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APPENDIX A

IN THE
Court of Appeal of the State of California
IN AND FOR THE
Fifth Appellate District

BEVERLY PELLEGRINI,
Plaintiff and Appellant,

v.

FRESNO COUNTY PUBLIC GUARDIAN, as Trustee, etc. et al.,
Defendants and Respondents.

Case No. F088717
Fresno County Super. Ct. No. 10CEPR00683

TO THE SUPERIOR COURT:

* * * **REMITTITUR** * * *

This remittitur is issued in the above-entitled cause. Also enclosed is a file-stamped copy of the opinion/order.

Respondent(s) to recover costs.

Date: February 26, 2026

BRIAN COTTA, Clerk/Executive Officer
/s/
By: Nicole Acosta, Deputy Clerk

APPENDIX B

Court of Appeal , Fifth Appellate District
Brian Cotta, Clerk/Executive Officer
Electronically FILED on 12/12/2025
by Nicole Acosta, Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE FIFTH APPELLATE DISTRICT

BEVERLY PELLEGRINI,
Plaintiff and Appellant,

v.

FRESNO COUNTY PUBLIC GUARDIAN, as Trustee, etc. et al.,
Defendants and Respondents.

F088717
(Super. Ct. No. 10CEPR00683)

Appellant's petition for rehearing filed December 9, 2025, in the above referenced case is hereby denied.

/s/
DETJEN, J.

WE CONCUR:

/s/
LEVY, Acting P.J.
/s/
PENA, J.

APPENDIX C

Court of Appeal , Fifth Appellate District
Brian Cotta, Clerk/Executive Officer
Electronically FILED on 11/26/2025
by MTAYLOR, Deputy Clerk

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIFTH APPELLATE DISTRICT

BEVERLY PELLEGRINI,
Plaintiff and Appellant,

v.

FRESNO COUNTY PUBLIC GUARDIAN, as Trustee, etc. et al.,
Defendants and Respondents.

F088717
(Super. Ct. No. 10CEPR00683)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Brian M. Arax, Judge.

Beverly Pellegrini, in pro. per., for Plaintiff and Appellant.

Peter Wall, Interim County Counsel, Heather H. Kruthers, Chief Deputy County Counsel, for Defendant and Respondent Fresno County Public Guardian.

Marleen Merchant, in pro. per., for Defendant and Respondent Marleen Merchant.

-ooOoo-

On June 18, 1999, Lillian Dorothy Pellegrini (Lillian)[1] and her husband Angelo John Pellegrini (Angelo) executed the "Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust" (Trust). (Boldface & underscoring omitted.) The Trust provided Marleen Joyce Merchant (Marleen) and Beverly Jean Pellegrini (Beverly)-Lillian and Angelo's daughters-would receive the remainder of the Trust estate in equal shares after Lillian and Angelo died.

During their joint lifetimes, Lillian and Angelo were cotrustees of the Trust. Following Angelo's death on March 27, 2008, Lillian became the sole trustee. Under the terms of the Trust, upon the death of the first spouse, the surviving spouse was required to divide the Trust estate into three subtrusts–a "'Survivor's Trust,'" a "'Marital Trust,'" and a "'Family Trust'"–and fund them. In probate proceedings in the 2010's, the superior court found Lillian repeatedly refused to fund the Family Trust and wrongfully took

[1] In this opinion, we refer to individuals by their first names for clarity and convenience. No disrespect is intended.

assets belonging thereto in bad faith. The court removed Lillian as trustee and appointed the Fresno County Public Guardian (Public Guardian) as successor trustee. Lillian appealed from some-but not all-appealable orders and this court affirmed them in 2016. *(Merchant v. Pellegrini* (Oct. 31, 2016, F072656) [nonpub. opn.].)

Lillian passed away on November 6, 2023. On April 2, 2024, Beverly filed a motion as Lillian's "personal representative" and "successor in interest" to "void all previous orders, opinions and judgments." The superior court denied this motion in an August 13, 2024 order. On August 27, 2024, Beverly filed a motion to vacate the August 13, 2024 order. The court treated the August 27, 2024 motion as one for reconsideration and denied it in a September 18, 2024 order. In a separate September 18, 2024 order, the court approved, allowed, and settled the Public Guardian's "... Final Account Current and Report ..." (some capitalization omitted) covering the period of March 24, 2018, through March 12, 2024; authorized compensation to the Public Guardian and its attorney for services rendered during the period of accounting; authorized payment of a bond fee from the estate; and authorized distribution of the Family Trust's remaining assets to Marleen and Beverly in equal shares. On appeal from these three orders,[2] Beverly

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[2] The "Notice of Appeal" (boldface & capitalization omitted) indicated Beverly appeals from orders entered "August 13, 2024 and September 18, 2024." Attached to the civil case information statement were (1) a probate minute order accompanied by a detailed written ruling entered on August 13, 2024; (2) a probate

makes numerous contentions that have already been decided in the earlier proceedings and/or invite us to ignore established findings. She also provides briefing with deficiencies fatal to appellate review. For the reasons set forth below, we affirm the orders.

BACKGROUND

The following background is taken from the appellate record, which does not include a reporter's transcript.

I. Provisions of the Trust instrument

a. *The subtrusts*

Upon the death of the first spouse, the surviving spouse-as the sole trustee" shall divide the Trust estate" "into three separate trusts": the Survivor's Trust, the Marital Trust, and the Family Trust.

The share of the Trust estate to be allocated to the Survivor's Trust "shall consist of the Surviving Spouse's interest in the Trustors' community property and the Surviving Spouse's separate property, if any ...." "The entire net income from the Survivor's Trust shall be distributed currently to the Surviving Spouse in quarter-annual or more frequent installments during his/her life." "The Trustee may pay to or apply

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minute order accompanied by a detailed written ruling entered on September 18, 2024; and (3) a second probate minute order, without accompanying written order, also entered on September 18, 2024.

for the benefit of the Surviving Spouse so much of the principal of [the Survivor's] Trust as the Trustee may deem proper or necessary to provide the Surviving Spouse with reasonable support, care, comfort or happiness." Upon the death of the surviving spouse, "the principal of [the Survivor's] Trust shall be added to the Family Trust and distributed in the same fashion as provided for hereinafter [regarding the Family Trust]."

The share of the Trust estate to be allocated to the Marital Trust "shall consist of the minimum dollar amount necessary for a marital deduction to eliminate (or to reduce to the extent possible) any federal estate tax at the death of the Deceased Spouse ...." "It is the Deceased Spouse's intent that assets qualifying for the federal estate tax marital deduction shall be transferred to the Marital Trust only to the extent that such transfer would effect a reduction in the federal estate tax otherwise payable by the Deceased Spouse's estate." "The entire net income from the Marital Trust shall be distributed currently to the Surviving Spouse in quarter-annual or more frequent installments during his/her life." "The Trustee may pay to or apply for the benefit of the Surviving Spouse so much of the principal, up to the whole thereof, as the Trustee deems appropriate for the surviving spouse's health, general welfare and support in accordance with his/her accustomed standard of living ...." Upon the death of the surviving spouse, the principal of the Marital Trust "shall be distributed" "as follows: One (1) share for each of the Trustors' then living children and one (1) share for each group of issue of any deceased child by right of representation."

The share of the Trust estate to be allocated to the Family Trust "shall consist of the balance of the Trust Estate representing the balance of the Deceased Spouse's interest in the Trustors' community property and the balance of the Deceased Spouse's separate property included in the Trust Estate but after the allocation of such property to the Marital Trust." "The Trustee shall distribute the income and so much of the principal [of the Family Trust] as the Trustee deems appropriate in the event of accident, illness or like emergency to the Surviving Spouse or to maintain the Surviving Spouse in his or her accustomed standard of living or for extended care." Upon the death of the surviving spouse, "the entire principal and any accrued income shall be distributed as follows: One (1) share for each of Trustors' then living children and one (1) share for each group of issue of any deceased child by right of representation."

b. *Power to amend or revoke the Trust*

During their joint lifetimes, Angelo and Lillian were free to revoke "in whole or in part" or amend "any of the terms of' the Trust. Upon the death of first spouse, the surviving spouse "shall have the power to amend, revoke or terminate the Survivor's Trust, but the Marital Trust or the Family Trust may not be amended, revoked or terminated on the death of the Deceased Spouse."

c. *2004 amendment to the Trust*

On August 11, 2004, Angelo and Lillian executed an amendment to the Trust, which revised the provision regarding the distribution of the Family Trust upon the death of the surviving spouse. The amendment primarily focused on one item of Trust property–Angelo and Lillian's residence in San Francisco–and provided Beverly with a right to a life estate therein that could be used or relinquished by her, after which an equal division between the trustors' two daughters would be carried out. Other provisions of the Trust remained unchanged.

After Angelo's death, Lillian sold the San Francisco residence in 2009.

II. Earlier court proceedings

a. *Fresno Superior Court*

On July 3, 2012, Marleen–as a remainder beneficiary–filed a petition to remove Lillian as trustee, appoint a successor trustee, and obtain other relief. According to the petition, Lillian refused to provide information concerning the Trust assets following Angelo's death. In 2010, Marleen successfully applied to the superior court for an order compelling Lillian to provide an accounting of the assets as of the time of Angelo's death as well as information on how the assets were allocated between the three subtrusts. On December 3, 2010, Lillian-then represented by counsel-filed and signed under penalty of perjury a "STATEMENT OF TRUST ASSETS AS OF MARCH 27, 2008." Included with this statement was a summary of a purported allocation of Trust assets valued at $544,386.91 to the Family Trust. Among the assets set forth in the allocation was one-half of the

$800,000 value of the San Francisco residence as of March 27, 2008, or $400,000. In 2011, however, Lillian–then no longer represented by counsel–directly contradicted or repudiated the statement. Specifically, in a letter dated September 2 7, 2011, in response to a request by Marleen's attorney for further information and accounting concerning the Family Trust, Lillian asserted no Family Trust existed, there were no assets in the Family Trust, and no assets were ever allocated or distributed to a Family Trust. Consequently, Lillian breached the Trust in two ways: (1) by failing to fund the Family Trust; and (2) even if the Family Trust had been funded, by making contradictory and bad faith representations to the beneficiaries, which displayed her unfitness to serve.

On January 13, 2014, Marleen filed a petition for the recovery of property belonging to the Family Trust and awards for double damages and attorney's fees and costs under Probate Code section 859. This petition was based on essentially the same factual allegations as the July 3, 2012 petition, but it raised new allegations related to a revised accounting filed by Lillian in 2013. In said accounting, Lillian (1) confirmed no Family Trust was ever created or funded following Angelo's death; (2) claimed the San Francisco real property was entirely her separate property upon Angelo's death; and (3) admitted she held assets that were formerly in the Trust estate in her own name individually and outside of the Trust. The petition further alleged: "'[B]y purposefully and continuously refusing over the last five years to follow the provisions of the Trust agreement that require her to create a Family Trust, Lillian has in bad faith wrongfully taken, concealed and disposed of property belonging to the Family Trust.'" Marleen subsequently moved to bifurcate the issues. The superior court granted the request on June 17, 2014. Under the bifurcation order, a trial on "'the issues of (a) whether the Family Trust was required to be funded after [Angelo's] death and ... (b) whether the title to the San Francisco real property maintained its joint tenancy characterization after being transferred to [the Trust]'" would proceed first. Outstanding issues would be set for separate trials.

On January 14, 2015, the first trial commenced. After considering the evidence presented and the parties' arguments, the superior court issued its findings and order after trial on January 20, 2015. It found–by clear and convincing evidence– "'the Family Trust was required to be funded following the death of Angelo ... on March 27, 2008,'" and "should have been funded with"'"a minimum of $544,386.91'"at that time. The court also found–by clear and convincing evidence– "'the title to the San Francisco real property did not maintain its joint tenancy characterization after being transferred to the Trust.'" On January 28, 2015, Marleen served a notice of entry of the January 20, 2015 order. Lillian did not appeal from this order.

On May 11, 2015, a hearing was held to determine whether Lillian should be removed as trustee of the Family Trust. In an order filed May 15, 2015, the superior court (1) ordered Lillian's removal as trustee of the Family Trust"'for failing to fund the Family Trust after the death of Angelo'"; and (2) appointed the Public Guardian as the successor trustee for the Family Trust. Furthermore, the order directed Lillian "'to fund the Family Trust in the amount of $544,386.91, and [to] pay said amount to the ... Public Guardian as the Successor Trustee of the Family Trust .... '" On May 21, 2025, Marleen served a notice of entry of the May 15, 2015 order. Lillian did not appeal from this order.

On August 25, 2015, one more trial was conducted to resolve the remaining issues. The superior court reviewed the court file, heard the testimony of witnesses, considered other evidence presented at trial, and heard the arguments of counsel and Lillian. In its findings and order after trial issued September 4, 2015, the court pronounced:

> "'1. ... Lillian ... is in default with respect to the Petition to Recover Property Belonging to Trust, For Award of Double Damages, And For Recovery of Attorneys' Fees and Costs, as she does not have a written response on file to that petition.
>
> "'2. Further, based on the evidence of
>
> "'(a) [Lillian's] repeated misrepresentations regarding the funding of the Family Trust;
>
> "'(b) [Lillian's] deliberate refusal to fund the Family Trust, even in the face of court orders to do so;
>
> "'(c) [Lillian's] repeated delay of the

> proceedings through the filing of frivolous motions and proceedings; and,
>
> "'(d) [Lillian's] outright refusal to comply with the terms of [the Trust],
>
> "'the [c]ourt finds that ... Lillian ... in bad faith wrongfully took assets belonging to the Family Trust, and double damages are awarded pursuant to [Probate Code] section 859.
>
> "'3. The evidence is uncontradicted that ... Lillian ... repeatedly breached the standard of care with respect to her duties as trustee, including, among other things, by failing to fund the Family Trust, even after being ordered to do so. The [c]ourt finds that this conduct justifies an award of attorneys' fees and costs in favor of ... Marleen ... as a surcharge against . . . Lillian ....'"

Based on the above findings, the court ordered Lillian to "'pay double damages in the amount of $544,386.91 to the ... Public Guardian as the Successor Trustee of the Family Trust ... pursuant to ... [Probate Code] section 859'" "'in addition to the $544,386.91 that [Lillian] was already ordered to pay to the ... Public Guardian as the Successor Trustee of the Family Trust'" (italics omitted) pursuant to the May 15, 2015 order. The court also ordered Lillian to be "'surcharged for the attorneys' fees and costs that ... Marleen ... has incurred in this matter in the amount of $439,497.62.'"

In mid-October 2015, as Lillian continued to take no action to comply with the superior court's orders, the Public Guardian filed an ex parte application seeking to enforce the judgment embodied in the September 4, 2015 order against a financial account held by Lillian. The application alleged relief was sought on an ex parte basis due to Lillian repeatedly stating she would not fund the Family Trust, which created a reasonable likelihood she would attempt to move or conceal assets if a noticed motion were brought. On October 20, 2015, the superior court granted the ex parte relief sought by the Public Guardian, including freezing Lillian's accounts at UBS Financial Services (UBS) until further order of the court and requiring UBS to transfer the sum of $1,528,271.44 to the Public Guardian in full satisfaction of the September 4, 2015 order. There was insufficient cash in Lillian's accounts to satisfy the entire judgment, but not all the assets were in the form of cash. A November 16, 2015 follow-up order authorized the Public Guardian to direct UBS as to which noncash assets to liquidate. Lillian did not appeal from the November 16, 2015 order. She filed a motion for a writ of supersedeas or–in the alternative–a writ of prohibition relating to the postjudgment orders, which this court denied on January 19, 2016.

b. *Fifth District Court of Appeal*

On October 28, 2015, Lillian appealed from the September 4, 2015 order and the October 20, 2015 postjudgment order. At the outset, this court noted "affirmance would appear to be supportable based on the deficiencies in the record alone,"[3] but it would "nonetheless briefly consider Lillian's main arguments" "in an abundance of caution." *(Merchant v. Pellegrini, supra,* F072656.)

First, Lillian argued "(1) the Trust was wholly revocable by [her] after Angelo's death and ... she did not have to fund the Family Trust and (2) the San Francisco real property, after being transferred into the Trust, retained its joint tenancy status and became her separate property upon Angelo's death." This court pointed out "those issues were resolved against Lillian in the January 2015 Order and ... cannot be raised by Lillian in the present appeal" because she "did not file a timely appeal (or any appeal) from the January 2015 Order."[4],[5] This court also pointed out any other arguments against the validity of the January 20 and May 15, 2015 orders were forfeited because "th[e]se orders were not timely appealed by [Lillian] and are not subject to [a] belated collateral attack in an appeal

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[3] These "glaring deficiencies" included a "minimal record" that did not contain either a clerk's transcript or a reporter's transcript and sporadic citations thereto in the opening brief. *(Merchant v. Pellegrini, supra,* F072656.)

[4] This court rejected Lillian's assertion "the January 2015 Order was 'interlocutory and not subject to appeal,'" citing Probate Code section 1304, subdivision (a). *(Merchant v. Pellegrini, supra,* F072656.)

[5] This court later added "case law adequately supported the trial court's determination that the San Francisco real property was no longer in joint tenancy once it was transferred by the trustors into the Trust." *(Merchant v. Pellegrini, supra,* F072656.)

from a subsequent order."[6] *(Merchant v. Pellegrini, supra,* F072656.)

Next, Lillian "characterize[d] her arguments challenging the validity of th[e] [January 20 and May 15, 2015] orders as jurisdictional," i.e., "she claim[ed] the trial court exceeded its power or jurisdiction to act." This court believed this to be "an apparent effort to get around the problem of failing to timely appeal from the prior orders" and opted to "briefly address Lillian's arguments to the extent that she has portrayed the alleged errors as jurisdictional." (Italics omitted.) Lillian contended "Marleen lacked standing to seek any relief under [Probate Code] section 17200 and the trial court was without power to grant Marleen's petition." She advanced "substantially the same ... argument concerning the May 2015 Order removing Lillian as trustee of the Family Trust and appointing the ... Public Guardian as successor trustee." This court observed these arguments "relie[d] on Lillian's assumption that the Trust was entirely revocable by her at all times, even after Angelo's

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[6] For instance, this court highlighted Lillian's argument "the Family Trust became invalid as a result of the 2024 amendment because that amendment, by focusing primarily on the San Francisco real property, allegedly left out an explicit beneficiary designation for the personal property in the Family Trust upon the death of the surviving spouse." (Italics omitted.) On top of "completely reject[ing] [any] attacks on the trial court's orders requiring the funding of the Family Trust" as forfeited, this court noted " [t]he trial court implicitly rejected" the aforementioned claim "because it[s] order requiring that the Family Trust be funded necessarily included the court's conclusion that the Family Trust was valid." *(Merchant v. Pellegrini, supra,* F072656.)

death," which was "a false foundational premise" because "the Trust clearly provided that after the death of the first spouse, the Trust assets were to be divided into the separate subtrusts and only the Survivor's Trust would remain revocable." *(Merchant v. Pellegrini, supra,* F072656.)

With regard to the October 20, 2015 postjudgment order, from which she timely appealed, Lillian argued she "was entitled to a noticed hearing" because the order "entailed the taking or transfer of property." This court explained (1) it could not be "adequately apprised of the exact nature or extent of any alleged deficiency of notice or opportunity to be heard" because Lillian "failed to provide a sufficient record"; and (2) "ex parte relief may be granted on extremely short notice" "[w]here exceptional circumstances are present," but "Lillian's appeal fail[ed] to address the issue of whether her ongoing defiance of the trial court's direct orders to fund the Family Trust, and the risk implied therefrom that she would seek to hide or conceal assets to prevent enforcement of the Damages Order may have provided justification for the trial court to proceed on an ex parte basis in this particular instance." *(Merchant v. Pellegrini, supra,* F072656.)

Lillian then argued "all of the proceedings in the trial court below ... must be set aside based on an alleged failure to join Beverly as an indispensable party under Code of Civil Procedure section 389." This court determined she "forfeited the issue" because she "fail[ed] to cite anything in the record to indicate that she ever pursued a motion to bring Beverly in as a party or that she otherwise raised the argument in the trial court." Lastly, Lillian appeared to contend "the trial court's rulings should be reversed because the trial court allegedly engaged in or abetted the commission of fraud and embezzlement when it permitted the judgment to be enforced against Lillian's financial account at UBS" and "the ex parte petitions contained perjured declarations." This court found these claims "largely unintelligible and without any support in the record" and deemed them forfeited. *(Merchant v. Pellegrini, supra,* F072656.)

In affirming the judgment and orders, this court concluded Lillian's appeal "failed to establish any reversible error or abuse of discretion in regard to the [previous] orders of the trial court." *(Merchant v. Pellegrini, supra,* F072656.) The California Supreme Court denied a petition for review. (See *ibid.,* review den. Jan. 11, 2017, S238760.) The remittitur was issued January 12, 2017.

c. *Federal court*

Following the foregoing state court proceedings, Lillian filed a federal action against Fresno County (including the Public Guardian), the superior court, three banks (including UBS), and Marleen's counsel. *(Pellegrini v. Fresno County* (9th Cir. 2018) 742 Fed.Appx. 209, 210.) The federal district court "dismissed the complaint with prejudice for lack of subject-matter jurisdiction." *(Ibid.)* On appeal, the Ninth Circuit Court of Appeals held: (1) both the Eleventh Amendment and the *Rooker-Feldman* doctrine deprived the district court of jurisdiction over Lillian's claims against the superior court *(Pellegrini* *v. Fresno County, supra,* 742 Fed.Appx. at p. 210); (2) Lillian "failed to 'specifically and distinctly' argue on appeal why the district court had subject matter jurisdiction over the fraud and conversion claims against the other defendants" and forfeited the issue *(ibid.);* (3) Lillian's claims "directly contravene[d] the Superior Court's holding that these assets belonged to the trust" and "[t]he district court lacked jurisdiction over these 'inextricably intertwined' claims, as ... 'the relief requested in the federal action would effectively reverse the state court decision or void its ruling'" *(ibid.);* and (4) Lillian's "arguments of extrinsic fraud fail" as she "d[id] not contend that she was deprived of the ability to present her case in state court" *(id.* at p. 211). Nevertheless, the Ninth Circuit "vacate[d] the dismissal with prejudice and remand[ed] with directions that the dismissal be without prejudice" to allow Lillian to reassert her claims in a competent court. *(Ibid.)*

III. Current court proceedings

On April 2, 2024, Beverly–proceeding in propria persona–brought a survival action (Code Civ. Proc., § 377.30; Prob. Code, § 13107.5), moving to "void all previous orders, opinions and judgments" pursuant to Probate Code section 7250 and asking for "full restitution of the property taken from Lillian" and "all damages to which Lillian ... is entitled by law." Beverly presented various arguments that Lillian raised and the superior court addressed in earlier proceedings, such as: (1) Marleen lacked standing to petition for Lillian's removal as trustee; (2) the superior court exceeded its jurisdiction by ordering Lillian's removal as trustee and appointing the Public Guardian as successor trustee; (3) the failure to join Beverly as a party voided the superior court's judgment and rulings; (4) the Family Trust could not be funded; and (5) the San Francisco residence was Lillian's separate property upon Angelo's death. Beverly also presented new arguments, including: (1) the superior court exceeded its jurisdiction by issuing the November 16, 2015 ex parte order liquidating Lillian's assets; (2) Lillian was prevented from fully participating in the earlier proceedings and was deprived of a fair adversary hearing; (3) Marleen made false representations at the time she petitioned to remove Lillian as trustee; (4) Marleen, Marleen's attorney, UBS, and the superior court knew the San Francisco residence was Lillian's separate property upon Angelo's death yet engaged in fraudulent conversion; (5) the Public Guardian improperly consented to be trustee of the Family Trust, which was nonexistent, or otherwise breached the Family Trust; and (6) distribution of Lillian's "misappropriated sole and separate property" held in the Family Trust was limited to Beverly.

