suggested by the parties, the request for judicial notice is also **DENIED**.

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IV. CONCLUSION

For the reasons set forth above, the Court orders as follows:

1. Ms. Pickens' motion to dismiss the complaint, (Doc. No. 15), is **GRANTED** as to any claim under § 3713, and as to any claim based on her role as the trustee of the Marital Trust. The motion is **DENIED** on all other grounds.
2. Vikki Paulson and Ms. Christensen's motion to dismiss the complaint, (Doc. No. 19), is **GRANTED IN PART** and **DENIED IN PART**. The request for judicial notice filed in connection with the motion to dismiss the complaint, (Doc. No. 19-2), is **GRANTED IN PART** and **DENIED IN PART**.
3. James Paulson's motion to dismiss, (Doc. No. 36), is **DENIED**.
4. Ms. Pickens' motion to dismiss the cross-claim, (Doc. No. 40), is **DENIED**.
5. Vikki Paulson and Ms. Christensen's motion to dismiss the cross-claim, (Doc. No. 44), is **DENIED**. The request for judicial notice filed with the motion to dismiss the cross-claim, (Doc. No. 44-2), is also **DENIED**.

If Plaintiff may plausibly allege additional facts to cure the deficiencies noted herein, Plaintiff may file an amended complaint only as to the dismissed claims within fourteen (14) days of the date of this order. Defendants are otherwise ordered to file an answer to the complaint or cross-claim, as applicable, within fourteen (14) days of the date of this order or within fourteen (14) days of an amended complaint being filed, whichever is later.

IT IS SO ORDERED.

Dated: September 6, 2016

Hon. Anthony J. Battaglia
United States District Judge

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellant, v. JAMES D. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson; VIKKI E. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust; CRYSTAL CHRISTENSEN, individually;and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust; MADELEINE PICKENS, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Trustee of the Marital Trust created under the Allen E. Paulson Living Trust; and as Trustee of the Madeleine Anne Paulson Separate Property Trust, Defendants-Appellees.	No. 21-55197 D.C. No. 3:15-cv-02057-AJB-NLS Southern District of California, San Diego ORDER

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOHN MICHAEL PAULSON, individually; and as Executor of the Estate of Allen E. Paulson; JAMES D. PAULSON,	No. 21-55230 D.C. No. 3:15-cv-02057-AJB-NLS

individually; and as statutory executor of the Estate of Allen E. Paulson, MADELEINE PICKENS, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Trustee of the Marital Trust created under the Allen E. Paulson Living Trust; and as Trustee of the Madeleine Anne Paulson Separate Property Trust,

Defendants,

and

VIKKI E. PAULSON, individually; and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust; CRYSTAL CHRISTENSEN, individually;and as statutory executor of the Estate of Allen E. Paulson; and as Co-Trustee of the Allen E. Paulson Living Trust,

Defendants-Appellants.

Before: WARDLAW, IKUTA, and BADE, Circuit Judges.

Judges Wardlaw and Bade have voted to deny the petition for rehearing en banc filed by Appellees Crystal Christensen and Vikki E. Paulson and to deny the petition for rehearing en banc filed by Appellee Madeleine Pickens. Judge Ikuta voted to grant both petitions for rehearing en banc.

The full court has been advised of both petitions for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for rehearing en banc, Dkts 67 and 68, are denied.