On April 11, 2024, the Public Guardian concurrently filed a "Third and Final Account Current and Report of Successor Trustee" (some capitalization omitted) covering the period of March 24, 2018, through March 12, 2024, and a "Petition for Allowance of Compensation to Trustee and Attorney and Distribution" (some capitalization omitted). The Public Guardian asked the superior court to (1) approve, allow, and settle the account and report; (2) authorize compensation in the amount of $1,731.84 to the Public

Guardian and $2,500 to the Public Guardian's attorney for services rendered to the Family Trust during the period of accounting; (3) permit the Public Guardian to pay a $16,128.18 bond fee from the Family Trust; and (4) allow distribution of the Family Trust's remaining assets to Marleen and Beverly in equal shares. On May 22, 2024, Beverly filed an opposition thereto.

In an August 13, 2024 order, the superior court denied Beverly's motion to void all previous orders, opinions, and judgments. In its statement of decision, the court reasoned:

> "[Beverly] argues that the trial court lacked jurisdiction, arguing that Marleen lacked standing under Probate Code sections 15800 and 17200. Lillian made the same argument in her appeal. This question has been decided by the Fifth District Court of Appeal[] and denied review by the California Supreme Court. The appellate court noted that this argument was based on a false foundational premise that the entire Trust was revocable after Angelo's death. [Citation.] [Beverly] also argues that the court lacked jurisdiction when it removed Lillian as trustee and appointed the [P]ublic [G]uardian. Similarly, the appellate court has already addressed this issue noting Lillian's arguments were based on the same faulty premise of a revocable trust and that there was no jurisdictional error. [Citation.] [Beverly] also repeats Lillian's previous argument that the ex parte order to

liquidate assets was void for lack of notice. The appellate court has already considered this issue and noted that Lillian had failed to show error. [Citation.] The appellate court additionally noted that there are circumstances in which the court may dispense with notice. [Citation.] [Beverly] also repeats Lillian's previous argument that lack of joinder is fatal to the judgment. The appellate court has already considered this argument and found this issue was not jurisdictional. [Citation.] For all of the claims [Beverly] makes now regarding the trial court's lack of jurisdiction to make the 2015 orders, the appellate court has already addressed that none of these jurisdictional arguments have merit. This court will not disturb the findings already made by the appellate court. [¶] ... [¶]

"... [Beverly] argues that this court's 2015 orders were based on fraud and that they should be considered void.

"... [Beverly], who is not licensed to practice law in the State of California, claims she was not permitted to be present in the courtroom during the August 2015 hearing. As such, Lillian was unable to call [Beverly] as a witness for tracing Lillian's financial assets. Then, Lillian who had been present in the morning was, for reasons not explained in the motion, unable to attend court in the afternoon. [Beverly] requested the court postpone the proceedings, which was denied. This does not amount to being denied the opportunity to be heard. If anything, this amounted to the court ensuring that a person not licensed to practice law in the State of California did not attempt to do so. Additionally, it appears that Lillian failed to appear for a portion of the hearing and did not have a justifiable excuse for that failure to participate. [¶] ... [N]othing has been presented by [Beverly] showing that anyone prevented Lillian from participating in the hearings.

"Notably, [Beverly]'s claims of extrinsic fraud are still based on the faulty premises already addressed by the appellate court. The appellate court has already noted that Lillian's claims about the nature of the property were faulty. [Citation.] [Beverly] also reiterates the previous claims that the San Francisco property should have been treated as Lillian's separate property. This court determined this question at the January 14, 2015 trial, finding that the property did not maintain its joint tenancy characterization after being transferred to the Trust. [Citation.] Lillian did not appeal this order. [Citation.] Additionally, nothing presented by [Beverly] now indicates that this court relied on any fraudulent piece of evidence, rather it appears that [Beverly] acknowledges that the court interpreted the same evidence she would intend to present

> now. [Beverly] disagrees with how the evidence was ultimately interpreted.
>
> "[Beverly] also argues that Marleen made false representations when she claims to be a beneficiary of the Trust. As discussed above, [Beverly] is relying on a faulty premise regarding this argument. [Beverly]'s claim that Marleen, her attorney, this court, and UBS ... knew claims that the real property converted to community property upon transfer to a trust were false is similarly based on a faulty premise. [Beverly]'s claims that the Public Guardian breached the Trust when consenting to be the trustee is also based on a faulty premise.
>
> "[Beverly] has failed to present any reason for the court to find any of its previous orders void based on extrinsic fraud. Additionally, [Beverly]'s remaining arguments regarding failures alleged against the Public Guardian are not well taken. [Beverly]'s arguments rely on this court finding that its previous orders should be voided. This court is not finding so and therefore the remainder of [Beverly]'s arguments regarding the Public Guardian similarly fail. ..." (Fn. omitted.)

On August 27, 2024, Beverly filed a motion to vacate the August 13, 2024 minute order based on "clear error of facts." The superior court, which noted Beverly "ha[d] not provided any legal authority for the basis of her motion," treated the motion as one for reconsideration under Code of Civil Procedure section 1008 and denied it in a September 18, 2024 order. In its ruling, it explained:

> "A motion for reconsideration is to be made by affidavit including the new law or facts the moving party claims. [Citation.] Here, Beverly ... has not included any affidavit, but only what amounts to a Memorandum of Points and Authorities. If the Court were to consider the motion on the merits, there is no presentation of new law or facts. Instead, Beverly ... reasserts the same law and facts as were raised in her previous motion.
>
> "Code of Civil Procedure section 1008 does not limit the court's inherent power to reevaluate its own rulings. [Citations.] Trial courts have discretion to review interim orders and correct erroneous rulings and orders. [Citation.] This [c]ourt has, on multiple occasions, found no such error with regards to the issues both Lillian and Beverly ... have repeatedly asserted. Nor has it found any other errors in this matter."

In a separate September 18, 2024 order, the court approved, allowed, and settled the Public Guardian's final account current and report; authorized compensation to the Public Guardian and its attorney for services rendered during the period of accounting; authorized payment of a bond fee from the estate; and authorized distribution of the Family Trust's remaining assets to Marleen and Beverly in equal shares.

DISCUSSION

I. Standard of review

"On appeal, we must presume the trial court's judgment is correct. [Citation.] In service of that rule, we adopt all intendments and inferences to affirm the judgment or order unless the record expressly contradicts them. [Citation.]" *(Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324 *(Nielsen).)* "It is the burden of the party challenging a judgment on appeal to provide an adequate record to assess error. [Citation.] Thus, an appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If he fails to do so, the argument is forfeited. [Citation.]" *(Ibid.)*

"The California Rules of Court provide an appellant with a choice of several types of records upon which to take an appeal. The choices include a reporter's transcript, a clerk's transcript, an agreed statement and a settled statement. [Citations.]" *(Nielsen, supra,* 178 Cal.App.4th at p. 324.) When the reporter's transcript is not provided by an appellant, as is the case here, "we must treat this as an appeal 'on the judgment roll'" *(ibid.),* ""conclusively presume that the evidence is ample to sustain the [superior court's] findings"'"*(ibid.),* and limit our review "to determining whether any error 'appears on the face of the record'" (*id.* at pp. 324-325).

II. Analysis

a. *Probate Code section 13107.5*

"Where the money or property claimed in an affidavit or declaration executed under [Probate Code section 13100 et seq.] is the subject of a pending action or proceeding in which the decedent was a party, the successor of the decedent shall, without procuring letters of administration or awaiting probate of the will, be substituted as a party in place of the decedent by making a motion under Article 3 (commencing with Section 377.30) of Chapter 4 of Title 2 of Part 2 of the Code of Civil Procedure. The successor of the decedent shall file the affidavit or declaration with the court when the motion is made. For the purposes of Article 3 (commencing with Section 377.30) of Chapter 4 of Title 2 of Part 2 of the Code of Civil Procedure, a successor of the decedent who complies with this chapter shall be considered a successor in interest of the decedent." (Prob. Code, § 13107.5; see Code Civ. Proc., § 377.30 ["A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter I (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest."].) This "survivor cause of action is not a new cause of action that vests in the heirs on the death of the decedent, but is instead a separate and distinct cause of action that belonged to the decedent before death, but by statute, survives that event." *(Brenner v. Universal Health Services of Rancho Springs, Inc.* (2017) 12 Cal.App.5th 589, 605, fn. 9; see *id.* at p. 605 ["A survivor claim is a claim asserted on behalf of the victim or decedent."].)[7]

b. *Arguments*

Beverly's various arguments on appeal do not compel us to reverse the superior court's August 13 and September 18, 2024 orders.

Beverly repeats Lillian's prior assertions the January 20, 2015 order was not appealable and the superior court should have joined Beverly as a party. This court rejected these contentions in 2016. "'Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court.' [Citation.]" *(Joyce v. Simi Valley Unified School Dist.* (2003) 110 Cal.App.4th 292, 304.)

Beverly repeats Lillian's prior assertions the Family Trust was invalid and the San Francisco real property retained its joint tenancy status and became Lillian's separate property upon Angelo's death. As this court pointed out in 2016, these contentions were rejected by the superior court in its January 20, 2015 order and Lillian did not appeal therefrom within 60

---

[7] In its respondent's brief, the Public Guardian does not contest the applicability of Probate Code section 13107.5 in the instant case. Marleen joined the brief.

days after the notice of entry was served. (See Cal. Rules of Court, rule 8.104(a)(1)(B).) As a result, any right to challenge the January 20, 2015 order and its particulars is "forever lost." *(In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8 *(Baycol);* see *ibid.* ["California follows a 'one shot' rule under which, if an order is appealable, appeal must be taken or the right to appellate review is forfeited."].)

Beverly repeats Lillian's prior assertion the superior court's May 15, 2015 order wrongfully removed Lillian as trustee and wrongfully appointed the Public Guardian as successor trustee. As this court pointed out in 2016, Lillian did not timely appeal from this order. (See Cal. Rules of Court, rule 8.104(a)(1)(B).) Therefore, appellate review thereof has been forfeited. *(Baycol, supra,* 51 Cal.4th at p. 761, fn. 8.)

Beverly reasserts Lillian was prevented from fully participating in and deprived of a fair adversary hearing at the January 14 and May 11, 2015 proceedings. As this court pointed out in 2016, Lillian did not timely appeal from the January 20 and May 15, 2015 orders. (See Cal. Rules of Court, rule 8.104(a)(1)(B).) Therefore, appellate review of the proceedings underlying those orders has been forfeited. *(Baycol, supra,* 51 Cal.4th at p. 761, fn. 8.)

Beverly reasserts the November 16, 2015 ex parte liquidation order was void for want of jurisdiction. As this court pointed out in 2016, Lillian did not timely appeal from this order. (See Cal. Rules of Court, rule 8.104(a)(1)(B).) Therefore, appellate review thereof has been forfeited. *(Baycol, supra,* 51 Cal.4th at p. 761, fn. 8.)

Beverly contends "[n]o opportunity to be heard was provided regarding the Opposition to the Accounting" "or to contest the accounts at either 2024 hearing." However, no such error appears on the face of the record. *(Nielsen, supra,* 178 Cal.App.4th at pp. 324-325.) In particular, a September 18, 2024 probate minute order demonstrated a hearing was held on the Public Guardian's final account current and report and petition. A checkbox was marked indicating "all parties were given an opportunity to address the Court" before "the matter was submitted." The minute order also specified: "The Court notes Ms. Beverly Pellegrini's continuous objection to the distribution under the Trust as the fees and structure is currently fashioned." (Boldface omitted.)

Beverly contends the Public Guardian is liable for breach of the Family Trust because it "produced negligible income depriving Lillian ... of the opportunity to continue generating wealth on her rightfully owned sole and separate property that was converted by fraud during one of the most expansionary growth periods in our nation's history" and "distribut[ed] $439,497.62 of Lillian['s] ... separate property to Marleen." She also contends the Public Guardian "knew that the property taken was Lillian['s] ... sole and separate inherited assets over which the court or its agents have no jurisdiction" yet engaged in fraudulent conversion and transfer of these assets. These arguments essentially ask us to reexamine the superior court's January 20 and May

15, 2015 orders–from which Lillian did not appeal (see Cal. Rules of Court, rule 8.104(a)(1)(B))–and disregard explicit findings, namely (1) the Family Trust was valid and "'required to be funded'" in the amount of $544,386.91 following Angelo's death; (2) the title to the San Francisco residence"'did not maintain its joint tenancy characterization after being transferred to the Trust'"; (3) Lillian"'repeatedly breached the standard of care with respect to her duties as trustee, including, among other things, by failing to fund the Family Trust, even after being ordered to do so'"; (4) Lillian"'in bad faith wrongfully took assets belonging to the Family Trust'"; (5) Lillian was required "'to fund the Family Trust in the amount of $544,386.91, and [to] pay said amount to the ... Public Guardian as the Successor Trustee of the Family Trust'"; (6) Lillian was required to"'pay double damages in the amount of $544,386.91 to the ... Public Guardian as the Successor Trustee of the Family Trust'"; and (7) Lillian was required to be"'surcharged for the attorneys' fees and costs that ... Marleen ... has incurred in this matter in the amount of $439,497.62.'" Appellate review of these findings has been forfeited. *(Baycol, supra,* 51 Cal.4th at p. 761, fn. 8.)

Beverly contends Lillian "held the sole and terminating interest in the Family Trust of any asset transferred to it" "with no remainder beneficiary designated" and "was due the 100% distribution of these assets." In 2016, this court rejected Lillian's earlier contention Marleen had no standing to bring the 2012 and 2014 petitions. (See Prob. Code, § 17200, subd. (a) ["[A] trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust."].) Beverly's argument relies on a premise that contradicts this court's prior finding. (See *Joyce v. Simi Valley Unified School Dist., supra,* 110 Cal.App.4th at p. 304.)

To close, we call attention to the assorted deficiencies in Beverly's appellate briefs. Various assertions lack "appropriate citations to the material facts in the record." *(Nielsen, supra,* 178 Cal.App.4th at p. 324; see *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205 ["It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations."].) Sometimes, this is because an assertion deals with a matter that is not in the appellate record. (See *Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360, 366, fn. 8 ["'Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs.'"].) When Beverly does cite to the record, she usually refers to facts favoring her own position. (See *Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408 ["An appellant ... who cites and discusses only evidence in her favor fails to demonstrate any error and waives the contention that the evidence is insufficient to support the judgment."].) Moreover, although Beverly ostensibly uses headings and subheadings in the body of her brief to identify her arguments, those headings and subheadings do not always match the content of the ensuing text. (See *Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179 ["An appellant must '[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority.'"].) Those headings and subheadings are made all the more unhelpful because Beverly's discussion of her claims often becomes unfocused. (See *Perry v. City of San Diego* (2021) 65 Cal.App.5th 172, 188, fn. 8 ["It is not this court's role to connect the dots."]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 ["An appellate court is not required to examine undeveloped claims, nor to make arguments for parties."].) While we are mindful Beverly represented herself on appeal, this fact does not excuse her missteps. "Under the law, a party may choose to act as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' [Citation.]" *(Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

DISPOSITION

The August 13 and September 18, 2024 orders are affirmed. Costs on appeal are awarded to defendants and respondents Fresno County Public Guardian and Marleen Merchant.

/s/
DETJEN, J.

WE CONCUR:

/s/
LEVY, Acting P.J.

/s/
PENA, J.

APPENDIX D

1A SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO

Probate Department, Central Division

☐ In the Matter of

☐ The Estate of

☐ The Guardianship of

☐ The Conservatorship of

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

☐ Conservatee

☐ Minor(s)

☐ Deceased

PROBATE MINUTE ORDER

Entered by:
Randi Long

Case Number:
10CEPR00683

Hearing Date: 09/18/2024

Department 97 A

Judge: *Brian M Arax*

Clerk: Randi Long

Reporter/Tape/CD:

Bailiff: H. Martinez

Hearing Type: Third and Final Account Current and Report of Successor Trustee; Petition for Allowance of Compensation to Trustee and Attorney and Distribution

Petitioner(s):

☐ Not Present ☐ Present ☐ Pro Per

Other:

☐ Not Present ☐ Present ☐ Pro Per

Other: Beverly Pellegrini

☐ Not Present ☒ Present ☐ Pro Per

Counsel: Katwyn DeLaRosa – ZM

☐ Not Present ☒ Present

Counsel: Kelly Dankbar – Zm

☐ Not Present ☒ Present

Other:

☐ Not Present ☐ Present

Ms. DeLaRosa confirms that the Accounting is reviewed and has no needs or problems to be addressed. Ms Dankbar confirms no objection to the Accounting. The Court notes Ms. Beverly Pellegrini's continuous objection to the distribution under the Trust as the fees and structure is currently fashioned.

☒ After all parties were given an opportunity to address the Court, the matter was submitted.

☐ Continued to: at a.m. in Dept
☐ Set on: at a.m. in Dept for:

☒ Petition is: ☒ granted ☐ denied
☐ before Court Trial
☐ after Court Trial (P JUDG)
☐ after Jury Trial (JV)
☒ Order signed
☐ Order to be signed ex parte
☐ Taken under submission

☐ Attorney appointed for conservatee:

☐ Voting rights ☐ Revoked ☐ Restored

☐ Petition is dismissed:
☐ with prejudice ☐ without prejudice

☐ before Court Trial (DISMS)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Entire action dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMV)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Will admitted to Probate
☐ Bond in the amount of: $
☐ Bond not required/waived

☐ Based on all of the pleadings in the file, based on the report of the Court Investigator, and based on all of the evidence and statements made in court, the Court finds that there is clear and convincing evidence that leaving the child(ren) in either parent's custody would be detrimental to the child(ren), and appointing a guardian of the person would be in the child(ren)'s best interests.

☐ Temporary Guardianship/Conservatorship Letters extended to:

☐ All other orders remain in full force and effect until:

☐ The Court directs:

____
Judge of the Superior Court (Signature)

[Court seal]

The foregoing instrument is correct copy of the original on file in this office.

ATTEST: SEP 20 2024

Superior Court Clerk
State of California County of Fresno
By /s/
Deputy

APPENDIX E

DANIEL C. CEDERBORG,
County Counsel-SBN 124260
Heather Kruthers, Chief Deputy-SBN 192195
County of Fresno
2220 Tulare Street, Suite 500
Fresno, California 93721-2128
E-Mail: HKruthers@co.fresno.ca.us
Telephone: (559) 600-3479
Facsimile: (559) 600-3480

Attorneys for Fresno County Public Guardian

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION

[DATE STAMP]
FILED
9/18/2024
FRESNO COUNTY SUPERIOR COURT
By rlong
DEPUTY

[DATE STAMP]
RECEIVED
4111/2024 1:22 PM
FRESNO COUNTY SUPERIOR COURT
By: Seng Yang, Deputy

In the Matter of the

ANGELO JOHN PELLEGRINI AND
LILLIAN DOROTHY PELLEGRINI
REVOCABLE LIVING TRUST dated
June 18, 1999.

Case No. 10CEPR00683

ORDER SETTLING THIRD AND FINAL ACCOUNT CURRENT AND REPORT OF TRUSTEE AND ALLOWING COMPENSATION TO TRUSTEE AND ATTORNEY AND DISTRIBUTION

[Probate Code §§ 11681; 115688; 16062; 16063]

Hearing Date: 9/18/2024
Time: 9:00 a.m.
Department: 97A

The verified petition and third and final account of the Fresno County Public Guardian as trustee of the above-named trust was regularly heard on 9/18/2024. Objections having been made, and the Court having given due consideration to the petition and account and objections, finds that all notices of the hearing have been given as required by law, and that a factual basis exists for all the allegations of the account and petition, settles the account, and grants the petition. Good cause appearing,

IT IS ORDERED AND ADJUDGED that:

1. The trustee has in her possession a balance of property on hand of $1,075,213.84, all of which is cash,

belonging to the trust.

2. The third and final account and report is approved, allowed and settled as filed, and all acts and transactions relating to matters in that account and set forth are ratified, confirmed, and approved.

3. The petitioner is authorized $1,731.84 as compensation for services rendered on behalf of the conservatee during the period of accounting.

4. The petitioner is authorized to pay County Counsel $2,500.00 for legal services rendered on behalf of the conservatee during the period of the accounting.

5. The trustee is authorized to pay from the estate a bond fee of $16,128.18 to be deposited in the County treasury.

6. After payment of the above fees and commissions (in addition to $438.75 that the Public Guardian had to pay to file the account) totaling $20,798.77, the remaining cash of $1,054,415.07 shall be distributed as follows:

BEVERLY PELLEGRINI	1/2	$527,207.54
MARLEEN MERCHANT	1/2	$527,207.53

7. The Public Guardian is authorized to deposit with the Fresno County Treasurer any distribution she cannot make or that is refused.

DATED: 9/18/2024

/s/
JUDGE OF THE SUPERIOR COURT
BRIAN M. ARAX

APPENDIX F

1 SUPERIOR COURT OF CALIFORNIA
• COUNTY OF FRESNO

Probate Department, Central Division

☐ In the Matter of

☐ The Estate of

☐ The Guardianship of

☐ The Conservatorship of

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

☐ Conservatee

☐ Minor(s)

☐ Deceased

PROBATE MINUTE ORDER

Entered by:
Maribel Zapata

Case Number:
10CEPR00683

Hearing Date: 06/10/2024

Department 97 A

Judge: *Brian M Arax*

Clerk: Maribel Zapata

Reporter/Tape/CD:

Bailiff: H. Martinez

Hearing Type: Third and Final Account Current and Report of Successor Trustee; Petition for Allowance of Compensation to Trustee and Attorney and Distribution

Petitioner(s):

☐ Not Present ☐ Present ☐ Pro Per

Other: Beverly Pellegrini

☐ Not Present ☒ Present ☒ Pro Per

Other: Marleen Merchant

☐ Not Present ☒ Present

Counsel: Heather Kruthers

☐ Not Present ☒ Present

Counsel:

☐ Not Present ☐ Present

Other: Joshua Cochran

☐ Not Present ☒ Present

Counsel to address and correct examiner file note #1.

The Statement of Decision is attached.

☒ After all parties were given an opportunity to address the Court, the matter was submitted.

☒ Continued to: 8/13/2024 at 11:00 a.m. in Dept 97A

☐ Set on: at a.m. in Dept for:

☐ Petition is: ☐ granted ☐ denied
☐ before Court Trial
☐ after Court Trial (P JUDG)
☐ after Jury Trial (JV)
☐ Order signed
☐ Order to be signed ex parte
☐ Taken under submission

☐ Attorney appointed for conservatee:

☐ Voting rights ☐ Revoked ☐ Restored

☐ Petition is dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMS)
☐ after Court Trial (DIOEA)

☐ after Jury Trial (DIS)

☐ Entire action dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMV)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Will admitted to Probate
☐ Bond in the amount of: $
☐ Bond not required/waived

☐ Based on all of the pleadings in the file, based on the report of the Court Investigator, and based on all of the evidence and statements made in court, the Court finds that there is clear and convincing evidence that leaving the child(ren) in either parent's custody would be detrimental to the child(ren), and appointing a guardian of the person would be in the children's best interests.

☐ Temporary Guardianship/Conservatorship Letters extended to:

☐ All other orders remain in full force and effect until:

☐ The Court directs:

____
Judge of the Superior Court (Signature)

1B SUPERIOR COURT OF CALIFORNIA
• COUNTY OF FRESNO

Probate Department, Central Division

□ In the Matter of

□ The Estate of

□ The Guardianship of

□ The Conservatorship of

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

□ Conservatee

□ Minor(s)

□ Deceased

PROBATE MINUTE ORDER

Entered by:
Seng Yang

Case Number:
10CEPR00683

Hearing Date: 08/13/2024

Department 97 A

Judge: *Brian M Arax*

Clerk: Seng Yang

Reporter/Tape/CD:

Bailiff: H. Martinez

Hearing Type: Third and Final Account Current and Report of Successor Trustee; Petition for Allowance of Compensation to Trustee and Attorney and Distribution

Petitioner(s): Joshua Cochran–Zm

☐ Not Present ☒ Present ☐ Pro Per

Other: Marleen Merchant

☐ Not Present ☒ Present ☒ Pro Per

Other: Beverly Pellegrini

☐ Not Present ☒ Present

Counsel:

☐ Not Present ☐ Present

Counsel: Kelly Dankbar–Zm

☐ Not Present ☒ Present

Other:

☐ Not Present ☐ Present

The court will continue the matter to allow counsel to address and correct the examiner notes.

☐ After all parties were given an opportunity to address the Court, the matter was submitted.

☒ Continued to: 9/18/2024 at 11:00 a.m. in Dept 97A

☐ Set on: at a.m. in Dept for:

☐ Petition is: ☐ granted ☐ denied
☐ before Court Trial
☐ after Court Trial (PJUDG)
☐ after Jury Trial (JV)
☐ Order signed
☐ Order to be signed ex parte
☐ Taken under submission

☐ Attorney appointed for conservatee:

☐ Voting rights ☐ Revoked ☐ Restored

☐ Petition is dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMS)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Entire action dismissed:

☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMV)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Will admitted to Probate
☐ Bond in the amount of: $
☐ Bond not required/waived

☐ Based on all of the pleadings in the file, based on the report of the Court Investigator, and based on all of the evidence and statements made in court, the Court finds that there is clear and convincing evidence that leaving the child(ren) in either parent's custody would be detrimental to the child(ren), and appointing a guardian of the person would be in the child(ren)'s best interests.

☐ Temporary Guardianship/Conservatorship Letters extended to:

☐ All other orders remain in full force and effect until:

☐ The Court directs:

____

Judge of the Superior Court (Signature)

APPENDIX G

1B SUPERIOR COURT OF CALIFORNIA
• COUNTY OF FRESNO

Probate Department, Central Division

☐ In the Matter of

☐ The Estate of

☐ The Guardianship of

☐ The Conservatorship of

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

☐ Conservatee

☐ Minor(s)

☐ Deceased

PROBATE MINUTE ORDER

Entered by:
Randi Long

Case Number:
10CEPR00683

Hearing Date: 09/18/2024

Department 97 A

Judge: *Brian M Arax*

Clerk: Randi Long

Reporter/Tape/CD:

Bailiff: H. Martinez

Hearing Type: Motion to Vacate Minute Order

Petitioner(s): Beverly Pellegrini

☐ Not Present ☒ Present ☒ Pro Per

Other:

☐ Not Present ☐ Present ☐ Pro Per

Other:

☐ Not Present ☐ Present

Counsel:

☐ Not Present ☐ Present

Other: Katwyn Delarosa–Zm

☐ Not Present ☒ Present

Counsel: Kelly Dankbar–ZM

☐ Not Present ☒ Present

Please see the attached Court ruling.

☒ After all parties were given an opportunity to address the Court, the matter was submitted.

☐ Continued to: at a.m. in Dept
☐ Set on: at a.m. in Dept for:

☒ Petition is: ☐ granted ☒ denied
☐ before Court Trial
☐ after Court Trial (P JUDG)
☐ after Jury Trial (JV)
☒ Order signed
☐ Order to be signed ex parte
☐ Taken under submission

☐ Attorney appointed for conservatee:

☐ Voting rights ☐ Revoked ☐ Restored

☐ Petition is dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMS)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Entire action dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMV)
☐ after Court Trial (DIOEA)

☐ after Jury Trial (DIS)

☐ Will admitted to Probate
☐ Bond in the amount of: $
☐ Bond not required/waived

☐ Based on all of the pleadings in the file, based on the report of the Court Investigator, and based on all of the evidence and statements made in court, the Court finds that there is clear and convincing evidence that leaving the child(ren) in either parent's custody would be detrimental to the child(ren), and appointing a guardian of the person would be in the child(ren)'s best interests.

☐ Temporary Guardianship/Conservatorship Letters extended to:

☐ All other orders remain in full force and effect until:

☐ The Court directs:

____
Judge of the Superior Court (Signature)

September 18, 2024 10CEPR00683

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust. Motion To Vacate Minute Order

Facts

On August 13, 2024, the Court denied Petitioner Beverly Pellegrini's Motion to Render Previous Orders, Judgment, and Opinions Void. On August 28, 2024, Beverly filed a "Motion to Vacate Minute Order". In her motion. she asserts that reversal of the August 13, 2024 Minute Order is required based on "error of facts". She has not provided any legal authority for the basis of her motion. It appears that Petitioner intends to request the Court reconsider its ruling pursuant to Code of Civil Procedure section 1008.

Law

Code of Civil Procedure section 1008 governs reconsideration of court orders and renewals of previous motions. (Code Civ. Proc., § 1008, subd. (e): *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1499.) Pursuant to Code of Civil Procedure section 1008, the losing party may bring a motion to reconsider, and a different order may be entered, if, subject to the following conditions. the motion is:

(1) Brought before the some judge that made the order;

(2) Made within 10 days after service upon the

party of notice of the entry of the order;

(3) Based on new or different facts, circumstances, or law; and

(4) Made and decided before entry of judgment.

Thus, a party requesting the Court reconsider its prior orders must provide new evidence and a satisfactory explanation for why the evidence was not previously presented. (*Mink v. Superior Court* (1992) 2 Col.App.4th 1338, 1342; *New York Times Co. v. Superior Court* (2005) 135 Col.App.4th 206, 212-213; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.) The burden has been compared to "that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, hove discovered or produced it at the trial." (*New York Times Co. v. Superior Court, supra,* 135 Col.App.4th 206, 212-213.)

Discussion

A motion for reconsideration is to be made by affidavit including the new law or tacts the moving party claims. (Code Civ. Proc., § 1008, subd. (a).) Here, Beverly Pellegrini has not included any affidavit, but only what amounts to a Memorandum of Points and Authorities. If the Court were to consider the motion on the merits. there is no presentation of new law or facts. Instead, Beverly Pellegrini reasserts the same law and facts as were raised in her previous motion.

Code of Civil Procedure section 1008 does not limit the court's inherent power to reevaluate its own rulings. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096-1097; *Boschetti v. Pacific Bay Investments Inc.* (2019) 32 Col.App.5th 1059, 1070.) Trial courts have discretion to review interim orders and correct erroneous rulings and orders. (*Boschefti v. Pacific Bay Investments Inc., supra,* 32 Cal.App.5th at p. 1070.) This Court has, on multiple occasions, found no such error with regards to the issues both Lillian and Beverly Pellegrini have repeatedly asserted. Nor has it found any other errors in this matter.

Ruling

The motion is denied.

It is So Ordered:

Date: 9-18-24

By: /s/
Brian M. Arax,
Judge, Fresno County Superior Court

SUPERIOR COURT OF CALIFORNIA •
COUNTY OF FRESNO
Probate Department, Central Division
1130 "O" Street
Fresno, California 93721
(559) 457-1888

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

[DATE STAMP]
0FOR COURT USE ONLY
FILED
9/18/2024
FRESNO COUNTY SUPERIOR COURT
By rlong
DEPUTY

CASE NUMBER:
10CEPR00683

I certify that I am not a party to this cause. A true copy of the Minute Order 9/18/2024 & Court Ruling has been processed and:

☐ I certify that the following document(s) have been transmitted electronically by the Fresno County Superior Court at Fresno, California. The transmission originated from e-mail address probate.efile@fresno.courts.ca.gov on , at a.m. The electronically transmitted document(s) are in accordance with the California Rules of Court, rule 2.251. The list of electronically served recipients are listed below.

☒ Placed in a sealed envelope and:

☐ Deposited with the United States Postal Service, mailed first class, postage fully prepaid and addressed as shown below.

☒ Placed for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing/e-mailing: Fresno, California 93724-0002 on:

Date: September 18, 2024

Clerk, by /s/ Randi Long, Deputy
Randi Long

Beverly Pellegrini
3345 E. Huntington Blvd.
Fresno, CA 93702

Heather Kruthers
2220 Tulare St., Suite 500
Fresno, CA 93721

Kelly Dankbar
400 Capitol Mall, 11th Floor
Sacramento, CA 95814

☐ Clerk's Certificate of Mailing Additional Address Page Attached

APPENDIX H

1A SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO

Probate Department, Central Division

☐ In the Matter of

☐ The Estate of

☐ The Guardianship of

☐ The Conservatorship of

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

☐ Conservatee

☐ Minor(s)

☐ Deceased

PROBATE MINUTE ORDER

Entered by:
Seng Yang

Case Number:
10CEPR00683

Hearing Date: 08/13/2024

Department 97 A

Judge: *Brian M Arax*

Clerk: Seng Yang

Reporter/Tape/CD:

Bailiff: H. Martinez

Hearing Type: Motion Under Probate Code 13107.5 Pursant to Code of Civil Procedure 377.30; Memorandum in Support of Motion Pursant to Probate Code 13110; Probate Code 7250; Probate Code 16440; Probate Code 850

Petitioner(s): Beverly Pellegrini

☐ Not Present ☒ Present ☒ Pro Per

Counsel:

☐ Not Present ☐ Present

Other: Marleen Merchant

☐ Not Present ☒ Present ☐ Pro Per

Counsel: Kelly Dankbar–Zm

☐ Not Present ☒ Present

Other: Joshua Cochran–ZM

☐ Not Present ☒ Present

Other:

☐ Not Present ☐ Present

Ms. Pellegrini represents the objector Marleen Merchant is not a beneficiary of the Trust and does not have a standing. The Court will issue a written decision on the motion which will be sent out to the parties once completed.

The Statement of Decision is attached.

☐ After all parties were given an opportunity to address the Court, the matter was submitted.
☐ Continued to: at a.m. in Dept
☐ Set on: at a.m. in Dept for:
☐ Petition is: ☐ granted ☐ denied
☐ before Court Trial
☐ after Court Trial (P JUDG)
☐ after Jury Trial (JV)
☐ Order signed
☐ Order to be signed ex parte
☐ Taken under submission

☐ Attorney appointed for conservatee:

☐ Voting rights ☐ Revoked ☐ Restored

☐ Petition is dismissed:
☐ with prejudice ☐ without prejudice

☐ before Court Trial (DISMS)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Entire action dismissed:
☐ with prejudice ☐ without prejudice
☐ before Court Trial (DISMV)
☐ after Court Trial (DIOEA)
☐ after Jury Trial (DIS)

☐ Will admitted to Probate
☐ Bond in the amount of: $
☐ Bond not required/waived

☐ Based on all of the pleadings in the file, based on the report of the Court Investigator, and based on all of the evidence and statements made in court, the Court finds that there is clear and convincing evidence that leaving the child(ren) in either parent's custody would be detrimental to the child(ren), and appointing a guardian of the person would be in the child(ren)'s best interests.

☐ Temporary Guardianship/Conservatorship Letters extended to:

☐ All other orders remain in full force and effect until:

☐ The Court directs:

____
Judge of the Superior Court (Signature)

August 13, 2024 Case No. 10CEPR00683

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust.

Petition to Render Previous Orders, Judgment. and Opinions Void

Facts

Trust History

Angelo John Pellegrini and Lillian Pellegrini, as husband and wife, executed the Angelo John Pellegrini and Lillian Dorothy Peliegrini Revocable Living Trust of June 18, 1999 ("the Trust"). The Trust stated that their children, Beverly Pellegrini and Marleen Merchant would receive the remainder of the Trust estate in equal shares after Angelo and Lillian died. During their joint lifetimes, Angelo and Lillian were the co-trustees. The Trust provides that upon the death of the first spouse, the surviving spouse would act as trustee, but the assets were to be divided into separate trusts–the Survivor's Trust, the Marital Trust, and the Family Trust.[1]

The Trust could be amended while both Angelo and Lillian were living, but upon one of their deaths, the surviving spouse could only amend, revoke, or terminate the Survivor's Trust. In 2004, they amended

[1] The court will refer to the individuals by their first names for ease of reference and not out of disrespect.

the Trust regarding distribution of the Family Trust upon the death of the surviving spouse. The amendment was primarily to address the trustors' residence in San Francisco. It provided Beverly with a right to a life estate that could be used or relinquished by her, after which, an equal division between the two daughters would be carried out.

Angelo died on March 27, 2008, making Lillian the sole trustee. Lillian sold the San Francisco property in approximately 2009.

Court Proceedings

State Trial Court Proceedings

In 2010, Marleen applied for a court order compelling Lillian to provide an accounting. While represented by counsel in 2010, Lillian signed a 2010 Statement of Trust Assets describing the assets in the Family Trust as including one-half of the $800,000 value of the San Francisco residence as of March 27, 2008. The total value of assets in the Family Trust was represented as $544,386.91. However, when she no longer had representation, in 2011, Lillian sent Marleen's attorney a letter stating there were no assets in the Family Trust and never had been.

In 2012, Marleen filed a petition to remove Lillian as trustee. In 2013, Lillian did a revised accounting confirming that no Family Trust was ever created or funded following Angelo's death. claiming the San Francisco property was Lillian's separate property upon Angelo's death, and admitting to holding assets formerly in the Trust estate in her name, individually and outside of the trust.

In 2014, Marleen filed a petition for the recovery of property belonging to the Family Trust, for double damages, and attorney's fees. A bifurcated trial occurred in 2015. The trial court first considered 1) whether the Family Trust was required to be funded after Angelo's death and 2) whether the San Francisco property maintained joint tenancy characterization after it was transferred to the Trust. On January 14, 2015, the trial was conducted on the first issues. The trial court found the Family Trust was required to be funded following Angelo's death at a minimum of $544,386.91 and that the San Francisco property did not maintain its joint tenancy characterization after it was transferred to the Trust. On January 28, 2015, Marleen served notice of entry of the January 2015 Order. Lillian did not appeal this order, making that decision final.

On May 11, 2015, the trial court held a hearing on the remaining issues. The remaining issues included, 1) whether Lillian should be removed as trustee, 2) whether Lillian breached the Trust, 2) whether Lillian should be surcharged, 4) whether Lillian was required to return assets or property to the Family Trust, and 5) whether Lillian, in bad faith, wrongfully took, concealed, or disposed of property belonging to the Trust, making her liable for twice the value of the property recovered and attorney's fees and costs. The trial court removed Lillian as trustee of the Family Trust for failing to fund it after Angelo's death and appointed the Fresno County Public Guardian as the successor trustee of the Family Trust. The trial court also ordered that Lillian was to fund the Family Trust in the amount of $544,386.91. The trial court reserved the remaining issues for a later trial date. On May 21, 2015, Marleen served notice of entry of the May 2015 Order. Lillian did not appeal this order, nor did she comply with it.

On August 25, 2015, the trial court held the trial on the reserved issues. There, the court found Lillian was in default regarding the Petition to Recover Property Belonging to Trust, For Award of Double Damages, and For Recovery of Attorney's Fees and Costs for failing to respond to said petition. The trial court also found that Lillian had acted in bad faith and wrongfully took assets belonging to the Family Trust, justifying double damages against her and attorney's fees and costs. This order clarified Lillian should pay double damages in the amount of $544,386.91 to the Fresno County Public Guardian as successor trustee. in addition to the $544,386.91 previously ordered. and to pay $439,497.62 for Marleen's attorney's fees and costs. On September 25, 2015, Marleen served a notice of entry of the Damages Order.

In October 2015, the Public Guardian filed an ex parte seeking to enforce the judgment. On October 20, 2015 the trial court granted the ex parte relief, including freezing of Lillian's accounts at UBS Financial Services and to require UBS to transfer $1,528,271.44 to the successor trustee to satisfy the Damages Order.

Fifth District Court of Appeals Proceedings

On October 28, 2015, Lillian appealed the September 4, 2015 Damages Order, as well as the postjudgment orders entered on October 20, 2015. Remittitur was issued on January 12, 2017. (See Remittitur, filed January 12, 2017.) The appellate court found that Lillian's appeal failed to establish reversible error or abuse of discretion by the trial court. (Id. at p. 2.) Additionally, the appellate court noted that Lillian sought review of orders which she had previously failed to timely appeal, namely the January and May of 2015 orders. (Id. at p. 17.)

Lillian had asserted that she did not receive due process regarding the ex parte orders. (Id. at p. 29.) The appellate court noted that it had denied Lillian's request for writ of supersedeas and/or prohibition. (Id. at p. 32.) On February 17, 2016, the Supreme Court denied Lillian's petition for review. (Ibid.) The appellate court also noted that Lillian had failed to show error regarding the ex parte and that, even if there was error, she failed to show it was reversible error. (Id. at p. 33.) Lillian was personally liable for the amounts due and failed to show a regularly noticed motion would have produced a different outcome. (Ibid.)

The appellate court also addressed Lillian's claim that failure to join Beverly as an indispensable party was jurisdictional. (Ibid.) The appellate court held that it was not a jurisdictional defect and noted that this issue did not appear to have been raised to the trial court. (Id. at pp. 33-34.)

Regarding Lillian's claims that the trial court abetted the commission of fraud and embezzlement by permitting judgment to be enforced against her financial account, the appellate court found such claims "largely unintelligible and without any support in the record." (Id. at p. 34.) Judgment orders are presumed correct and error must be affirmatively shown. (Ibid.)

On January 11, 2017, the California Supreme Court denied review. [See California Supreme Court Docket.)

Ninth District Circuit Court Proceedings

Following the trial court's orders, Lillian filed a federal action naming as defendants Fresno County, Fresno County Superior Court, three banks, and Marleen's counsel. *(Pellegrini v. Fresno County* (9th Cir. 2018] 742 Fed.Appx. 209, 210.) The district court dismissed the complaint with prejudice for lack of subject-matter jurisdiction, but the Ninth District Court of Appeals vacated the dismissal and remanded with directions that the dismissal be without prejudice. (Id. at p. 211.) In this federal matter, Lillian presented the issue of extrinsic fraud. (Ibid.) She argued that the defendants had misrepresented the property title and interest in order to steal her property. (Ibid.) The federal court briefly noted that this argument failed where she did not also argue that she was prevented from presenting her claims in state court. (Ibid.) Ultimately, the federal appellate court found that Lillian had failed to argue why the district court had subject-matter jurisdiction over fraud and conversion claims. (Id. at p. 210.) The federal appellate court decided that the district court lacked jurisdiction where "'the relief requested in the federal action would effectively reverse the state court decision or void its ruling.'" (Id. at p. 210, quoting *Cooper* v. *Ramos* (9th Cir. 2012) 704 F.3d 772. 779.)

Discussion

Judicial Notice

In her motion, Petitioner asserts that the trial court, appellate court, and federal court have all misinterpreted the Trust. Evidence Code section 452, subdivision (d) authorizes the court to take judicial notice of court records. Here. six courts have addressed many of the issues Petitioner addresses in the instant motion. Thus, the court is exercising its discretion to take judicial notice of the existence[2] of the following court records:

1. Fresno Superior Court Case Number 10CEPR00683 Remittitur filed January 12, 2017, affirming this court's previous ruling and finding that the appeal failed to establish reversible error or abuse of discretion by the trial court;

2. Pellegrini v. Fresno Superior Court (E.D. Cal. 2015) 2015 WL 6167523, remanding case back to Fresno County Superior Court following Notice of

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[2] With the exception of the Remittitur, the court takes judicial notice of the *existence* of the several cases relating to the Trust at issue here.

Removal:

3. Pellegrini v. Merchant (E.D. Cal. 2017) 2017 WL 615254, denying motions to disqualify judge, change venue, and stay;

4. Pellegrini v. Merchant (E.D. Cal. 2017) 2017 WL 735740, denying motion to disqualify judges;

5. Pellegrini v. Fresno County (E.D. Cal. 2017) 2017 WL 1348865, vacated and remanded;

6. Pellegrini v. Fresno County (19th Cir. 2018) 742 Fed. Appx. 209;

7. Pellegrini v. Fresno County, Cal. (2019) 139 S.Ct. 801 (Mem), denying writ of certiorari;

8. Pellegrini v. United States District Court for the Eastern District of California (2017) 538 U.S. 905, denying petition for writ of certiorari; and

9. Pellegrini v. United States District Court for the Eastern District of California (2017) 538 U.S. 991. denying petition for rehearing.

Jurisdiction

Petitioner[3] argues that the trial court lacked jurisdiction, arguing that Marleen lacked standing

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[3] Lillian *is* deceased and this motion is brought by her daughter Beverly.

under Probate Code sections 15800 and 1 7200. Lillian made the same argument in her appeal. This question has been decided by the Fifth District Court of Appeals and denied review by the California Supreme Court. The appellate court noted that this argument was based on a false foundational premise that the entire Trust was revocable after Angelo's death. (Remittitur. p. 20.) Petitioner also argues that the court lacked jurisdiction when it removed Lillian as trustee and appointed the public guardian. Similarly, the appellate court has already addressed this issue noting Lillian's arguments were based on the same faulty premise of a revocable trust and that there was no jurisdictional error. (Id. at p. 21.) Petitioner also repeats Lillian's previous argument that the ex parte order to liquidate assets was void for lack of notice. The appellate court has already considered this issue and noted that Lillian had failed to show error. (Id. at p. 33.) The appellate court additionally noted that there are circumstances in which the court may dispense with notice. (Ibid.) Petitioner also repeats Lillian's previous argument that lack of joinder is fatal to the judgment. The appellate court has already considered this argument and found this issue was not jurisdictional. (Id. at p. 34.) For all of the claims Petitioner makes now regarding the trial court's lack of jurisdiction to make the 2015 orders, the appellate court has already addressed that none of these jurisdictional arguments have merit. This court will not disturb the findings already made by the appellate court.

- *Probate Code Section 7250*

Probate Code section 7250 discharges a personal representative from claims by heirs based on "any act or omissions directly authorized, approved, or confirmed" in a judgment or order concerning administration of a decedent's estate. (Prob. Code, § 7250, subd. (a).) However, this does not apply "where the judgment or order is obtained by fraud or conspiracy or by misrepresentation contained in the petition or account or in the judgment as to any material fact." (Prob. Code,§ 7250, subd. (c).) Here, Petitioner argues that this court's 2015 orders were based on fraud and that they should be considered void.

Petitioner relies on *Spector* v. *Superior* Court *of Son Mateo County* (1961) 55 Cal.2d 839, 843-844 for the position the extrinsic fraud occurred because Lillian was denied her opportunity to present her positions in court. First, the court in *Spector* was not assessing the issue of extrinsic fraud. *(See ibid.)* Second, in *Spector,* the trial court had denied petitioner's counsel the opportunity to present evidence and make arguments. *(Ibid.)* Here, Petitioner, who is not licensed to practice law in the State of California, claims she was not permitted to be present in the courtroom during the August 2015 hearing. As such, Lillian was unable to call Petitioner as a witness for tracing Lillian's financial assets. Then, Lillian who had been present in the morning was, for reasons not explained in the motion, unable to attend court in the afternoon. Petitioner requested the court postpone the proceedings, which was denied. This does not amount to being denied the opportunity to be heard. If anything, this amounted to the court ensuring that a person not licensed to practice law in the State of

California did not attempt to do so. Additionally, it appears that Lillian failed to appear for a portion of the hearing and did not have a justifiable excuse for that failure to participate.

Petitioner also cites *Estate of Sanders* (1985) 40 Cal.3d 607 for the position that extrinsic fraud can include circumstances which deprive a person from the ability to participate in a hearing. In discussing the issue of a person being prevented from participating in a hearing, the court considered the issue of a party being deprived of the opportunity to present his or her case "by fraud or deception ... as by keeping him away from court ..." (Id. at p. 614.) Here, nothing has been presented by Petitioner showing that anyone prevented Lillian from participating in the hearings.

Notably, Petitioner's claims of extrinsic fraud are still based on the faulty premises already addressed by the appellate court. The appellate court has already noted that Lillian's claims about the nature of the property were faulty. (Remitfitur, p. 20.) Petitioner also reiterates the previous claims that the San Francisco property should have been treated as Lillian's separate property. This court determined this question at the January 14, 2015 trial, finding that the property did not maintain its joint tenancy characterization after being transferred to the Trust. (Id. at p. 9.) Lillian did not appeal this order. (Id. at p. 17.) Additionally, nothing presented by Petitioner now indicates that this court relied on any fraudulent piece of evidence, rather it appears that Petitioner acknowledges that the court interpreted the same evidence she would intend to present now. Petitioner disagrees with how the evidence was ultimately interpreted.

Petitioner also argues that Marleen made false representations when she claimed to be a beneficiary of the Trust. As discussed above, Petitioner is relying on a faulty premise regarding this argument. Petitioner's claim that Marleen, her attorney, this court, and UBS Financial Services knew claims that the real property converted to community property upon transfer to a trust were false is similarly based on a faulty premise. Petitioner's claims that the Public Guardian breached the Trust when consenting to be the trustee is also based on a faulty premise.

Petitioner has failed to present any reason for the court to find any of its previous orders void based on extrinsic fraud. Additionally, Petitioner's remaining arguments regarding failures alleged against the Public Guardian are not well taken. Petitioner's arguments rely on this court finding that its previous orders should be voided. This court is not finding so and therefore the remainder of Petitioner's arguments regarding the Public Guardian similarly fail. As a final note, the Court adopts fully the Opposition papers on file herein filed by beneficiary Ms. Marleen Merchant as additional and supporting grounds for the Court's ruling.

Ruling

The motion is Denied, in its entirety, on each and every ground.

So Ordered:

Date: 8-13-24

/s/
Brian M. Arax
Judge, Fresno County Superior Court

SUPERIOR COURT OF CALIFORNIA •
COUNTY OF FRESNO
Probate Department, Central Division
1130 "O" Street
Fresno, California 93721
(559) 457-1888

TITLE OF CASE:

Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

[DATE STAMP]
0FOR COURT USE ONLY
FILED
8/13/2024 4:10:17 PM
FRESNO COUNTY SUPERIOR COURT
By senyang
DEPUTY

CASE NUMBER:
10CEPR00683

I certify that I am not a party to this cause. A true copy of the Minute Order 9/18/2024 & Court Ruling has been processed and:

☐ I certify that the following document(s) have been transmitted electronically by the Fresno County Sup erior Court at Fresno, California. The transmission originated from e-mail address probate.efile@fresno.courts.ca.gov on , at a.m. The electronically transmitted document(s) are in accordance with the California Rules of Court, rule 2.251. The list of electronically served recipients are listed below.

☒ Placed in a sealed envelope and:

- ☐ Deposited with the United States Postal Service, mailed first class, postage fully prepaid and addressed as shown below.

- ☒ Placed for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing/e-mailing: Fresno, California 93724-0002 on:

Date: August 13, 2024

Clerk, by /s/ Seng Yang, Deputy
Seng Yang

Beverly Pellegrini
3345 E. Huntington Blvd.
Fresno, CA 93702

Heather Kruthers
2220 Tulare St., Suite 500
Fresno, CA 93721

Marleen Merchant
6633 Ventana Dr
Rancho Murieta, CA 95683

Kelly Dankbar
400 Capitol Mall, 11th Floor
Sacramento, CA 95814

APPENDIX I

Court of Appeal, Fifth Appellate District –
No. F088717

S294533

IN THE SUPREME COURT OF CALIFORNIA
En Banc

[DATE STAMP]
SUPREME COURT
FILED
FEB 25 2026
Jorge Navarrete Clerk

Deputy

BEVERLY PELLEGRINI,
Plaintiff and Appellant,

v.

FRESNO COUNTY PUBLIC GUARDIAN, as
Trustee, etc. et al.,
Defendants and Respondents.

The petition for review is denied.

GUERRERO
Chief Justice

APPENDIX J

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[DATE STAMP]
FILED
JUL 17 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LILLIAN PELLEGRINI,
Plaintiff-Appellant,

v.

FRESNO COUNTY; et al.,
Defendants-Appellees.

No. 17-15735
D.C. No. 1 :16-cv-01292-LJO-BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Chief Judge, Presiding

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted July 11, 2018[**]
San Francisco, California

Before: TASHIMA, GRABER, and HURWITZ, Circuit Judges.

After the Fresno County Superior Court ordered Plaintiff Lillian Pellegrini to transfer assets to a family trust and pay damages, she filed this federal action against the court, Fresno County, three banks, and the law firm that had prosecuted the state court proceedings. The district court dismissed the complaint with prejudice for lack of subject-matter jurisdiction. We have jurisdiction over Pellegrini's timely appeal under 28 U.S.C. § 1291 and we vacate and remand.

1. The Eleventh Amendment barred district court jurisdiction over Pellegrini's claims against the Superior Court. *See Franceschi v. Schwartz,* 57 F.3d 828, 831 (9th Cir. 1995) (per curiam) ("The Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies." (citation and internal quotation marks omitted)). The claims are also barred under the *Rooker-Feldman* doctrine. *See Noel v. Hall,* 341 F.3d 1148, 1163 (9th Cir. 2003) (noting that the doctrine bars review of a "legal injury caused by a state court judgment, based on an

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[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

allegedly erroneous legal ruling").

2. Pellegrini failed to "specifically and distinctly" argue on appeal why the district court had subject-matter jurisdiction over the fraud and conversion claims against the other defendants, so the issue is forfeited. *See Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986) (describing forfeiture of issues). In any case, Pellegrini's claims directly contravene the Superior Court's holding that these assets belonged to the trust. The district court lacked jurisdiction over these "inextricably intertwined" claims, as the "the relief requested in the federal action would effectively reverse the state court decision or void its ruling." *Cooper v. Ramos*, 704 F.3d 772, 779 (9th Cir. 2012) (citation omitted).

3. Pellegrini's arguments of extrinsic fraud fail. She asserts that "[t]he defendants acted in concert to misrepresent property title and interest for purposes of stealing" her property, but does not contend that she was deprived of the ability to present her case in state court. *See Green v. Ancora-Citronelle Corp.*, 577 F.2d 1380, 1384 (9th Cir. 1978) (defining extrinsic fraud as conduct that "prevents a party from having an opportunity to present his claim or defense in court or deprives a party of his right to a day in court," not "misrepresentations" that go "to the very heart of the issues contested in the state court action" (citations and internal quotation marks omitted)).

4. The district court did not abuse its discretion by taking judicial notice of documents and orders filed in the state proceedings. "[A] court may take judicial

notice of 'matters of public record.'" *Lee v. City of Los Angeles,* 250 F .3d 668, 689 (9th Cir. 2001) (citation omitted). The district judge made clear that he took judicial notice of "the existence of the document or order," not "[t]he truth or the correctness of the factual content." *See id.* at 690 (holding that "when a court takes judicial notice of another court's opinion, it may do so not for the truth of the facts recited therein, but for the existence of the opinion" (citation and internal quotation marks omitted)). Pellegrini also asserts that she had no opportunity below to oppose judicial notice. To the contrary, the district court expressly considered, and rejected, Pellegrini's objections to judicial notice.

5. The district court dismissed Pellegrini's complaint with prejudice. But "a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert [her] claims in a competent court." *Frigard v. United States,* 862 F.2d 201, 204 (9th Cir. 1988). We therefore vacate the dismissal with prejudice and remand with directions that the dismissal be without prejudice.

VACATED and **REMANDED;** costs shall be taxed against Pellegrini.

APPENDIX K

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF CALIFORNIA

LILLIAN PELLEGRINI,

v. CASE NO: 1:126-CV-01292-LJO-BAM

FRESNO COUNTY, CALIFORNIA, ET AL.,

JUDGMENT IN A CIVIL CASE

XX – Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 4/6/2017

Marianne Matherly
Clerk of Court

ENTERED: April 6, 2017

by: /s/ T. Lundstrom
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF CALIFORNIA

LILLIAN PELLEGRINI,
Plaintiff,

v.

FRESNO COUNTY, *et al.*,
Defendants.

1:16-cv-01292 LJO BAM

MEMORANDUM DECISION AND
ORDER GRANTING DEFEDANTS'
MOTIONS TO DISMISS
(Docs. 40, 42,43, 44, 45, 46)

MEMORANDUM DECISION AND
ORDER DENYING BEVERLY
PELLEGRINI'S REQUEST FOR
INTERVENTION (Doc. 15)

I. INTRODUCTION

Pending before the Court are six motions to dismiss the complaint filed by Defendants Fresno County Superior Court ("FCSC") (Docs. 40, 42); Fresno County (erroneously sued as Fresno County Counsel representing Joshua Cochron and Fresno County Public Guardian (Doc. 43); UBS Financial Services ("UBS") and The Bank of New York Mellon ("BNY")

(Doc. 44); Weintraub Genshlea Chediak Tobin & Tobin (erroneously sued as and herein referred to as "Weintraub Tobin") (Doc. 45); and Comerica, Inc. ("Comerica") (Doc. 46). Also pending is Beverly Pellegrini's ("Beverly") request to intervene. (Doc. 15.)

Having reviewed the parties' briefs and all supporting documents, the Court found these motions suitable for decision without oral argument, and the hearing set for April 10, 2017, was vacated. For the reasons set forth below, Defendants' motions to dismiss are GRANTED, and Beverly Pellegrini's motion for intervention is DENIED.

II. FACTUAL AND PROCEDURAL BACKGROUND

This case stems from a trust administration dispute between Lillian Pellegrini ("Lillian") and her daughter, Marleen Merchant ("Marleen"), which was decided in a probate proceeding conducted by the FCSC, Case No. 10CEPR00683. Lillian appealed the FCSC judgment, and the Fifth District Court of Appeal (the "Fifth DCA") affirmed the FCSC judgment on October 31, 2016. Lillian filed a petition for review in the California Supreme Court, which was summarily denied on January 11, 2017. The FCSC judgment is now final.

A. The 1999 Trust

Angelo John Pellegrini (Angelo) and Lillian, as husband and wife, executed what the Fifth DCA termed a "fairly standard revocable living trust" on

June 18, 1999. As described by the Fifth DCA,

> [t]he Trust states that Angelo and Lillian (also referred to as the trustors) have two children – namely, their daughters Beverly Jean Pellegrini (Beverly) and Marleen – who would receive the remainder of the Trust estate in equal shares after Angelo and Lillian died. Angelo and Lillian, during their joint lifetimes, were the co-trustees of the Trust.
>
> The Trust provides that on the death of the first spouse, the surviving spouse would continue to act as trustee. However, at that time, the Trust assets were supposed to be divided into separate trusts. As the Trust clearly states: "On the death of the Deceased Spouse, the Trustee shall divide the Trust Estate . . . into three separate trusts, designated as the 'Survivor's Trust,' the 'Marital Trust,' and the 'Family Trust.'" Here, Angelo died on March 27, 2008, at which time Lillian became the sole trustee and, according to the above language, was obligated to divide the Trust estate into separate trusts as provided in the Trust.
>
> . . .
>
> On the Subject of amendment or revocation, the Trust provides that during their joint lifetimes, Angelo and Lillian were free to revoke or amend the trust. However,

> "[o]n the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke or terminate the Survivor's Trust, but the Marital Trust or the Family Trust may not be amended, revoked, or terminated on the death of the Deceased Spouse."

Merchant v. Pellegrini, No. F072656, 2016 WL 6426389, at * 1-2 (Oct. 31, 2016) (unpublished).[1]

In her complaint before this Court, Lillian alleges a different operation of the 1999 Trust. After inheriting money from Lillian's siblings Mike and Gladyce, Lillian and her husband Angelo created the Angelo Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust on June 18, 1999 (the "1999 Trust"). (Cmplt., p. 62.)[2] In creating this Trust and "tax subtrusts," if either spouse continued to live while the federal estate tax exemption was being increased, the tax subtrusts would not be necessary and would not be funded. (Cmplt., p. 12:17-20.) By the Trust's terms, all assets contributed to the trust would retain their same character and ownership interests and the settlor contributing the property would retain control of that property during his/her lifetime. Moreover, the

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[1] This summary does not represent any factual findings with respect to disputed aspects of the 1999 Trust, it is merely the Fifth DCA's summary of the trust provisions to provide factual context.

[2] All page numbers are made in reference to the CM/ECF pagination at the top of filed documents.

Trust would remain subject to revocation during the survivorship period by the settlor contributing the property. (Cmplt., p. 12:21-23, p. 62, Exh. 3.) Lillian contributed her inherited separate property which comprised nearly all assets held in the Trust account. Other financial assets contributed to the Trust had been titled in joint tenancy and were transferred. The only other asset that was transferred to the Trust was residential property held by Angelo and Lillian as joint tenants.

In 2004, Angelo and Lillian amended the distribution clause of the Family Trust on the surviving spouse's death permitting a life estate to Beverly in the Trust's residential property, if then unsold. (Cmplt., p. 63, Exh. 3.) Two amendments "left the Family Trust void of any beneficiary designation, rendering the Family Trust a nullity and an invalid trust." (*Id.*)

In March 2008, Angelo died. Pursuant to the Trust terms, Lillian maintained unrestrained power of sale, and she sold the San Francisco real property within six months of Angelo's death, distributing the proceedings to her Survivor's Trust. Shortly after this sale in 2008, Lillian revoked the Trust. (Cmplt., p. 63, Exh. 3.) Lillian also claims that in 2008, a Marital and Survivor's trust were funded, which she claims implied that the Family Trust was not intended to be funded on the first spouse's death. (Cmplt., p. 14:5-11.) Lillian asserts subsequent amendments to the 1999 Trust were made in 2010, which rendered the Family Trust "void and a nullity for lack of any beneficiary designation on the Surviving Settlor's eventual death."

(Cmplt., p. 16:17-20.)

B. FCSC Proceedings

In July 2010, Marleen successfully petitioned the FCSC for an order compelling Lillian to provide an accounting of assets as of the time of Angelo's death and to provide information on how the assets were allocated between the Survivor's Trust, the Marital Trust, and the Family Trust. Lillian filed a statement of trust assets as of March 27, 2008. Among the assets purportedly allocated to the Family Trust was one-half of the $800,000 value of a San Francisco residence. The total value of assets that Lillian, through her attorney, represented to have been allocated to the Family Trust was $544,386.91. In 2011, these representations regarding the Family Trust were repudiated by Lillian in a letter written by her in response to a request by Marleen's attorney for further information and accounting concerning the Family Trust. Lillian stated that there were no assets in the Family Trust and no assets were ever allocated or distributed to a Family Trust.

Purportedly based on this letter, in July 2012, Marleen filed a petition to remove Lillian as trustee, appoint a successor trustee, and obtain other relief. On January 13, 2014, Marleen filed an additional petition seeking the recovery of property belonging to the Family Trust, for an award of double damages under Probate Code § 859, and for an award of attorney's fees.

On June 17, 2014, the FCSC granted a motion to bifurcate the trial and determined two issues would be tried first: (1) whether the Family Trust was required to be funded after Angelo's death, and (2) whether the title to real property in San Francisco maintained its joint tenancy characterization after being transferred into the 1999 Trust. (*See* Doc. 44-2, pp. 170-72, Exh. 16.) On January 14, 2015, a trial was conducted on these two issues, and the FCSC determined by clear and convincing evidence that the Family Trust was required to be funded following the death of Angelo with a minimum of $544,386.91. (*Id.*) The FCSC also found the San Francisco real property did not maintain its joint tenancy characterization after being transferred to the 1999 Trust. (*Id.*)

In May 2015, after holding a hearing, the trial court ordered the removal of Lillian as trustee of the Family Trust for failing to fund it after Angelo's death, and it appointed the Fresno County Public Guardian as the successor trustee. (Doc. 44-2, pp. 42-43, Exh. 2.) The May 2015 order also directed Lillian to fund the Family Trust in the amount of $544,386.91, and to pay this amount to the Public Guardian. (*Id.*) As to all remaining issues, a one-day court trial was set for August 25, 2015. (*Id.*)[3]

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[3] Both the January 14, 2015, order and the May 15, 2015, orders were final and appealable when issued. Cal. Prob. Code § 1304(a). No appeal of these orders was taken within the 60-day time period to do so. Cal. Rules of Ct., rule 8.104(a)(1). Lillian did not file an appeal with the Fifth DCA until November 2015, after the second trial was held by FCSC. The Fifth DCA held that, to the extent Lillian was attempting to appeal the January 2015 and May 2015 orders, this portion of her appeal was untimely. (Doc. 44-2, pp. 19-

On trial of the remaining issues in August 2015, the trial court found that Lillian wrongfully and in bad faith took assets belonging to the Family Trust, and double damages were awarded pursuant to California Probate Code § 859 which Lillian was ordered to pay to the Public Guardian. (Doc. 44-2, pp. 45-47, Exh. 3.) Lillian was also ordered to pay Marleen's attorney's fees through the Public Guardian. In total, Lillian was ordered to pay $1,528,271.44 to the Public Guardian. (*Id.*)

On October 14, 2015, Lillian filed a document in the U.S. District Court for the Eastern District of California entitled "Request for Transfer to Federal Court 28 U.S.C. § 1441," which was construed as a notice of removal of the trial court proceedings over which this Court determined it had no jurisdiction; the case was remanded to the FCSC *sua sponte* less than one week later. (Doc. 44-2, pp. 49-84, Exh. 4; 1:15-cv-01564-LJO-EPG, Doc. 1.)

On October 19, 2015, the Public Guardian filed an ex parte application seeking to enforce FCSC's order requiring Lillian to fund the Family Trust and pay Marleen's attorney's fees through the Public Guardian and to freeze Lillian's UBS accounts. (Doc. 44-2, pp. 159-60, Exh. 13.)

On October 20, 2015, FCSC granted the Public Guardian's motion, froze Lillian's accounts at UBS until further order, and required UBS to transfer the

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sum of $1,528,271.44 to the Public Guardian. (Doc. 44-2, pp. 156-57, Exh. 12.) Lillian then appealed the trial court's orders to the Fifth DCA on November 15, 2015. (Doc. 44-2, p. 93, Exhibit 6). On November 16, 2015, FCSC issued an ex parte order granting full authority to the Public Guardian to liquidate assets from Lillian's UBS accounts. (Doc. 44-2, p. 162 (Exh. 14).)

C. Proceedings Before the California Fifth District Court of Appeal

On November 16, 2015, Lilian filed a "Request for Writ of Supersedeas []," and the Fifth DCA issued a temporary stay of FCSC's October 20, 2015, and November 16, 2015, ex parte orders in the underlying case. (Doc. 44-2, p. 93 (Exhibit 6).) On December 4, 2015, the Fifth DCA issued an order clarifying FCSC's October 20, 2015, ex parte order "freezing accounts held in the name of Lillian Dorothy Pellegrini at UBS Financial Services, Inc." remained enforceable "insofar as it directs that 'no transfers or withdrawals shall be made from the [specified] account[s] until further order of the Court.'" (*Id.*)

On December 19, 2015, Lillian filed a "Request to Respond to Answer," and on January 6, 2016, Lillian filed a "Motion to Decide Writ of Prohibition." (*Id.* at pp. 96-97.) On January 19, 2016, the Fifth DCA issued the following order regarding Lillian's motions:

> The "Request to Respond to Answer" filed on December 10, 2015, and the "Motion to Decide Writ filed on January 6, 2016, are granted. The "Request for Writ of

> Supersedeas or the Alternative Writ of Prohibition ... , " filed on November 16, 2015, is denied. This court's November 18, 2015, stay order, and December 4, 2015, clarifying order are vacated and the temporary stay is lifted.

(Doc. 45-2, p. 8.)

On October 31, 2016, the Fifth DCA issued an order affirming FCSC's judgment. (Doc. 45-2, p. 10-45.)

D. Proceedings Before This Court

Prior to the Fifth DCA's October 2016 decision, Lillian filed suit in August 2016 in the U.S. District Court for the Northern District of California naming as defendants Fresno County, Fresno County Counsel, Fresno County Public Guardian, FCSC, UBS, BNY, Comerica, and "Weintraub Tobin." Lillian alleges the probate proceedings before FCSC were void for lack of jurisdiction, various Defendants committed fraud on the court because they knew no Family Trust ever existed, FCSC denied Lillian due process by failing to provide her notice of hearings and an opportunity to be heard; and the Public Guardian, Weintraub Tobin, UBS, Comerica, and BNY were all complicit with and participated in the fraudulent conveyance and conversion of Lillian's trust assets held in UBS accounts. Lillian also alleges UBS breached her privacy in providing information to the Public Guardian without her consent.

On August 30, 2016, the Northern District *sua* *sponte* determined venue was improper there and transferred the case to the Eastern District where it determined venue was proper, finding that Lillian's claims arose out of events that occurred in Fresno, California. (Doc. 9.)

On October 31, 2016, Lillian filed a document entitled "Motion to Notify Court of a Conflict of Interest by Lillian Pellegrini" – construed as seeking disqualification of the undersigned – and a second document was filed by Lillian's daughter, Beverly Pellegrini, entitled "Notice – Federal Jurisdiction Under Federal Rule of Civil Procedure 60; Intervenor by Right Under Federal Rule of Civil Procedure 24; Joinder Under Federal Rules of Civil Procedure 19." (Docs. 14, 15.)

On November 3, 2016, Lillian was ordered to serve the complaint, and Beverly's motion entitled "Notice – Federal Jurisdiction Under Federal Rule of Civil Procedure 60; Intervenor by Right Under Federal Rule of Civil Procedure 24; Joinder Under Federal Rules of Civil Procedure 19" ("request to intervene") was held in abeyance until such time as the Defendants were served and the motion was properly re-noticed. (Doc.16.) Between December 27, 2016, and January 9, 2017, each Defendant filed a motion to dismiss. (Docs. 40, 42, 43, 44, 45, 46.)

On January 12, 2017, Lillian filed a motion for venue change and a motion to stay the proceedings. (Docs. 53, 54.) On February 14, 2017, the Court denied Lillian's motions to transfer venue, stay the proceedings, and to disqualify the undersigned. (Doc.

76.) The Court did not reach Beverly's October 2016 request to intervene as it had never been re-noticed for a hearing and was not properly before the Court.

On February 24, 2017, Beverly filed a "notice of appeal" seeking immediate appeal of the Court's refusal to reach her request to intervene. (Doc. 80.) As Beverly's motion was never properly re-noticed or set for a hearing and no order had therefore been issued regarding the matter of intervention that could be appealed, the Court construed Beverly's "notice of appeal" as a motion for an order on her request to intervene. (Doc. 81.) The Court set a hearing on this request, supplied the parties with a briefing schedule, and continued Defendants' motions to dismiss to be heard concurrently with Beverly's request to intervene. (Doc. 81.)

III. JUDICIAL NOTICE

Defendants UBS, Weintraub, and Fresno County each seek judicial notice of various court documents. (Docs. 43-2, 44-2, 43-2, 57, 97.)

UBS and Bank of NY Mellon's Request (Doc. 44-2):

California Supreme Court Records: California Supreme Court Docket in Case No. S238760 (Doc. 44-2, Exh. 7).

Fifth DCA Records: (1) an October 31, 2016, order in *Merchant v. Pellegrini*, Case No. F072656 (Doc. 44-2, Exh. 1); and (2) the Docket (Register of Actions) in Case No. F072656 (Doc. 44- 2, Exh. 6).

FCSC Records and Filings, Case No. 10CEPR00683:

- March 3, 2014, Memorandum of Points and Authorities in Support of Motion of Petitioner Marleen Merchant to Enforce Subpoenas (Doc. 44-2, Exh. 8)

- April 4, 2014, Further Reply of Petitioner Marleen Merchant to Opposition to Motion to Enforce Subpoenas (Doc. 44-2, Exh. 9)

- June 17, 2014 Order granting the Motion of Petitioner Marleen Merchant to Enforce Subpoenas (Doc. 44-2, Exh. 10)

- August 8, 2014, FCSC Order Directing Compliance with Subpoenas (Doc. 44-2, Exh. 11)

- January 21, 2015, Finding and Order After Trial (Doc. 44-2, Exh. 16)

- May 15, 2015, Order Removing Lillian D. Pellegrini as Trustee and Appointing Successor Trustee; Order Directing Lillian D. Pellegrini to Fund a Family Trust in the Amount of $544,386.91 (Doc. 44-2, Exh. 2)[4]

- September 4, 2015, Findings and Order After Trial (Doc. 44-2, Exh. 3)

- October 20, 2015, Ex Parte Order Freezing Accounts

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[4] A copy of this order is attached to Plaintiff's complaint. (Doc. 1, p. 77-78.)

Held in the Name of Lillian Dorothy Pellegrini at UBS Financial Services Inc. (Doc. 44-2, Exh. 12)

• October 20, 2015, Ex Parte Order Directing UBS Financial Services Inc. to Pay $1,528,721.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders (Doc. 44-2, Exh. 13)

• November 16, 2015, Ex Parte Order Granting Full Authority to the Fresno County Public Guardian, as Successor Trustee, as to Liquidation of Family Trust Assets (Doc. 44-2, Exh. 14)[5]

• A January 22, 2016, Notice to Court and All Parties filed by UBS (Doc. 44-2, Exh. 15)

Eastern District of California Orders and Filings in Case No. 1:15-cv-01564-LJO-EPG: (1) an October 14, 2015, document filed by Lillian Pellegrini entitled "Request for Transfer" (Doc. 44-2, Exh. 4); and (2) an October 20, 2015, Order of Remand (Doc. 44-2, Exh. 5).

Weintraub Tobin's Request (Doc. 45-2, Doc. 57):

California Supreme Court Records: California Supreme Court Order issued January 11, 2017, denying Lillian's petition for review of the Fifth DCA's October 31, 2016, order (Doc. 57, Exh. A)

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[5] A copy of this order is attached to Lillian's complaint. (Doc. 1, p. 95-96.)

Fifth DCA Records: (1) a November 18, 2015, Order (Doc. 45-2, Exh. A); (2) a December 4, 2015, Clarifying Order (Doc. 45-2, Exh. B); (3) a January 19, 2016, order denying writ of supersedaes and dissolving temporary stay (Doc. 45-2, Exh. C); and (4) an October 31, 2016, order in *Merchant v. Pellegrini,* Case No. F072656 (Doc. 45-2, Exh. D).

***Fresno County's Request (Doc. 43-2, 43-4)*:**

Fifth DCA Records: (1) a January 19, 2016, order denying writ of supersedaes and dissolving temporary stay (Doc. 43-4, Exh. A); (2) a October 31, 2016, order in *Merchant v. Pellegrini,* Case No. F072656 (Doc. 43-4, Exh. B).

Eastern District of California Orders and Filings in Case No. 1:15-cv-01564-LJO-EPG: (1) an October 14, 2015, document filed by Lillian Pellegrini entitled "Request for Transfer" (Doc. 43-4, Exh. C); (2) an October 14, 2015, document filed by Lillian Pellegrini entitled "Motion to Dismiss" (Doc. 43-4, Exh. D); (3) an October 14, 2015, document filed by Lillian Pellegrini entitled "Motion for Confidentiality" (Doc. 43-4, Exh. E); and (4) an October 20, 2015, *sua sponte* order of the Eastern District of California, remanding Lillian Pellegrini's case to the FCSC (Doc. 43-4, Exh. F).

Under the Federal Rules of Evidence, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "The court . . . must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2).

Rule 12(d) provides that if "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). However, there are two exceptions to this rule: a court may consider material (1) which is properly submitted as part of the complaint, or (2) matters of public record that have been judicially noticed. *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001).

As orders of the court or documents filed with a court, all the documents identified by Fresno County, UBS, and Weintraub Tobin are subject to judicial notice as matters of public record. *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012). The truth or the correctness of the factual content of these documents may *not* be judicially noticed, but the *existence* of the document or order and what the particular document states are subject to judicial notice. *Lee v. City of L.A.*, 250 F.3d 668, (9th Cir. 2001) (court may take judicial notice of another court's opinion, but not for the truth of the facts recited therein, but for the existence of the opinion).

Lillian argues the Court may not take judicial notice of these documents without converting Defendants' motions to dismiss into motions for summary judgment, but this is incorrect. Judicial notice of public documents is one of the long-standing exceptions to Rule 12(d)'s prohibition on considering documents outside the pleadings in relation to a motion to dismiss. *Lee*, 250 F.3d at 688-89. Defendants' requests for judicial notice are GRANTED.[6]

IV. SUBJECT MATTER JURISDICTION

All Defendants except Comerica assert the Court lacks subject matter jurisdiction over Lillian's claims under the *Rooker-Feldman* doctrine, and they argue dismissal is required pursuant to Federal Rule of Civil Procedure 12(b)(1). Defendants contend Lillian's claims amount to an impermissible collateral attack on FCSC's judgments.

A. Legal Standard – Motion to Dismiss Pursuant to Rule 12(b)(1)

"As courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings." *Branson v. Nott,* 62 F.3d 287, 291 (9th Cir. 1995) (citing *Dist. of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983)); *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986). "This is true even when the challenge to a state court decision involves federal constitutional issues." *Id.* (citing *Feldman,* 460 U.S. at 484-86; *Worldwide Church of God,* 805 F.2d at 891). This is so because, pursuant to 28 U.S.C. § 1257, the power to review a

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[6] The Court notes several of Defendants' requests for judicial notice overlap.

state court's judgment lies solely with the United States Supreme Court, not with federal district courts. *Feldman*, 460 U.S. at 476. In other words, "[t]he *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments." *Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 644 n. 3 (2002).

B. The Court Lacks Subject Matter Jurisdiction Under *Rooker-Feldman*

The *Rooker-Feldman* doctrine has been subject to criticism as overused and little understood.[7] In 2005, the United States Supreme Court revisited the doctrine in *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283 (2005) and reiterated it "is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284. The Court clarified that where there is parallel state and federal litigation, *Rooker-Feldman* "is not triggered simply by the entry of judgment in the state court." *Id.* at 292. Moreover, section 1257 "does not stop a district court from exercising subject-matter

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[7] *See* Thomas D. Rowe, Jr., "Rooker-Feldman: Worth only the Powder to Blow it Up?," 74 Notre Dame L. Rev. 1081, 1083 (1999) (observing the "notable frequency" with which federal courts invoke Rooker-Feldman to find they lack jurisdiction).

jurisdiction simply because a party attempts to litigate in federal court a matter previously in state court." *Id.* at 293. Where a federal plaintiff "'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" *Id.* (quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)).

In its most recent application by the Ninth Circuit Court of Appeals, a case cited with approval by the Supreme Court in *Exxon*, the *Rooker-Feldman* doctrine was held not to apply. *Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003). In *Noel*, the court observed that in its routine application, *Rooker-Feldman* is "exceedingly easy." *Id.* at 1155. However, the doctrine "becomes difficult – and, in practical reality, only comes into play as a contested issue – when a disappointed party seeks to take not a formal direct appeal, but rather its de facto equivalent, to a federal district court." *Id.*

The court explained that it "is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court." *Id.* at 1163. A forbidden de facto appeal is brought in two kinds of cases: (1) where a "federal plaintiff complains of harm caused by a state court judgment that directly withholds a benefit (or imposes a detriment on) the federal plaintiff, based on an allegedly erroneous ruling by the court"; and (2) where a federal plaintiff complains "of a legal injury caused by a state court judgment, based on an allegedly erroneous legal ruling, in a case in which the federal plaintiff was one of the litigants." *Id.*

This litigation fits into the second type of case identified in *Noel*, and despite some of the noted difficulties and narrow scope of the *Rooker-Feldman* doctrine, it is applicable here. To determine whether *Rooker-Feldman* deprives the court of subject matter jurisdiction, "the immediate inquiry is whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim." *Taylor v. Fed. Nat'l Mortg. Ass'n*, 374 F.3d 529, 531 (7th Cir. 2004). "Claims that directly seek to set aside a state court judgment are de facto appeals and are barred without additional inquiry." *Id.* Federal claims that were not raised in state court or that do not, on their face, require review of a state court's decision may still be subject to *Rooker-Feldman* if those claims are inextricably intertwined with a state court judgment. *Id.*

Lillian's injury for all Defendants' alleged conduct is the loss of UBS account assets resulting from FCSC's order that she pay $1,528,271.44 to the Family Trust through the Public Guardian. Lillian states she has sought a "dismissal" through the FCSC and the Fifth DCA before the order for payment was issued by the FCSC, but due to failures of due process and "through the courts' negligence, the property has been stolen and dismissal is too late." (Cmplt., p. 42:18-23.) Lillian maintains her "only remedy" now is to demand payment "of the full claim." Lillian asks this Court to enter a "default judgment" in her favor, and then order UBS to replace all her assets and reimburse Lillian for the associated costs, liabilities, and interest.

Although Lillian generally alleges violations of due process, and makes reference to fraud and conversion, none of her claims are pled distinctly as causes of action against particular Defendants. Rather, her complaint is an amalgamation of the various reasons why the FCSC lacked jurisdiction over her trust, made incorrect legal determinations, and issued a judgment and orders that are void due to fraud on the court. Lillian's alleged injury from all Defendants' conduct is one in the same: Lillian's UBS accounts were levied to pay $1,528,271.44 to the Family Trust pursuant to the FCSC order; the remedy she seeks is return of the $1,528,271.44 plus additional costs and interest.[8] Although Lillian does not explicitly ask to void the FCSC's judgment and orders, seeking recovery of the sum FCSC ordered she pay to the Family Trust is tantamount to such a request. In that sense, Lillian's entire complaint is a de facto appeal of the FCSC judgment, which is barred under *Rooker-Feldman*. *See Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 557 (7th Cir.1999) ("[A] litigant may not attempt to circumvent the effect of *Rooker-Feldman* and seek a reversal of a state court judgment simply by casting the complaint in the form of a civil rights action.").

Parsing Lillian's allegations into distinct claims,

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[8] Lillian also claims she is entitled to double and triple damages under the California Probate Code §§ 859, 13605. (Cmplt., p. 42.)

including claims for due process violations against the FCSC as well as fraud and conversion claims against the remaining Defendants, these claims are inextricably intertwined with the state court judgment and therefore are also barred under *Rooker-Feldman.* In *Feldman,* the Court expanded the doctrine to include claims that were inextricably intertwined with the state court's ultimate decision. *Feldman,* 460 U.S. at 486-87. Inextricably intertwined claims are those that would necessarily require the district court to review a judicial decision of a state court, something the district court has no jurisdiction to do.[9] *Id.*

Since *Feldman,* lower federal courts have formulated different criteria and rules for determining which claims are "inextricably intertwined" with the state court's judgment such that *Rooker-Feldman* applies. The Ninth Circuit has embraced the GASH approach, named for the Seventh Circuit decision formulating the approach, to determine whether claims are "inextricably intertwined." *Noel,* 341 F.3d at 1164 (citing *GASH Assocs. v. Village of Rosemont,* 995 F.2d 726 (7th Cir. 1993) ("Of the formulations in the other circuits, we find most notable (and most useful) the similar formulation of the Seventh Circuit, first articulated at some length by Judge Easterbrook in [*GASH*]")). Under this approach, whether a claim is "inextricably intertwined" "hinges on whether the federal claim alleges that the injury was caused by the

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9 There are very limited exceptions to this jurisdictional prohibition, including writs of habeas corpus under 28 U.S.C. § 2254.

state court judgment, or, alternatively, whether the federal claim alleges an independent prior injury that the state court failed to remedy." *Taylor*, 374 F.3d at 533; *GASH*, 995 F.2d at 728-29. Thus, if a plaintiff is not seeking to set aside the state court judgment but rather presents "some independent claim," even if it is one that denies a legal conclusion that a state court has reached in a case to which he was a party, then *Rooker Feldman* does not apply and the federal court has jurisdiction. *Taylor*, 374 F.3d at 533.

Although Lillian asserts due process violations by the courts and the judges involved in the underlying Probate proceedings,[10] the essence of her complaint is that FCSC improperly and impermissibly determined she was required to fund the Family Trust when Angelo died in 2008, and then erroneously ordered that she fund the Family Trust. Adjudicating and deciding any due process violation by the state court necessarily implicates FCSC's judgment, rendering those due process claims against FCSC inexplicably intertwined with its judgment.

Lillian's claims against Fresno County, UBS, BNY, Comerica, and Weintraub Tobin for fraud and conversion are somewhat more difficult, in part because the allegations are scattered, vague, and conclusory. Some allegations relate to these Defendants' compliance with the FCSC order that the

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[10] Although there were allegations of various due process violations by different FCSC judges, none were identified as Defendants.

Family Trust be funded from Lillian's UBS account assets. Lillian alleges that UBS, BNY, and Comerica refused to stop the payment from her UBS account when she requested it, and that this constituted conversion. (Cmplt., pp. 27-30, 38-39.) Lillian also alleges generally that in providing her account information to the Public Guardian and in freezing her account *prior* to a court order to do so, UBS breached its duties of privacy and breached a contract. In essence, however, these allegations stem from the FCSC's orders removing Lillian as trustee of the Family Trust, freezing Lillian's UBS accounts, and ordering distribution of Lillian's assets to the Family Trust via the Public Guardian. An element of these claims necessarily requires that the FCSC orders executing its judgment were somehow void or invalid, thus implicating the underlying state court judgment. Even to the extent Lillian alleges UBS froze her accounts before an order was in place to do so or otherwise impermissibly divulged information to the Public Guardian, the only damage she alleges as a result of this conduct is the loss of assets from her UBS account – which is directly tied to the FCSC order that she fund the Family Trust by making payment to the Public Guardian. Moreover, the allegation that information was provided to the Public Guardian regarding her UBS accounts is fundamentally connected to the FCSC order appointing the Public Guardian successor trustee of the Family Trust and implicates the Public Guardian's rights and obligations as successor trustee to seek financial information. Lillian vigorously contends the FSCS order appointing the Public Guardian as trustee was invalid, impermissible, and otherwise in violation of her rights.

Analyzing these allegations will necessitate an evaluation of FCSC's order that Lillian pay UBS trust assets to the Public Guardian. These claims are inextricably intertwined with the FCSC judgment.

Another portion of the allegations against Fresno County, Weintraub Tobin, and UBS relate to fraud on the court and alleged misrepresentations these Defendants made to the FCSC or the Fifth DCA regarding the nature of the Family Trust. (*See, e.g.,* Cmplt., p. 28:23-26 (UBS colluded with Weintraub Tobin and Fresno County); p. 18:26-19:24) ("Weintraub Tobin knowingly and falsely claimed" in a 2012 petition that the Family Trust was created, and then claimed in a brief filed before the Fifth DCA that the trust was "supposed" to have been created, evidencing the misrepresentation in 2012).)

This is very similar to fraud-on-the-court claims considered by the Seventh Circuit in *Taylor,* 374 F.3d at 533. There, the plaintiff-appellant, Taylor, lost her home in a judicial foreclosure action. Rather than directly appealing the state court judgment, Taylor filed a separate suit alleging the defendant mortgage company and its law firm committed extrinsic fraud and fraud upon the court by instituting wrongful foreclosure actions against her in violation of federal statutes. The defendants removed the case to federal court where it was dismissed for lack of jurisdiction under *Rooker-Feldman.* On appeal, the court held Taylor's alleged injuries did not stem from an independent violation of her rights, but from the alleged extrinsic fraud upon the state court and intentional deprivation of her property that she claimed occurred due to that violation. As such, the claims were inextricably intertwined with the state court's judgment and barred by *Rooker-Feldman*.

Like *Taylor*, Lillian's allegations of fraud on the court do not arise from an independent violation of her rights, but from the court processes she claims were in violation of her rights and from purported misrepresentations various Defendants made in characterizing to FCSC the nature of the 1999 trust and the trust assets. Notably, Lillian also alleges that FCSC knew about the fraud and was complicit with it – which intertwines all the fraud allegations with the FCSC's orders and judgment. (Cmplt., 20:26-21:2.) There is no way to examine the alleged fraud on the court without evaluating FCSC's underlying legal determinations. *See Worldwide Church of God*, 805 F.2d at 892-93 (impossible to evaluate constitutional claims without conducting review of state court's legal determinations and jury verdict, thus *Rooker-Feldman* applied to constitutional claims). Lillian's allegations of fraud on the court against Fresno County, UBS, Weintraub Tobin are inextricably intertwined with FCSC's legal determinations and its judgment.[11]

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[11] Lillian alleges UBS filed a document before FCSC containing a "wrongful death ransom" against Beverly, but this is difficult to frame as a "claim" for relief. The allegation of "wrongful death ransom" seemingly relates to a January 2016 notice filed by UBS in the FCSC case, but that filing contains no words that could be construed as a "wrongful death ransom." (*See* Doc. 97.) The Court considers that allegation in more depth below, but standing alone, it is difficult, if not impossible, to construe this as a claim for relief, particularly as Lillian has no standing to seek any relief on Beverly's behalf, and there is no allegation relating to Lillian

Because Lillian's complaint amounts to a de facto appeal of FCSC's legal determinations in the underlying probate matter, and because all other allegations that can be construed as claims against various defendants are inextricably intertwined with FCSC's legal determinations and judgments, the Court finds it lacks subject matter jurisdiction over Lillian's complaint under the *Rooker-Feldman* doctrine, and it is DISMISSED.

V. BEVERLY'S REQUEST TO INTERVENE

As the Court finds it is without subject matter jurisdiction over Lillian's complaint, there can be no jurisdiction over any complaint in intervention filed by Beverly. *See Canatella v. California*, 404 F.3d 1106, 1113 (9th Cir. 2005) (intervention as of right cannot extend federal jurisdiction); *Mattice v. Meyer*, 353 F.2d 316 (8th Cir. 1965) (where no action was pending since plaintiff was without standing to initiate an action, person who sought to intervene as co-plaintiff could not complain on appealed that he was not allowed to do so); *Hobbs v. Police Jury of Morehouse Parish*, 49 F.R.D. 176 (D. La. 1970) (intervenor takes case as he

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herself.

Lillian's bare allegation against Comerica is that it may have been the depository bank for the Public Guardian and it would not respond to Lillian's request to stop payment and return her UBS funds. (Cmplt., pp. 38-39.) Construing this assertion as some type of claim, it is still inextricably intertwined with FCSC's order requiring payment be made to the Public Guardian and cannot be considered without examining FCSC's underlying legal determinations.

finds it and may not intervene if there is no proper suit before the court); *see also* 7C Fed. Prac. & Proc. § 1917 (3d ed.) (2017) (intervention presupposes the pendency of an action in a court of competent jurisdiction and cannot create jurisdiction if one existed before).

Even if there were jurisdiction over some claim in Lillian's complaint, for all the reasons set forth below, the request for intervention is DENIED.

A. Beverly and Lillian's Request "for Intervenor by Right or Joinder"

Aside from the jurisdictional issue, the Court notes the procedural awkwardness of Beverly's request to intervene. Beverly is not eligible to represent Lillian before this Court because she is not admitted to the California Bar, and she is not eligible to practice before this Court pro hac vice. Nevertheless, Beverly continues to draft and file all Lillian's papers in this case:

> Lillian Pellegrini is Settlor/Trustee and competent but she lacks legal skill and acumen to be able to prepare and file her own papers by herself. Lillian Pellegrini and Beverly Pellegrini discuss all legal issues completely and thoroughly and all filings are read aloud to Lillian Pellegrini to facilitate her comprehension and compensate for her diminished vision acuity . . . [w]ithout representation, Lillian Pellegrini has relied on services provided by Beverly Pellegrini.

(Doc. 15, 9:19-27.)

At the February 13, 2017, hearing on Lillian's motions to stay, to transfer venue, and to disqualify the undersigned, the Court explained to Lillian that if she were unable to represent herself, she would need to retain counsel, which could not be her daughter Beverly. The request to intervene is signed by both Beverly and Lillian, and they both request that "the District Court grant the motion for intervention by right or in the alternative, grant joinder under Federal Rule 19 to permit Beverly Pellegrini" to participate in the litigation. (Doc. 15, 10:27-11:2.) It appears some of the motivation to intervene stems from Lillian's purported inability to represent herself in pro se.[12]

The request to intervene first asserts the Court has jurisdiction over claims of an intervenor under 28 U.S.C. §1367, and then asserts the Court has jurisdiction under Federal Rule of Civil Procedure 60 due to "fraud on the Court that was perpetrated with an intent and knowledge to steal property from Lillian Pellegrini." (Doc. 15, 2:2-3.)

Beverly and Lillian request that Beverly be permitted to intervene as a matter of right or that she be joined under Rule 19. The basis for this request is articulated, in relevant part, as follows:

The property involved in this action before

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[12] Given the coordination of this lawsuit between Lillian and Beverly noted above, it is unclear why Beverly was not added as a co-plaintiff from the outset.

the District Court is property that is owned by and belongs to Lillian Pellegrini, over which Lillian Pellegrini retained control since acquisition through inheritance in 1999 from her siblings['] estates. This property was stolen from her revocable trust through the unauthorized sale of invested assets and the proceeds were withdrawn without notice or authorization.

Beverly Pellegrini was appointed co-trustee to protect Lillian Pellegrini's rights to her property and income and to protect trust assets to generate wealth. Beverly Pellegrini is also a named beneficiary of this trust and is a named beneficiary of a general power of appointment. Because Beverly Pellegrini, as beneficiary, has an interest in the property that was stolen and an obligation by contract to protect Lillian Pellegrini's rights to her property, Beverly Pellegrini has a right of intervention to protect her interest. By protecting her interest, she is also protecting the preceding interest of the real party of interest, Lillian Pellegrini, as owner and as Settlor/Trustee.

The matter before this District Court is the recovery of the unauthorized sale of invested assets and withdrawal of proceeds that has caused substantial financial harm to Lillian Pellegrini and future beneficiaries. The property was stolen through extrinsic fraud and fraud on the Court by prohibiting

> any semblance of due process when the Court lacked statutory authority to exercise any jurisdiction over Lillian Pellegrini or her property held in any of her trusts at any time and the Court thereby exceeded its jurisdiction to permit stealing and conversion of assets owned by Lillian Pellegrini. The liquidation has caused an overall loss resulting from the unauthorized sale of investments and denied income and growth and wealth for which Beverly Pellegrini was requested by Angelo Pellegrini and Lillian Pellegrini to help preserve through her investment experience as a securities analyst of a broad spectrum of industries and understanding of financial markets and economics.

(Doc. 15, 8:3-23.) Lillian and Beverly maintain that Beverly's intervention is necessary to protect Beverly's interests as a beneficiary of the trust, and, on her own, Lillian lacks the legal and physical skills necessary to adequately defend Beverly's interests.

B. Legal Standards

1. Intervention As of Right

Federal Rule of Civil Procedure 24(a)(2) provides for intervention as of right where the potential intervenor "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impeded the movant's ability to protect its interest, unless existing parties adequately represent that interest." The Ninth Circuit has articulated four requirements for intervention as of right under Rule 24(a)(2):

> (1)[T]he [applicant's] motion must be timely; (2) the applicant must have a 'significantly protectable' interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impeded its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Freedom from Religion Found v. Geithner, 644 F.3d 836, 841 (9th Cir. 2011) (quoting *Cal. Ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)). Proposed intervenors must meet all four criteria, and "[f]ailure to satisfy any one of the requirements is fatal to the application." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009). In evaluating motions to intervene, "courts are guided primarily by practical and equitable considerations, and the requirements for intervention are broadly interpreted in favor of intervention." *United States v. Alisal Water Corp.,* 370 F.3d 915, 919 (9th Cir. 2004). "Courts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in invention, and the declarations supporting the motion as true absent sham, frivolity or other objections." *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

2. Permissive Intervention

Under Federal Rule of Civil Procedure 24(b)(1), "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Permissive intervention "requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." *Freedom from Religion Found.*, 644 F.3d at 843 (quoting *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.3d 470, 473 (9th Cir. 1992)). "Even if an applicant satisfies those threshold requirements," however, "the district court has discretion to deny permissive intervention." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "[T]he court may also consider other factors in the exercise of its discretion, including 'the nature and extent of the intervenors' interests' and 'whether the intervenors' interests are adequately represented by other parties.'" *Perry*, 587 F.3d at 955 (quoting *Spangler v. Pasadena City Bd. Of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)).

Both permissive and intervention as of right motions must be served on all parties, "[t]he motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c).

3. Amendment of the Complaint to Join A Party under Rule 15

Federal Rule of Civil Procedure 15(a)(2) requires the court to "freely give" leave to amend a pleading "when justice so requires." Fed. R. Civ. P. 15(a)(2). This policy is "applied with extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). It is within the court's discretion whether to grant or deny leave to amend. *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate a decision on the merits, rather than on the pleadings or technicalities." *Id.* In considering requests to amend, courts analyze the following factors: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether plaintiff has previously amended her complaint. *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

C. Request for Intervention under Rule 24 is DENIED

1. Lillian and Beverly's Motion for Intervention or Joinder is Procedurally Defective

Initially, no matter how the October 2016 request is construed – whether as a motion to intervene or a motion to amend the complaint to add Beverly as a plaintiff – the motion is defective. Any motion for intervention under Rule 24 requires the motion to "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). No proposed pleading has been submitted to the Court. Lillian and Beverly's request indicates that, if Beverly is permitted to intervene, an addendum to the complaint "will include" causes of action under 18 U.S.C. §§ 1961, 1962, 1956, and 1957,[13] code sections promulgated under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). This citation to various code sections is insufficient for the Court to infer the substance of the claims Beverly wishes to assert under RICO.

The same is true of a motion to amend the complaint to name Beverly as a plaintiff. Rule 137(c) of the Local Rules for the U.S. District Court, Eastern District of California, states in pertinent part that, "[i]f filing a document requires leave of court, such as an amended complaint after the time to amend as a matter of course has expired, counsel shall attach the document proposed to be filed as an exhibit to the moving papers seeking such leave." The Court has discretion to deny a motion to amend for failure to attach a proposed pleading as required by local rule. *Waters v. Weyerhaeuser Mortgage Co.*, 582 F.2d 503, 507 (9th Cir. 1978). As noted above, Beverly has failed to attach a proposed amended complaint or describe the new claims in sufficient detail. A court's ability to evaluate the propriety of a motion to amend a pleading is hampered when the moving papers do not describe the proposed amendments in sufficient detail or attach

[13] 18 U.S.C. §§ 1957, 1958 are criminal statutes that do not contain a private right of action.

the proposed amended pleading. *United States v. Molen*, No. 2:10-cv-02591-MCE-KJN, 2011 WL 3678431, at *2 (E.D. Cal. Aug. 22, 2011). As either a request for intervention or a motion to amend, the request is procedurally deficient without a proposed pleading.

2. Lillian and Beverly's Motion for Intervention is Substantively Defective

In considering the intervention of right factors set forth by the Ninth Circuit in *Geithner*, 644 F.3d at 841 the motion is timely as the pleadings have not closed and no schedule has yet been set. Given this posture, Beverly's intervention does not pose a risk of undue prejudice to Defendants. *See United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984).

The second factor, whether the applicant has a significant protectable interest, is fatal to the request. An applicant seeking intervention has a significant protectable interest in an action if (1) she asserts an interest that is protected under some law, and (2) there is a "relationship between its legally protected interest and the plaintiff's claims." *Nw. Forest Resource Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996). In addition, an applicant to intervene must be "so situated that disposing of the action may as a practical matter impair or impede" her ability to protect her interest. Fed. R. Civ. P. 24(a)(2). Beverly claims that she is a co-trustee with Lillian, and she is also a beneficiary of the trust. However, these allegations are conclusory – there is no allegation when Beverly was made co-trustee, of what particular trust she is co-trustee, or of what trust she is beneficiary.[14] It is simply too vague and conclusory to assert co-trustee and beneficiary status of the trust to allege a significant protectable interest. Moreover, this allegation is facially contradicted by Lillian's complaint which states that Lillian "is the only party of interest as Settlor, Trustee and sole Beneficiary of the [1999 Trust]." (Cmplt., 3:26-28.) Lillian also asserts she revoked the trust sometime in 2008. (Cmplt., p. 63, Exh. 3.)

Moreover, even assuming Beverly has a significant protectable interest, Beverly and Lillian have not shown that Lillian will not adequately represent Beverly's interests. Courts consider three factors in assessing whether the present party will adequately represent the interests of the proposed intervenor: (1) whether the interest of present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). The "most important factor in determining adequacy of representation is how the interest compares with the interests of the existing parties. When an applicant for intervention and an

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[14] In her reply brief, Beverly states a UBS account statement attached to the complaint bears her name as co-trustee, which is sufficient to establish this fact. This bare reference on an account does not provide any details regarding which trust Beverly is co-trustee or when this occurred.

existing party have the same ultimate objective, a presumption of adequacy of representation arises." *Id.*

Beverly and Lillian's argument as to adequacy of representation focuses on Lillian's physical limitations that preclude her from representing herself and the inability to locate and retain counsel. This is essentially an argument that, although Beverly is ineligible to represent her mother before this Court, Beverly wishes to become a party so she can litigate the case on her own and Lillian's behalf. Under these circumstances, Beverly has not established Lillian is *unwilling* or *legally incapable* of making all Beverly's arguments with regard to the claims regarding Lillian's trust. Rather, Lillian "lacks legal skill and acumen to be able to prepare and file her own papers by herself." If that is true, Lillian cannot proceed pro se with the case – adding Beverly to the suit as a plaintiff does not cure Lillian's inability to represent herself. Intervenor is not a mechanism whereby an unrepresented plaintiff hands off her case to another party to litigate it on her behalf. There is no showing that Beverly's interests diverge from Lillian in some way that requires Beverly's presence in the litigation. For these reasons, Lillian and Beverly's request to intervene as of right is both substantively and procedurally flawed and cannot be granted.

These same deficiencies preclude Beverly's request for permissive intervention. It is not clear how Beverly's interests diverge from that of her mother, such that Beverly needs to intervene to protect her own interests. Without a proposed amended complaint, the jurisdictional basis of the complaint in intervention is not ascertainable, and the Court cannot evaluate the viability of any claims under RICO Beverly states she wishes to file. Both procedurally and substantively, the request for permissive intervention is defective and cannot be granted.

D. Amendment to Add Beverly as A Party under Rule 15 is DENIED

Finally, even construing this filing as a motion to amend the complaint simply to add Beverly as a plaintiff, the request cannot be granted. While amendment to the complaint should be freely granted, where the amendment is futile a request to amend will not be granted. *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996). For the reasons discussed below, Lillian's claims are not viable, even assuming the Court has subject matter jurisdiction. Beverly will be precluded from litigating these claims to the same degree as Lillian, and thus amending the complaint to add her as a party is futile. With respect to additional claims Beverly wishes to file against Defendants under RICO, those claims were not properly presented to the Court in the form of a proposed amended complaint. For all the reasons set forth above, Beverly and Lillian's request to intervene is DENIED.

VI. DEFENDANTS' MOTIONS TO DISMISS ARE GRANTED

The Court finds it lacks subject matter jurisdiction over Lillian's claims as a de fact appeal of the FCSC judgment in the underlying probate matter prohibited by *Rooker-Feldman*. Even if the Court had jurisdiction over any of Lillian's claims, however, none are viable, and Defendants' motions to dismiss must be granted.

A. Standard of Decision - Motion to Dismiss Pursuant to Rule 12(b)(6)

A motion to dismiss pursuant to Rule 12(b)(6) is a challenge to the sufficiency of the allegations set forth in the complaint. Dismissal under Rule 12(b)(6) is proper where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balisteri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990). In considering a motion to dismiss for failure to state a claim, the court generally accepts as true the allegations in the complaint, construes the pleading in the light most favorable to the party opposing the motion, and resolves all doubts in the pleader's favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

To survive a 12(b)(6) motion to dismiss, the plaintiff must allege "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). "A claim has facial plausibility when the Plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions." *Twombly*, 550 U.S. at 555 (internal citations omitted). Thus, "bare assertions . . . amount[ing] to nothing more than a 'formulaic recitation of the elements'. . . are not entitled to be assumed true." *Iqbal*, 556 U.S. at 681. "[T]o be entitled to the presumption of truth, allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). In practice, "a complaint . . . must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Twombly*, 550 U.S. at 562. To the extent that the pleadings can be cured by the allegation of additional facts, a plaintiff should be afforded leave to amend. *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

B. FCSC's Motion to Dismiss is GRANTED[15]

Beyond the jurisdictional argument under *Rooker-Feldman*, FCSC contends Lillian's claims against it are barred by the Eleventh Amendment of the U.S. Constitution and precluded by judicial immunity; moreover, even if Lillian's claims were somehow

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[15] FCSC filed two identical motions to dismiss. (Docs. 40, 42.)

cognizable, they must be dismissed for failure to comply with the California Government Claims Act. (Doc. 42-1.)

Lillian's claims against FCSC, as can be cobbled together from the amorphous allegations of the complaint, relate entirely to FCSC's adjudication of the trust administration issues that arose in *In re The Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust, dated June 18, 1999*, Case. No. 10CEPR00683, Fresno County Superior Court. Lillian alleges FCSC acted without any jurisdiction over the 1999 Trust and its orders where therefore void; FCSC was without jurisdiction to appoint a trustee over the Family Trust, since that trust never existed (Cmplt., 24:1-4); it violated rules of due process by granting and imposing injunctions without notice or a hearing (Cmplt., 21:24-28, pp. 23-24); and it was without any jurisdiction to order UBS to furnish Lillian's account information or to freeze and levy Lillian's UBS account (Cmplt., pp. 24-25). Lillian also alleges FCSC "facilitated the fraud" by denying due process in issuing rulings before trials or hearings took place, denying Beverly Pellegrini a chance to be heard or permitted to be present at hearings; ignored evidence related to the existence of the Family Trust; and lacked any authority to issue orders regarding Lillian's trust property. (Cmplt., pp. 31-35.)

1. The Eleventh Amendment Bars Lillian's Claims Against FCSC

FCSC contends the Eleventh Amendment bars suits seeking either damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies. State courts are state entities for the purposes of the Eleventh Amendment, and thus FCSC maintains it is immune from Lillian's claims which arise out of its official actions in adjudicating the underlying trust administration proceedings. The Court agrees.

Put simply, Lillian can state no claim against FCSC (or its employees) pertaining to its adjudication of her trust in probate proceedings because such suits are barred by the Eleventh Amendment. *Simmons v. Sacramento,* 318 F.3d 1156, 1161 (2003) (citing *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 70 (1989) (holding that "'arms of the State' for Eleventh Amendment purposes" are not liable under § 1983)); *Greater L.A. Council on Deafness, Inc. v. Zolin,* 812 F.2d 1103, 1110 (9th Cir. 1987) ("We conclude that a suit against the Superior Court is a suit against the State, barred by the eleventh amendment.")).

2. FCSC's Additional Arguments

As the Court finds Lillian's claims against FCSC are barred by the Eleventh Amendment, it does not reach FCSC's alternative arguments pertaining to immunity and the Government Tort Act. Even if the *Rooker-Feldman* doctrine does not deprive the Court of jurisdiction, Lillian's claims against FCSC must be dismissed with prejudice as barred by the Eleventh Amendment.

C. UBS and BNY's Motion to Dismiss is GRANTED

Beyond arguing *Rooker-Feldman* deprives the Court of jurisdiction over Lillian's complaint, UBS and BNY contend Lillian's claims against them are subject to dismissal under the doctrines of res judicata, collateral estoppel, law of the case, and the Anti-Injunction Act, 28 U.S.C. § 2283. UBS and BNY also contend Lillian's claims must be dismissed as vague, unsupported, and unintelligible.

Lillian alleges UBS colluded with Marleen Merchant's counsel, Weintraub Tobin, to release Lillian's UBS account statements pursuant to Marleen's subpoena *before* FCSC had a chance to rule on Merchant's petition to enforce the subpoenas. (Cmplt., 27:15-18.) She also claims UBS released statements to the Public Guardian in August 2015 that were not the statements requested and those statements were furnished without prior notice or authorization from Lillian. Lillian asserts UBS knew that she was the settlor of the 1999 Trust, that no Family Trust was ever created, and that she intended to sell the San Francisco real property in 2008. She claims that UBS agreed "to conform to the demands of Weintraub Tobin and Fresno County," knowingly and intentionally aiding and abetting the conversion and theft of her UBS assets. (Doc. 1, Cmplt., p. 27-30.) She contends UBS breached her right to privacy in her accounts and froze her account in September 2015 before any court order or ruling was issued; breached its contract by harassing her for unnecessary private information; made a "wrongful death ransom" against Beverly's life; and demanded she remove all her accounts from UBS within a week or face further liquidation.

1. Issue Preclusion Bars Certain Claims Against UBS[16]

UBS contends Lillian's claims are barred by the doctrine of issue preclusion. As the Court understands Lillian's allegations, her claims of fraud, unspecified privacy violations, breach of contract, and "wrongful death ransom" spring directly from UBS' compliance with FCSC's orders directing UBS to comply with Marlene Merchant's 2014 subpoena requests; to freeze Lillian's UBS accounts pursuant to the October 20, 2015, order; to allow the Fresno County Public Guardian access and discretion to direct UBS on what assets in Lillian's account to liquidate; and to pay

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[16] Even if Beverly were added as co-plaintiff, her claims would be barred by issue preclusion to the same extent as Lillian because she and Lillian are in privity. To determine privity, courts examine the practicalities of the situation and determine whether the parties are sufficiently close to afford application of the principles of preclusion. *Armstrong v. Armstrong*, 15 Cal. 3d 942, 951 (1976). Privity may be established by "a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights." *Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1069 (1998) (internal citations omitted). Privity "has also been expanded to refer to . . . a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is 'sufficiently close' so as to justify application" or preclusion. *Id.* at 1069-70. Privity will also be found where the two parties have a "sufficient commonality of interests." *Tahoe-Sierra Preservation Council, Inc. v Tahoe Regional Planning Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003). In her motion to intervene, Beverly alleges she and Lillian are co-trustees. As such, they share a sufficient commonality of interests in the trust and its assets to establish privity in the underlying lawsuit regarding administration of the trust.

$1,528,271.44 to the Public Guardian. Lillian's claims are premised on the notion that FCSC had no jurisdiction to issue any orders regarding the trust assets, and that UBS acted in a spurious and unlawful manner in carrying out FCSC's orders.

Issue preclusion can be invoked by one not a party to the first proceeding, such as UBS, against a party who had a "full and fair opportunity to litigate the issue in the first case but lost," such as Lillian. *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 820 (2015). The underlying objective is to preclude a party from re-litigating an issue that has been finally decided against that party in a prior suit. *Id.*

Issue preclusion prohibits the re-litigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. Issue preclusion will apply "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party to the first suit or one in privity with that party." *Id.* at 819.

Here, Lillian had a full and fair opportunity to litigate in the underlying proceeding whether the Family Trust existed and should have been funded at the time of Angelo's death in 2008, the amount the Family Trust should have been funded, and whether Lillian was fit to act as trustee of the Family Trust. Those identical issues were finally decided against Lillian by FCSC in the underlying case, which was affirmed by the Fifth DCA, and Lillian's petition for review before the California Supreme Court was denied.[17] The requisite elements for issue preclusion are satisfied, and Lillian cannot state a cause of action that seeks to re-litigate the issue of whether the Family Trust existed or whether and how much it should have been funded. Lillian maintains UBS had information showing the Family Trust never existed. (Cmplt., 27:5-29:11.) The existence of the Family Trust, the amount it should have been funded, and whether Lillian could serve as trustee were finally decided and are not subject to re-litigation. Lillian cannot state a fraud claim against UBS based on a theory the Family Trust never existed.[18]

Lillian's allegations of privacy violations and contract breach appear to stem from UBS providing account statements to the Public Guardian. Lillian, however, was removed as Trustee of the Family Trust as of May 2015, and the Public Guardian was appointed by FCSC as successor trustee. There is no allegation by Lillian how, in its role as trustee, the Public Guardian was not entitled to account information pertaining to funding of the Family Trust.

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[17] FCSC's January 2015 and May 2015 orders were final and appealable when issued, and no appeal was taken within the 60-day period. Cal. Prob. Code § 1304(a); Cal. Rules of Ct., rule 8.104(a)(1). Lillian appealed in November 2015, and FCSC's orders were affirmed. Lillian sought review by the California Supreme Court, which was summarily denied on January 11, 2017. The FCSC's orders and legal determinations are all now final.

[18] The allegations against UBS asserting it worked a fraud on the court in conjunction with Weintraub Tobin and Fresno County are considered in Weintraub Tobin's motion to dismiss below.

This allegation suggests that the Public Guardian was not entitled to account information, which in essence seeks to re-litigate the appointment of a successor trustee.

Lillian's allegations that UBS wrongfully paid the Public Guardian out of her UBS accounts do not and cannot form the basis of a cognizable claim. The issue of whether assets from the UBS account were to be paid to the Family Trust was decided by FCSC in the underlying litigation. UBS' actions in complying with FCSC's judgment and its orders enforcing its judgment cannot form the basis of a legitimate cause of action because it necessarily seeks to re-litigate whether Lillian was required to fund the Family Trust.

2. Lillian's Remaining Allegations Do Not Constitute Viable Claims

Lillian also alleges UBS froze her accounts before FCSC issued any order requiring it to do so, which resulted in an IRS payment being rejected by UBS. However, Lillian concedes the IRS check was resubmitted for payment and penalties were paid by UBS. (Cmplt., p. 29:24-28.) As a result, Lillian has alleged there were no damages stemming from this "freeze" of her UBS account. To the extent there is any alleged wrongdoing by UBS in rejecting the IRS check or freezing the account at some point prior to the FCSC's October 20, 2015, order, there were no damages suffered, and the claim is not viable.

Lillian's allegations pertaining to UBS' "wrongful death ransom" are difficult to understand. Lillian alleges that

> UBS liquidated securities through Mike Williams Branch Manager on January 21-22, 2016. Keesal Young & Logan filed a WRONGFUL DEATH RANSOM with Fresno Superior Court (also filed with the Fifth District Court of Appeal) stating that Lillian Pellegrini could keep her funds if Beverly Pellegrini's life were abruptly ended.

(Doc. 1, Cmplt., 30:5-8.) The document filed by UBS in January 2016 on the FCSC docket, which is judicially noticed,[19] contradicts Lillian's allegation in this regard. On January 22, 2016, UBS filed a "Notice to the Court and All Parties" with FCSC which states that

> 7. On or about January 21, 2016, UBS became concerned about the welfare of Ms. Lillian Pellegrini's daughter, Beverly Pellegrini, who has repeatedly and recently threatened to harm or kill herself should UBS comply with the Court's Pay Order and pay $1,528,271.44 to the Public Guardian.
>
> 8. Also on January 21, 2016, UBS' counsel, Audette Paul Morales, alerted the City of Fresno Police Department (the "Fresno PD") about Ms. Beverly Pellegrini's threats to

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[19] To be clear, the Court has taken judicial notice of *what* was filed on the FCSC docket by UBS in January 2016 – not the *truth* of the *contents* of that filing. (Doc. 97.)

> harm or kill herself. The Fresno PD advised it would send officers to the Pellegrini home to conduct a welfare check on the Pellegrinis. As of the date of this *ex parte* petition, UBS is unaware of the results of said welfare check.

(Doc. 97, ¶¶ 7-8.) This document does not state that Lillian could keep her funds if "Beverly Pellegrini's life were abruptly ended." Although there is no specific document referenced by Lillian in her complaint with regard to this "Wrongful Death Ransom" allegation, this is the only document filed by UBS with FCSC at that time. Lillian's allegation that UBS filed a "wrongful death ransom" is contradicted by the FCSC docket, and the Court need not assume the truth of this fact. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (court need not accept as true allegations that contradict facts which may be judicially noticed).[20] Moreover, Lillian has no standing to assert a claim on Beverly's behalf, and there are no allegations in this regard that pertain to Lillian.

Typically, leave to amend a complaint should be granted, unless it is clear that Lillian's claims against UBS cannot be saved by amendment and any attempt to do so would be futile. *Chang*, 80 F.3d at 1296. The fraud and privacy allegations against UBS, aside from being overly vague and conclusory, are predicated on issues that were fully litigated by FCSC in the

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[20] Whether or not the content of the "Notice" filed by UBS is true, it simply does not say what Lillian alleges it does.

underlying case and decided against Lillian. Lillian cannot re-litigate those issues in this Court, even though framed inside a different claim. The wrongful death ransom allegation is contradicted by the text of UBS' state court filing in January 2016, and there are no damages alleged. None of Lillian's purported claims against UBS can be cured by amendment.

3. Claim Against BNY is Dismissed

Lillian's only allegation against BNY pertains to the withdrawal of funds from Lillian's trust account in the amount of $1,528,271.44:

> UBS withdrew funds from Lillian Pellegrini's trust account, issued check number 0001023561 for $1,528,271.44 on Bank of NY Mellon account number 043301601 made payable to the Unapproved Payee, Fresno County Public Guardian for the Lillian Pellegrini Family Trust (a trust that was known by UBS Financial Services, Weintraub Tobin, Fresno County Counsel, the Fresno County Public Guardian, and Fresno Superior Court not to exist at the time of transfer and was not created at any time, before or after the transfer). Bank of NY Mellon . . . were contacted immediately and informed of the fraudulent transfer and to stop payment and return the check to UBS Financial Services. Bank of NY Mellon did not comply.

(Cmplt., 38:10-23.) This claim stems from an allegation that Lillian's UBS account funds were improperly withdrawn. This issue, however, was already decided by FCSC; UBS was complying with an order executing FCSC's judgment as to the trust assets. As discussed above, Lillian cannot relitigate any issue pertaining to the existence of the Family Trust, the amount FCSC ordered it be funded, or FCSC's order that UBS make payment to Public Guardian. The claim against BNY is barred by issue preclusion. The predicate facts and issues of law on which this claim rests – the existence and funding of the Family Trust – were already decided against Lillian. This claim cannot be saved by amendment, and it is dismissed without leave to amend.

D. Fresno County's Motion to Dismiss is GRANTED

Fresno County[21] seeks dismissal of Lillian's complaint under Rule 12(b)(6). Fresno County asserts Lillian's conversion allegations against it cite criminal statutes for which there is no private right of action. Moreover, Fresno County contends the claims against it are barred by immunity and the prosecutorial privilege.

Lillian asserts Fresno County perpetrated a fraud that a Family Trust had been created under the 1999 Trust document and cites 18 U.S.C. §§ 1621-1623. Lillian claims the statements made by Fresno County,

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[21] Fresno County was erroneously sued as "Fresno County Counsel representing Joshua Cochron" and the "Fresno County Public Guardian."

through the County Counsel, in its ex parte petition filed with the FCSC on October 19, 2016, were false. (Cmplt., 39:21-40:18.) Lillian also maintains Fresno County acquired funds from her UBS account by way of fraud and deliberate misrepresentation of the facts and the law. (Cmplt., 41:21-27.) These allegations stem from Lillian's primary contention that the Family Trust never existed:

> The property actually stolen by Fresno County from Lillian Pellegrini's revocable trust came from two trusts of which Lillian Pellegrini owns all property. Income generated from investments in the irrevocable trust, of which Lillian Pellegrini is sole Trustee and sole Beneficiary and has full power of appointment that she has exercised, flows into the revocable trust of which also was the inherited separate property of Lillian Pellegrini that she holds as Sole Settlor, Trustee, and Sole Beneficiary.

(Cmplt., 41:15-20.) The issue of whether the Family Trust existed and whether it should have been funded with Lillian's trust assets was decided by FCSC. Any conversion claim against Fresno County predicated on Lillian's allegation that funds were wrongfully withdrawn from her account pursuant to court order is barred by issue preclusion. Additionally, the statutes Lillian cites in reference to a "conversion" claim, including 18 U.S.C. §§ 1621 (perjury), 1622 (subornation of perjury), 1623 (false declarations before grand jury or court), are criminal statutes for which there is no private right of action.

Lillian also alleges Fresno County Counsel, as representative for the Public Guardian, took Lillian's UBS assets by falsifying documents and court rulings in preparing ex part petitions and orders. These allegations, too, hinge on the premise that "Fresno County Counsel knew that no Family Trust had been created." (Doc. 1, Cmplt., 40:4.) As discussed above, Lillian cannot re-litigate the issue of whether a Family Trust was created – that issue was expressly decided by the FCSC. Her claim of fraud, conversion, and due process violations cannot rest on allegations regarding issue that were already decided against Lillian in the underlying matter.[22]

Moreover, in their role as advocates for the Public Guardian and as the Public Guardian in the probate proceedings, Fresno County Counsel and Joshua Cochron are entitled to prosecutorial immunity. The California Government Code section 821.6 provides that "[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." "California courts construe this provision broadly 'in furtherance of its purpose to protect public employees in the performance of their prosecutorial duties from the threat of harassment

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[22] As it relates to allegations that Fresno County colluded with UBS and Weintraub Tobin to perpetrate a fraud on the FCSC (Cmplt., pp. 39-41), that issue is addressed below in considering Weintraub Tobin's motion to dismiss.

through civil suits." *Ciampi v. City of Palo Alto*, 790 F. Supp. 2d 1077, 1108-09 (N.D. Cal. 2011) (quoting *Gillan v. City of San Marino*, 147 Cal. App. 4th 1033, 1048 (2007)). "Immunity under Government Code section 821.6 is not limited to claims for malicious prosecution, but also extends to other causes of action arising from conduct protected under the statute, including defamation and intentional infliction of emotional distress." *Gillan*, 147 Cal. App. 4th at 1048. It also applies to all employees of a public entity, not just its legally trained personnel. *Asgari v. City of L.A.*, 15 Cal. 4th 744, 756-57 (1997).

For example, in *Pagtakhan v. Alexander*, 999 F. Supp. 2d 1151, 1160 (N.D. Cal. 2013), the district court applied section 821.6 to claims against employees of the Public Guardian's office based on the prosecution of a conservatorship proceeding. Here, like *Pagtakhan*, the Public Guardian, as successor trustee, was obligated to pursue FCSC's order that Lillian fund the Family Trust. Lillian's allegations regarding the County Counsel's preparation of ex parte petitions and orders and obtaining injunctions related to this funding of the Family Trust all stem from the County Counsel's representation of the County and the Public Guardian in the underlying case, and the County Counsel and the Public Guardian are immune from suit under section 821.6

Finally, to the extent Lillian claims County Counsel or the Public Guardian made misrepresentations to the FCSC during the course of the underlying proceedings, they are part of Fresno County, a public entity, and are immune for any injury caused by misrepresentation. Cal. Gov't Code § 818.8.

In sum, the Court finds Lillian's allegations against Fresno County based on assertions the Family Trust never existed or that Fresno County had no legitimate power to withdraw funds from Lillian's UBS account, are barred by the doctrine of issue preclusion. Moreover, as it pertains to actions Fresno County and the Public Guardian took in carrying out FCSC's orders, Fresno County – and its employees – is entitled to immunity. Fresno County's motion to dismiss is GRANTED.

E. Weintraub Tobin's Motion to Dismiss is GRANTED

In its motion to dismiss, Weintraub Tobin argues Lillian's allegations of fraud against it are insufficient to state a cognizable claim as a matter of law. (Doc. 45.) Beyond this, Weintraub Tobin asserts the allegedly fraudulent conduct is outside the applicable statute of limitations.

Lillian asserts Weintraub Tobin, as counsel for Marleen Merchant, knowingly and falsely claimed to FCSC that a Family Trust was created and that Lillian had breached her fiduciary duties by failing to fund the Family Trust. (Cmplt., 18:26-29:2.) Lillian also contends Weintraub committed fraud by claiming that all property held in the 1999 Trust was community property, which Weintraub Tobin knew to be false. (Cmplt., 18:2-5.) Lillian asserts this became clear when Weintraub Tobin filed a document in June 2016 with the Fifth DCA stating that the Family Trust was "supposed" to have been created, implying that it never actually had been created. (Cmplt., 18:6-8.) Lillian terms this "fraud on the court."

Weintraub Tobin argues there is no private cause of action for "fraud on the court," and any such claim is barred by res judicata because the only remedy for such a claim is to set aside the FCSC's findings in the underlying case.

A claim for "fraud on the court" arose from the common law as a court-created equitable device to remedy injustices under the court's inherent power. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944). Federal Rule of Civil Procedure 60 expressly provides a remedy for such fraud, stating that "the court may relieve a party or its legal representative from a final judgment, order, or proceeding . . . [for] fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing part . . . . " Fed. R. Civ. P. 60(b)(3). Rule 60 does "not limit a court's power to . . . set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(3). Due to its equitable origins, however, no court has ever recognized fraud on the court as an independent legal cause of action for which a plaintiff may recover damages. It is, instead, a theory pursuant to which a party may seek relief from a judgment or court order induced on the basis of the opposing party's fraud. *Hazel- Atlas Glass Co.*, 322 U.S. at 248.)

To the extent Lillian's "fraud on the court" claim seeks damages, it is not viable because the only available remedy is equitable. To the extent Lillian's claim of fraud on the court seeks to set aside the FCSC judgment, the claim is barred by res judicata. Federal courts "will not entertain a collateral attack on a state judgment on the basis of 'fraud on the court' in an action for damages." *LaMie v. Wright*, No. 1:12-cv-1299, 2014 WL 1686145, at *14 (W.D. Mich. Apr. 29, 2014); *see also Fox Hollow of Turlock Owner's Ass'n v. Mauctrst, LLC.*, No. 1:03-cv-5439-AWI-SAB, 2015 WL 5022762, at * 4 (E.D. Cal. Aug. 24, 2015). "The universal rule in the federal courts . . . is that an equitable action to set aside a judgment may only be heard by the court whose judgment is challenged." (citing *Weisman v. Charles E. Smith Mgmt., Inc.*, 829 F.2d 511, 514 (4th Cir.1987); *Sessley v. Wells Fargo Bank, N.A.*, No. 2:11–cv–348, 2012 WL 726749, at * 9 (S.D. Ohio Mar. 6, 2012) (if plaintiff believed that a state court foreclosure judgment was obtained by fraud on the state court, plaintiff's remedy was by way of motion for relief filed in the state court, not by way of a collateral attack in federal court)). If she believes the FCSC judgment was procured by fraud on the court, Lillian's remedy is (or was) to bring a post-judgment motion or an independent action in equity to vacate the judgment in that court. A collateral attack on that state court judgment cannot be made in federal court.[23]

For this reason, Lillian's allegation of fraud against Weintraub Tobin is not viable as a claim for relief and cannot be cured by amendment. As such,

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[23] This applies equally to Lillian's claims that UBS and Fresno County colluded with Weintraub Tobin to commit a fraud on the court. (Cmplt., pp. 49-41.)

leave to amend is inappropriate.[24]

F. Comerica's Motion to Dismiss is GRANTED

Comerica contends Lillian makes no allegation that gives rise to a cognizable claim against it, and Comerica owes no duty of care to Lillian as an unrelated third party. Comerica requests the claim against it be dismissed without leave to amend. (Doc. 46-1.)

Lillian alleges that UBS withdrew funds from her trust account in the amount of $1,528,271.44 on BNY account number 043301601. BNY CEO Gerald Hassell and General Counsel Anthony Mancuso were "contacted immediately and informed of the fraudulent transfer and to stop payment and return the check to UBS Financial Services. Bank of NY Mellon did not comply." (Cmplt., 38:10-23.) Lillian's daughter, Beverly, was informed by the CPA and Controller for Fresno County that the Public Guardian uses Comerica Inc. to deposit funds that the Public Guardian receives. (Cmplt., 38:24-26.) Lillian claims Comerica was contacted immediately to return the check unpaid to UBS "on receipt and before it cleared." (Cmplt., 39:2-12.) Lillian does not state whether she was able to confirm that Comerica was the depository bank.

No formal cause of action is stated, and the

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[24] Because the claim is otherwise not viable, the Court does not reach Weintraub Tobin's statute of limitations argument.

allegation that Comerica was asked to stop payment, but did not return the funds to UBS does not form the basis of a claim upon which relief can be granted. Even to the extent Comerica received a deposit from UBS made payable to the Public Guardian, Comerica would have been acting in accord with FCSC's order that funds from Lillian's UBS account be withdrawn and paid to the Public Guardian. Lillian has not alleged any facts showing how Comerica has any duty to her. The allegations against Comerica merely show that Comerica may have been the depository bank for the trust funds ordered to be paid to the Public Guardian. There is no cognizable claim stated against Comerica and any amendment will be futile. As such, Lillian's claim against Comerica is dismissed with prejudice.

VII. CONCLUSION AND ORDER

For the reasons stated above, IT IS HEREBY ORDERED that:

1. Defendants' motions to dismiss are GRANTED;

2. Beverly Pellegrini's Request for Intervention is DENIED;

3. Lillian Pellegrini's complaint is DISMISSED with prejudice and without leave to amend; and

4. The Clerk of Court is DIRECTED to enter judgment in favor of Defendants and close this case.

IT IS SO ORDERED.

Dated: April 6, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE

APPENDIX L

Court of Appeal, Fifth Appellate District
No. F072656

S238760

IN THE SUPREME COURT OF CALIFORNIA
En Banc

MARLEEN MERCHANT,
Plaintiff and Respondent,

v.

LILLIAN D. PELLEGRINI, as Trustee, etc.,
Defendant and Appellant.

[DATE STAMP]
SUPREME COURT
FILED
JAN 11 2017
Jorge Navarrete Clerk

Deputy

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX M

Filed 10/31/16 Merchant v. Pellegrini CA5

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

MARLEEN MERCHANT,
Plaintiff and Respondent,

v.

LILLIAN D. PELLEGRINI, as Trustee, etc.
Defendant and Appellant.

F072656
(Super. Ct. No. 10CEPR00683)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Donald S. Black, Judge.

Lillian D. Pellegrini, in pro. per., for Defendant and Appellant.

Weintrab Tobin, Kelly E. Dankbar and Brendan Begley for Plaintiff and Respondent.

In the probate proceedings below, the trial court found after a trial on reserved issues that Lillian Dorothy Pellegrini (Lillian), as former trustee of the Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust of June 18, 1999 (the Trust), had repeatedly refused to comply with the Trust provisions requiring the funding of a subtrust designated as the Family Trust, even when ordered to do so by the trial court. The trial court found that Lillian acted in bad faith and wrongfully took assets belonging to the Family Trust. Consequently, the trial court granted the relief sought by plaintiff Marleen Merchant (Marleen), one of the residuary beneficiaries of the Family Trust, by awarding double damages under Probate Code section 859, which sums had to be paid by Lillian to the successor trustee of the Family Trust.[1] In the same order, the trial court also directed Lillian to pay the attorney fees incurred by Marleen. Lillian appeals from the above order, as well as from subsequent postjudgment enforcement orders. Because Lillian's appeal has failed to establish any reversible

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[1] Unless otherwise indicated, all further statutory references are to the Probate Code.

error or abuse of discretion in regard to the above orders of the trial court, we will affirm.

FACTS AND PROCEDURAL HISTORY

The Trust Provisions

Angelo John Pellegrini (Angelo) and Lillian, as husband and wife, executed the Trust on June 18, 1999, which appears to be a fairly standard revocable living trust. The Trust states that Angelo and Lillian (also referred to as the trustors) have two children—namely, their daughters Beverly Jean Pellegrini (Beverly) and Marleen—who would receive the remainder of the Trust estate in equal shares after Angelo and Lillian died. Angelo and Lillian, during their joint lifetimes, were the co-trustees of the Trust.

The Trust provides that on the death of the first spouse, the surviving spouse would continue to act as trustee. However, at that time, the Trust assets were supposed to be divided into separate trusts. As the Trust clearly states: "On the death of the Deceased Spouse, the Trustee shall divide the Trust Estate ... into three separate trusts, designated as the 'Survivor's Trust', the 'Marital Trust', and the 'Family Trust'." Here, Angelo died on March 27, 2008, at which time Lillian became the sole trustee and, according to the above language, was obliged to divide the Trust estate into separate trusts as provided in the Trust.

As defined by the Trust, the share of the trust estate to be allocated to the Survivor's Trust consisted of "the Surviving Spouse's interest in the Trustors' community property and the Surviving Spouse's separate property, if any, ..." The income of the Survivor's Trust was to be paid by the trustee in frequent installments to the surviving spouse during his or her lifetime. Further, the trustee was entitled to "pay to or apply for the benefit of the Surviving Spouse so much of the principal, up to the whole thereof, as the Trustee deems appropriate for the surviving spouse's health, general welfare and support in accordance with his/her accustomed standard of living." Upon the death of the surviving spouse, the principal of the Survivor's Trust "shall be added to the Family Trust and distributed in the same fashion as provided for hereinafter [regarding the Family Trust]."

The share of the trust estate to be allocated to the Marital Trust (also referred to in the Trust as a Q-Tip Trust) consisted of "the minimum dollar amount necessary for a marital deduction to eliminate (or reduce to the extent possible) any federal estate tax at the death of the Deceased Spouse." However, the Trust further provided that "assets qualifying for the federal estate tax marital deduction shall be transferred to the Marital Trust only to the extent that such transfer would effect a reduction in the federal estate tax otherwise payable by the Deceased Spouse's estate."[2] Upon the death of the surviving spouse, the principal

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[2] In light of this provision, it appears the Marital Trust need not be funded if doing so would not effect a reduction in federal estate tax otherwise payable by the deceased spouse's estate. Notably, the Family Trust did not have a such a provision, but was to be funded from the balance of the Trust estate after any allocations were made to the Survivor's Trust and Marital Trust.

of the Marital Trust "shall be distributed ... [o]ne share for each of the Trustors' then living children" (i.e., Marleen and Beverly) or, if deceased, to their issue by right of representation.

Finally, the Trust specifies that the Family Trust "shall consist of the balance of the Trust Estate representing the balance of the Deceased Spouse's interest in the Trustors' community property and the balance of the Deceased Spouse's separate property included in the Trust Estate but after the allocation of such property to the Marital Trust." Here, as already noted, Angelo was the deceased spouse; Lillian was the surviving spouse and sole trustee. Following the terms of the above Trust provision, it appears that the allocation of assets that should have been made by Lillian to the Family Trust consisted of Angelo's share of the community property and his separate property, less any portion of such property actually allocated to the Marital Trust.[3] As will be seen, that is precisely what the trial court concluded.

With regard to administering the Family Trust, the Trust states that "[t]he Trustee shall distribute the income and so much of the principal [of the Family Trust] as the Trustee deems appropriate in the event of accident, illness or like emergency to the Surviving Spouse or to maintain the Surviving Spouse in his or her accustomed standard of living or for extended care." Upon the death of the surviving spouse, the

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[3] The position taken by Lillian in the trial court was that she did not have to fund either the Marital Trust *or* the Family Trust.

entire principal and any accrued interest in the Family Trust "shall be distributed ... [o]ne share for each of Trustors' then living children" (i.e., Marleen and Beverly) or, if deceased, to their issue by right of representation.

On the subject of amendment or revocation, the Trust provides that during their joint lifetimes, Angelo and Lillian were free to revoke or amend the trust. However, "[o]n the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke or terminate the Survivor's Trust, but the Marital Trust or the Family Trust may not be amended, revoked or terminated on the death of the Deceased Spouse."

In their first amendment to the Trust, executed in 2004 (the 2004 amendment), Angelo and Lillian amended the provision of the Trust relating to the distribution of the Family Trust upon the death of the surviving spouse. The 2004 amendment primarily focused on one item of trust property—the trustors' residence in San Francisco—and provided Beverly with a right to a life estate therein that could be used or relinquished by her, after which an equal division between the trustors' two daughters would be carried out.[4] Other provisions of the Trust remained unchanged. The 2004 amendment stated in part as follows:

"c. Distribution of Family Trust on

[4] The San Francisco real property was sold by Lillian in 2009.

> Surviving Spouse's Death. Upon the death of the Surviving Spouse, our daughter, BEVERLY J. PELLEGRINI ('BEVERLY') shall be granted an estate for her lifetime to occupy the real property commonly known and designated as 2554 – 33rd Avenue, San Francisco, California ('the real property') including the contents therein, rent free, or until such time as she voluntarily terminates her possession of said premises for a continuous period of one year. [¶] Upon BEVERLY's death or her voluntary termination of her right to possession by vacating the property for a continuous period of one year, her life estate shall cease and the property shall be sold and the trustees shall divide the proceeds equally among our daughters BEVERLY and MARLEEN J. MERCHANT ('MARLEEN')."

Proceedings After Death of Angelo

Following Angelo's death on March 27, 2008, Lillian became the sole trustee of the Trust or, more specifically, of the separate subtrusts into which the Trust estate was then supposed to be divided. She was removed as trustee of the Family Trust in 2015. As should be apparent, the parties' dispute centers on Lillian's actions while trustee and, in particular, her failure and refusal to fund the Family Trust.

Although the record before us is somewhat sketchy, it appears that the relevant proceedings in the trial court arose out of two petitions filed in the trial court by Marleen. First, on July 3, 2012, Marleen filed a petition to remove Lillian as trustee, appoint a successor trustee and obtain other relief (the petition to remove trustee). Second, on January 13, 2014, Marleen filed a petition for the recovery of property belonging to the Family Trust, for an award of double damages under section 859 and for an award of attorney fees (the petition to recover property). Both petitions were verified by Marleen, and numerous exhibits were referenced in the allegations or attached as exhibits. Because the two petitions set the stage for the subsequent trials of particular issues and the resulting orders that have been appealed by Lillian, we briefly describe the nature of the allegations set forth in those pleadings.

The Petition to Remove Trustee

Marleen's petition to remove trustee contained, in substance, the following allegations:[5] Following Angelo's death, Lillian refused to provide information concerning the trust assets. Consequently, in 2010, Marleen successfully applied to the trial court for an order compelling Lillian to provide an accounting of the assets as of the time of Angelo's death and also to provide information on how the assets were allocated between the Survivor's Trust, the Marital Trust and the Family Trust. On December 3, 2010, while represented by counsel (attorney Robert Sullivan),

[5] Although at this point we are summarizing allegations in the petition, for ease of expression we do not insert the word "allegedly" into each sentence.

Lillian filed a "STATEMENT OF TRUST ASSETS AS OF MARCH 27, 2008," (the 2010 Statement of Trust Assets) signed by her under penalty of perjury. Included with the 2010 Statement of Trust Assets was a summary of a purported allocation of trust assets to the Family Trust.[6] Among the assets set forth in the purported allocation to the Family Trust was one-half of the $800,000 value of the San Francisco residence as of March 27, 2008, or $400,000.[7] The total value of assets that Lillian (through her attorney) represented to have been allocated to the Family Trust was $544,386.91.

However, in 2011, the above representations regarding the Family Trust were directly contradicted or repudiated by Lillian, who by that time was no longer represented by counsel. Specifically, in response to a subsequent request by Marleen's attorney for further information and accounting concerning the Family Trust, Lillian replied by letter of September 27, 2011, that no Family Trust exists, there are no assets in the Family Trust, and no assets were ever allocated or distributed to a Family Trust.

Based on the above allegations, the petition to

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[6] The allocation summary stated that assets were allocated to the Survivor's Trust and the Family Trust, but not the Marital Trust. Attorney Sullivan's cover letter, dated December 7, 2010, to Marleen's attorney explained that no assets were allocated to the Marital Trust due to the Trust's formula relating to estate taxes.

[7] The San Francisco real property was listed in the 2010 Statement of Trust Assets as "Community Property," valued as of the time of Angelo's death at $800,000. It also noted that the San Francisco real property was sold by Lillian in 2009.

remove trustee alleged that Lillian had breached the trust by either (1) failing to fund the Family Trust or (2) even if it had been funded (despite Lillian's most recent statements), by making contradictory and bad faith representations to the beneficiaries, which displayed her unfitness to serve. The petition sought Lillian's removal as trustee, the appointment of a successor trustee, further accounting of the Trust assets, redress of any breaches of trust, and other relief.

The Petition to Recover Property

Marleen's petition to recover property was based on essentially the same factual allegations as the petition for removal of trustee, but included several new allegations. The new allegations were largely based on a revised accounting filed by Lillian in 2013. In that 2013 accounting, Lillian (1) confirmed that no Family Trust was ever created or funded following Angelo's death, (2) claimed that the San Francisco real property was entirely Lillian's separate property upon Angelo's death,[8] and (3) admitted that she held assets that were formerly in the Trust estate in her own name individually, and outside of the trust.[9] Marleen's

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[8] Lillian's argument that the real property became her separate property upon Angelo's death was based on the original form of title (i.e., joint tenancy) that had existed before the real property was transferred by the trustors to the trust.

[9] In addition to reporting that the Family Trust and Marital Trust were not funded, the 2013 accounting stated that the Survivor's Trust was no longer in existence, Lillian having

petition to recover property further alleged: "[B]y purposefully and continuously refusing over the last five years to follow the provisions of the Trust agreement that require her to create a Family Trust, Lillian has in bad faith wrongfully taken, concealed and disposed of property belonging to the Family Trust." Accordingly, said petition asserted that Lillian was liable for twice the value of the property that belonged to the Family Trust, and for attorney fees and costs pursuant to section 859.[10]

Bifurcation of Issues Ordered

On June 17, 2014, the trial court granted Marleen's motion to bifurcate issues. Under the bifurcation order, a trial on "the issues of (a) whether the Family Trust was required to be funded after [Angelo's] death and ... (b) whether the title to the San Francisco real property maintained its joint tenancy characterization after being transferred to [the Trust]," was to proceed first. After the trial of the above two issues was completed, the remaining issues would be set for separate trial. Among other things, the

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exercised her power to revoke or terminate that subtrust.

[10] Section 859 states, in relevant part, as follows: "If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to ... a trust, ... the person shall be liable for twice the value of the property recovered by an action under this part. In addition, ... the person may, in the court's discretion, be liable for reasonable attorney's fees and costs. The remedies provided in this section shall be in addition to any other remedies available in law to a person authorized to bring an action pursuant to this part."

remaining issues included: whether Lillian should be removed as trustee as a result of the breaches of trust alleged by Marleen; whether Lillian as trustee breached the Trust and, if so, whether she should be surcharged (in an amount to be determined); whether Lillian as trustee should be surcharged for the attorney fees and costs incurred by Marleen in this matter; whether Lillian as an individual is required to return assets or property to the Family Trust; and whether Lillian, in bad faith, wrongfully took, concealed or disposed of property belonging to the Trust and is, therefore, liable for twice the value of the property recovered as well as Marleen's attorney fees and costs.

The First Issues Tried and Decided

On January 14, 2015, a trial was conducted to determine the issues of whether the Family Trust was required to be funded after Angelo's death and whether the title to the San Francisco real property maintained its joint tenancy characterization after being transferred to the Trust. After considering the evidence presented and the parties' arguments, the trial court issued its findings and order after trial on January 20, 2015 (the January 2015 Order). The trial court found, by clear and convincing evidence, that "the Family Trust was required to be funded following the death of Angelo ... on March 27, 2008," and that the amount it should have been funded with at that time was "a minimum of $544,386.91." The trial court also found, by clear and convincing evidence, that "the title to the San Francisco real property did not maintain its joint tenancy characterization after being transferred to the Trust." All other matters were reserved and would be determined by a subsequent trial or hearing. The reserved matters were expressly listed as including "surcharge of Lillian ..., as Trustee, removal of Lillian ... as Trustee, Lillian['s] ... liability for double damages under ... section 859, and Lillian['s] ... liability for [Marleen's] attorneys' fees and costs under ... section 859 ...."

On January 28, 2015, Marleen served notice of entry of the January 2015 Order, but Lillian never filed an appeal from that order. Thus, the trial court's determination of these foundational issues became final. Despite the trial court's determination that the Family Trust had to be funded in the minimum amount of $544,386.91, Lillian continued to fail or refuse to do so.

Lillian Removed as Trustee of the Family Trust

On May 11, 2015, the trial court held a hearing on the issue of whether Lillian should be removed as trustee of the Family Trust. In its order filed on May 15, 2015, the trial court (1) ordered the removal Lillian as trustee of the Family Trust "for failing to fund the Family Trust after the death of Angelo" and (2) appointed the Fresno County Public Guardian as the successor trustee of the Family Trust (the May 2015 Order). Furthermore, the May 2015 Order unequivocally stated that "Lillian ... is directed to fund the Family Trust in the amount of $544,386.91, and shall pay said amount to the Fresno County Public Guardian as the Successor Trustee of the Family Trust ...." As to the remaining issues, the May 2015 Order advised the parties that "[t]he Petition to Recover Property Belonging to Trust, For Award of Double Damages, and For Recovery of Attorneys' Fees and Costs, filed by [Marleen] on January 13, 2014, is set for a one-day court trial on August 25, 2015, ..."

On May 21, 2015, Marleen served a notice of entry of the May 2015 Order. Lillian did not file an appeal from that order, nor did Lillian comply with the clear directive therein to fund the Family Trust in the amount of $544,386.91.

Subsequent Trial of Remaining Issues

On August 25, 2015, the trial court proceeded with the trial on the remaining issues. The trial court reviewed the court file, heard the testimony of witnesses, considered the other evidence presented at trial, and heard the arguments of counsel and of Lillian. In its findings and order after trial, issued on September 4, 2015 (the Damages Order), the trial court made the following findings:

> "1. ... Lillian ... is in default with respect to the Petition to Recover Property Belonging to Trust, For Award of Double Damages, And For Recovery of Attorneys' Fees and Costs, as she does not have a written response on file to that petition.
>
> "2. Further, based on the evidence of
>
> "(a) [Lillian's] repeated misrepresentations regarding the funding of

the Family Trust;

"(b) [Lillian's] deliberate refusal to fund the Family Trust, even in the face of court orders to do so;

"(c) [Lillian's] repeated delay of the proceedings through the filing of frivolous motions and proceedings; and,

"(d) [Lillian's] outright refusal to comply with the terms of [the Trust],

"the Court finds that ... Lillian ... in bad faith wrongfully took assets belonging to the Family Trust, and double damages are awarded pursuant to ... section 859.

"3. The evidence is uncontradicted that ... Lillian ... repeatedly breached the standard of care with respect to her duties as trustee, including, among other things, by failing to fund the Family Trust, even after being ordered to do so. The Court finds that this conduct justifies an award of attorneys' fees and costs in favor of ... Marleen ... as a surcharge against ... Lillian ...."

Based on the above findings, the trial court ordered that Lillian "shall pay double damages in the amount of $544,386.91 to the Fresno County Public Guardian as the Successor Trustee of the Family Trust ... pursuant to ... section 859." The Damages Order explained that "[t]his amount is *in addition to the*

$544,386.91 that [Lillian] was already ordered to pay to the Fresno County Public Guardian as the Successor Trustee of the Family Trust" pursuant to the May 2015 Order. (Italics added.) Additionally, the trial court ordered that Lillian "is surcharged for the attorneys' fees and costs that ... Marleen ... has incurred in this matter in the amount of $439,497.62."

Marleen served a notice of entry of the Damages Order on September 25, 2015. On October 28, 2015, Lillian filed a notice of appeal from the Damages Order, identified in the notice of appeal as a judgment "dated September 4, 2015." Her notice of appeal also referenced two subsequent postjudgment orders entered by the trial court in October 2015, which we describe below.

Postjudgment Enforcement Orders

In mid-October 2015, when still no action had been taken by Lillian to comply with the trial court's orders, the successor trustee (i.e., the Fresno County Public Guardian) filed an ex parte application seeking to enforce the judgment embodied in the Damages Order against a financial account held by Lillian.[11] The application stated that relief was being sought on an ex parte basis because of Lillian's continuing statements that she would not fund the Family Trust, which created a reasonable likelihood that Lillian

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[11] Since the Damages Order had incorporated the prior determination that Lillian must fund the Family Trust in the amount of $544,386.91, for simplicity we treat the enforcement request as simply pertaining to the Damages Order.

would attempt to move or conceal assets if a noticed motion were brought. The application further alleged that enforcement of the judgment would not create a financial hardship on Lillian because, other than the attorney fees recovery to Marleen, the recovered funds would be placed into the Family Trust, and Lillian continued to be the beneficiary of the Family Trust during her lifetime.

On October 20, 2015, the trial court granted the ex parte relief sought by the successor trustee, including to freeze accounts of Lillian's at a particular financial institution (UBS Financial Services) until the further order of the trial court, and to require UBS Financial Services to transfer the sum of $1,528,271.44 to the successor trustee in full satisfaction of the September 4, 2015, Damages Order entered against Lillian.[12]

As noted, Lillian's notice of appeal is from the Damages Order dated September 4, 2015, and from the postjudgment enforcement orders entered on October 20, 2015.

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[12] Apparently, not all of the assets in the UBS Financial Services account were in the form of cash. Because there was insufficient cash in the UBS Financial Services account to satisfy the entire judgment, it was necessary to liquidate some noncash assets in the UBS Financial accounts. A follow-up order dated November 16, 2015, further authorized the successor trustee to direct UBS Financial Services as to which noncash assets to liquidate. The November 16, 2015, order came after Lillian's notice of appeal, and she did not file a subsequent notice of appeal from the November 16, 2015, order.

DISCUSSION

I. Burden on Appeal

Preliminarily, we point out Lillian's burden as appellant. A judgment or order of a trial court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Because a trial court's judgment or order is presumed to be correct, reversible error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, an appellant must affirmatively show prejudicial error based on adequate legal argument and citation to the record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522–523.) These requirements apply equally to an appellant who is acting without an attorney. (*McComber v. Wells, supra,* at p. 523.)

In light of the burden on appeal, when points are perfunctorily raised, without adequate analysis and authority or without citation to an adequate record, we may pass over them and treat them as abandoned. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700; *Duarte v. Chino Community Hospital, supra,* 72 Cal.App.4th at p. 856.) In fact, a failure to provide an adequate record on an issue requires that the issue be resolved against the appellant. (*Hernandez v. California Hospital Medical Center*

(2000) 78 Cal.App.4th 498, 502.) As stated in *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318 at page 324: "[A]n appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If he fails to do so, the argument is forfeited." (Accord, *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1310, fn. 3.)

In the present case, glaring deficiencies in the record indicate that, for the most part, Lillian has failed to meet her burden on appeal. For example, Lillian's opening brief is replete with factual assertions, but she only sporadically cites to anything in the minimal record she provided.[13] More than that, although Lillian provided an appendix containing selected documents, she intentionally declined to furnish any reporter's transcripts of the relevant proceedings in the trial court. Thus, to the extent her appeal involves challenges to the factual findings and/or to the sufficiency of the evidence in the trial and hearings below, the lack of a reporter's transcript renders the record materially incomplete to address those issues.[14] """"[I]f the record is inadequate for

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[13] Lillian provided an appendix containing some exhibits, but she did not provide a clerk's transcript or a reporter's transcript.

[14] Cases coming before an appellate court in such a posture are generally treated as an appeal """on the judgment roll""" (*Kucker v. Kucker* (2011) 192 Cal.App.4th 90, 93), in which "'review is limited to determining whether any error "appears on the face of the record." [Citations.]'" (*Ibid.*; see *Nielsen v. Gibson, supra,* 178

meaningful review, the appellant defaults and the decision of the trial court should be affirmed."'" (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 [citing examples where failure to provide reporter's transcript was fatal to assertion of error premised on insufficiency of evidence].)[15] As helpfully explained by one Court of Appeal: "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters.* To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

Compounding the problem of an incomplete record

Cal.App.4th at pp. 324-325; Cal. Rules of Court, rule 8.163.)

[15] Additionally, where an appellant challenges the sufficiency of the evidence to support a judgment or order, he or she should *discuss* all of the material evidence, including that which is unfavorable to the appellant's claim: "When a party challenges on appeal the sufficiency of evidence, the party must discuss all the evidence supporting the court's ruling or the party waives the point." (*Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1374.) When we compare the evidence referred to in the trial court's orders (e.g., the Damages Order and the January 2015 Order) to the minimal citations to the evidentiary record in Lillian's brief herein, it is apparent that Lillian has chosen to ignore significant portions of the evidence in her discussion.

is the fact that most of Lillian's opening brief concerns appealable orders from which she failed to file a timely appeal. Remarkably, even though she ostensibly appeals from the Damages Order, almost nothing in her brief addresses that order. We discuss below the implications of Lillian's misdirected attempt to obtain review of nonreviewable matters (due to her failure to timely appeal from those appealable orders).

Despite the above shortfalls on Lillian's part, in an abundance of caution we shall nonetheless briefly consider Lillian's main arguments, but we do so acknowledging at the outset that affirmance would appear to be supportable based on the deficiencies in the record alone.

II. Impact of Failure to Timely Appeal from Appealable Orders

In her statement of appealability, set forth in her opening brief, Lillian asserts without any discussion that the January 2015 Order was "interlocutory and not subject to appeal." Lillian is mistaken on that point. As noted previously herein, the January 2015 Order set forth the trial court's determination that "the Family Trust was required to be funded following the death of Angelo ... on March 27, 2008" in the amount of $544,386.91. The January 2015 Order also set forth the trial court's determination that "the title to the San Francisco real property did not maintain its joint tenancy characterization after being transferred to the Trust."

An appeal lies from any order made appealable by the Probate Code. (Code Civ. Proc., § 904.1, subd. (a)(10).) Section 1304, subdivision (a), makes appealable any final order under a section 17200 petition by a trustee or beneficiary concerning the internal affairs of a trust. (§ 1304, subd. (a) [final orders under § 17200 appealable, with two exceptions not applicable here]; *Esslinger v. Cummins* (2006) 144 Cal.App.4th 517, 523 ["An order determining the existence of a power, duty, or right under a trust is appealable."]; see § 17200, subds. (a) & (b) [a trustee or beneficiary may petition the trial court to determine any of a broad range of issues relating to the internal affairs of a trust].) Here, the January 2015 Order was clearly an appealable order under section 1304, subdivision (a), since the trial court made final determinations about the internal affairs of the Trust under section 17200.[16] Likewise, the May 2015 Order was appealable under section 1304, subdivision (a), since it also constituted a final order entered under section 17200. (See § 17200, subd. (b)(10).)

When an appealable order or judgment is entered by the trial court, an aggrieved party has 60 days from notice of entry of said order or judgment in which to file an appeal. (Cal. Rules of Court, rule 8.104(a)(1).) The time period is *jurisdictional*; once the deadline expires, the appellate court has no power to entertain an appeal as to that judgment or order. (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather*

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[16] It was also appealable under section 1300, subdivision (a), which provides that orders confirming rights in a real property conveyance or transfer are appealable.

Ins. Agency, Inc. (1997) 15 Cal.4th 51, 56.) Lillian did not file a timely appeal (or any appeal) from the January 2015 Order or the May 2015 Order. As a consequence, Lillian's right to challenge those orders or the matters resolved therein was forfeited and she cannot seek to review them in connection with her present appeal from a subsequent judgment or order. California law is unequivocal on this point: If an appealable order is not timely appealed, the right to appellate review of that order or to challenge its particulars is "forfeited" and "forever lost." (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 761, fn. 8; see *In re Marriage of Padilla* (1995) 38 Cal.App.4th 1212, 1215–1216 [party who failed to timely appeal an appealable order "cannot be heard to complain" about that order].) Moreover, an appellate court may not review a decision or order from which an appeal could previously have been taken, but was not. (*In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1347; *In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119; Code Civ. Proc., § 906.) """The law of this state does not allow, on an appeal from a judgment, a review of any decision or order from which an appeal might previously have been taken."""" (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239; see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 89, p. 152 [same].)

Here, despite her failure to appeal from the January 2015 Order, most of Lillian's appeal challenges the correctness of the trial court's resolution of the issues in that order. Among other things, Lillian's appeal argues that (1) the Trust was wholly revocable by Lillian after Angelo's death and that she did not have to fund the Family Trust and (2) the San Francisco real property, after being transferred into the Trust, retained its joint tenancy status and became her separate property upon Angelo's death. However, those issues were resolved against Lillian in the January 2015 Order and, therefore, cannot be raised by Lillian in the present appeal. Additionally, Lillian argues on various grounds that the January 2015 Order was erroneous or invalid. She makes a similar argument regarding the May 2015 Order. Again, those orders were not timely appealed by her and are not subject to Lillian's belated collateral attack in an appeal from a subsequent order.

Because the January 2015 Order and the May 2015 Order are not subject to ordinary appellate review for the reasons noted above, Lillian's arguments against the orders' validity would normally be disregarded or dismissed by this court. No timely appeal of an order means no appellate review. However, in our discussion below, we briefly address Lillian's arguments to the extent that she has portrayed the alleged errors as *jurisdictional*.

III. Lillian's Jurisdictional Arguments Fail

In an apparent effort to get around the problem of failing to timely appeal from the prior orders, Lillian characterizes her arguments challenging the validity of those orders as jurisdictional in nature. That is, she claims the trial court exceeded its power or jurisdiction to act. On that basis, Lillian is apparently asking that we treat the portion of her appeal challenging the January 2015 Order and the May 2015 Order as essentially a petition for a writ of prohibition,[17] concerning which she adds "there is no time limit." We decline to do so for reasons that will be explained in our discussion below.

Preliminarily, we briefly describe what is meant by jurisdictional error in this context. "[J]urisidictional errors can be of two types. A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56.) Lillian's contentions are solely of the latter type—i.e., an alleged excess of jurisdiction. Prohibition is used to challenge jurisdictional errors of *both* types; i.e., the writ may arrest or restrain proceedings that are either without *or* in excess of the jurisdiction of the tribunal. (8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 52, p. 929; Code Civ. Proc., § 1102; *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288–291.) Most procedural or statutory errors are not jurisdictional. Nevertheless, an error under a statutory

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[17] Lillian's opening brief is entitled "Appellant's Opening Brief" *and* "Writ of Prohibition." (Capitalization omitted.) The caption page of Lillian's appellant's appendix states that a motion for a writ of prohibition "remains pending." (Capitalization omitted.) We previously denied Lillian's motion for a writ of supersedeas and/or for a writ of prohibition relating to the postjudgment enforcement orders. (See order filed Jan. 19, 2016.) To the extent there remained a further or broader request for writ of prohibition, we now make clear that we are denying same. Lillian's request for a default in regard to her prohibition request is likewise denied.

provision may be considered to be in excess of jurisdiction, but ""*only* where the clear purpose of the statute is to restrict or limit the power of the court to act and where the effective enforcement of such restrictions requires the use of extraordinary writs of certiorari or prohibition."'" (*In re Marriage of Goddard*, *supra*, at p. 57, italics added.)

For a number of reasons, we reject Lillian's apparent request to treat her appeal as a request for writ of prohibition. The first is Lillian's delay. "'As a general rule, a writ petition should be filed within the 60-day period that is applicable to appeals. [Citations.] "An appellate court *may* consider a petition for an extraordinary writ at any time [citation], but has discretion to deny a petition filed after the 60-day period applicable to appeals, and *should* do so absent 'extraordinary circumstances' justifying the delay."' [Citation.]" (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 310.) Here, no justification for the delay is apparent and none is presented by Lillian. The second reason we decline to treat Lillian's attack on the prior orders as a petition for writ of prohibition is that Lillian had available to her the usual remedy of appealing from those orders, but she simply failed to pursue that remedy. (See, e.g., 8 Witkin, Cal. Procedure, *supra*, Extraordinary Writs, § 58, p. 936.) No explanation is offered for failure to avail herself of the presumptively adequate remedy of filing a timely appeal from the prior appealable orders.[18] The third reason we reject Lillian's request to treat her appeal as a petition for writ of prohibition is that she has failed to identify or demonstrate any jurisdictional error. We discuss this latter point more fully below.

A. Revocability Argument

Lillian makes two main arguments in her attempt to show that the trial court was without power or jurisdiction to issue the January 2015 Order. The first argument relies on Lillian's assumption that the Trust was entirely revocable by her at all times, even after Angelo's death. Based on that premise, Lillian argues that Marleen lacked standing to seek any relief under section 17200 and the trial court was without power to grant Marleen's petition. In support of that contention, Lillian notes that section 17200, subdivision (a), states: "*Except as provided in Section 15800*, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust ...." (Italics added.) Further, section 15800 provides: "Except to the extent that the trust instrument otherwise provides ..., during the time that a trust is revocable and the person holding the power to revoke the trust is competent: [¶] (a) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division. [¶] (b)

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[18] Additionally, prohibition is generally not available to remedy completed judicial acts or proceedings that are not continuing, since nothing remains to be restrained (8 Witkin, Cal. Procedure, *supra*, Extraordinary Writs, §§ 50–51, pp. 927–928), which would appear to be the case here.

The duties of the trustee are owed to the person holding the power to revoke." (See *Estate of Giraldin* (2012) 55 Cal.4th 1058, 1065–1066 [if a trust was fully revocable by the settlor during his lifetime, the contingent beneficiaries' interest was merely potential and could be divested during the settlor's lifetime, during which time the contingent beneficiaries would be powerless to act regarding the trust].)

Whatever we may think of Lillian's argument in the abstract, it fails in this case because it is based on a false foundational premise—namely, that the entire Trust was revocable by Lillian after Angelo's death. Contrary to that assumption, the Trust clearly provided that after the death of the first spouse, the Trust assets were to be divided into the separate subtrusts and only the Survivor's Trust would remain revocable. Specifically, the Trust stated that "[o]n the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke or terminate the Survivor's Trust, but the Marital Trust or the Family Trust may not be amended, revoked or terminated on the death of the Deceased Spouse." For this reason, Lillian's argument is without merit, since it erroneously assumes that a right of total and complete revocability existed following Angelo's death.[19]

Lillian advances substantially the same

[19] The presumption of revocability set forth in section 15400 is not applicable to the extent the trust is expressly made irrevocable, which was the case here after Angelo died.

revocability argument concerning the May 2015 Order removing Lillian as trustee of the Family Trust and appointing the Fresno County Public Guardian as successor trustee. For the same reasons as discussed above, her argument fails with respect to that order as well. No jurisdictional error is shown. We note that Lillian also argues the trial court abused its discretion because there were inadequate grounds to remove a trustee, but that is plainly not a jurisdictional argument. Moreover, grounds for removal plainly existed based on Lillian's refusal to comply with provisions of the Trust even after being ordered to do so by the trial court. (See § 15642, subds. (a), (b)(1), (b)(4) & (b)(9).)

B. Statute of Limitations Argument

Lillian's second argument offered in support of her claim of jurisdictional error regarding the January 2015 Order is simply that one or more statute of limitations had lapsed.[20] Lillian's argument cannot succeed because an ordinary statute of limitations (as here) does not create a jurisdictional bar; it merely provides a special defense that may be waived. (See, e.g., *Bliss v. Sneath* (1898) 119 Cal. 526, 528 [statute of limitations defense may be waived]; *Redlands etc. Sch. Dist. v. Superior Court* (1942) 20 Cal.2d 348, 360 [award of damages to the plaintiff despite his failure to file timely tort claim against district was not

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[20] It is possible she is making this argument as to the May 2015 Order as well. If so, our analysis and the outcome would be the same.

jurisdictional error].) Moreover, there is nothing in the terms of the particular statutes in question (i.e., §§ 16061.7, 16460)[21] to indicate that a clear purpose of either section was to restrict the power of the court to act, or to require it to exercise its jurisdiction in a particular manner. (See *In re Marriage of Goddard, supra,* 33 Cal.4th at p. 57 [describing the type of statutory provision necessary to support claim of excess of jurisdiction]; *Abelleira v. District Court of Appeal, supra,* 17 Cal.2d at p. 288 [same].) Lillian has failed to explain how violation of the statutes in question could possibly constitute jurisdictional error, and none is apparent.

We conclude that the purported errors based on the above statutes of limitation, if any such errors occurred, were of a nonjurisdictional nature and cannot support a writ of prohibition. (See, e.g., 2 Witkin, Cal. Procedure (5th ed., 2008) Jurisdiction, §

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[21] Section 16061.7, together with section 16061.8, simply provides for a 120-day limitations period for filing a contest to the validity of a trust, commencing when the notice required by section 16061.7 has been sent. Similarly, section 16460 provides a three-year limitations period for a beneficiary to sue the trustee for breach of trust, after the expiration of which all such claims are time-barred. The three-year period runs from the date the beneficiary has received an interim or final accounting in writing or a similar report that adequately discloses the existence of a claim against the trustee for breach of trust, or in the absence of such an accounting, within three years after the beneficiary discovered, or reasonably should have discovered, the subject of the claim. (§ 16460, subd. (a)(1) & (2).) These appear to be ordinary statute of limitations, not provisions that restrict the power of the court to act.

287, p. 894 [errors in matters of pleading, evidence, procedure, or substantive law are normally nonjurisdictional errors and not grounds for attack by writ of prohibition]; *Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 950 [noting that a failure to state a cause of action, insufficiency of evidence, abuse of discretion, and mistake of law, have been held to be nonjurisdictional errors for which collateral attack will not lie]; *Abelleira v. District Court of Appeal, supra,* 17 Cal.2d at p. 287 [mere errors of law or fact insufficient to support prohibition because "[i]f the lower court has power to make a correct determination of a particular issue, it clearly has power to make an incorrect decision, subject only to appellate review and not to restraint by prohibition."].)[22]

In any event, even assuming for the sake of argument that a failure to comply with the statute of limitations could conceivably be considered a jurisdictional bar, Lillian has failed to show that any error occurred. Below, we briefly discuss Lillian's assertion that the time limits of sections 16061.7 and 16460 were violated.

1. Section 16061.7

Service of the notification required under section 16061.7 creates a 120-day limitations period for a beneficiary or an heir to bring "an action to contest the

[22] Lillian has also failed to show that she raised the issue in the trial court, which is a further reason for denial of prohibition. (See 8 Witkin, Cal. Procedure, *supra,* Extraordinary Writs, §§ 140–141, pp. 1037–1038.)

trust." (§ 16061.7, subd. (h); cf. § 16061.8.) We fail to see how either of Marleen's petitions filed in the trial court could reasonably be considered a *contest* of the Trust. In no sense was the validity or applicability of the Trust or its provisions challenged or attacked. To the contrary, Marleen sought to carry out the terms of the Trust where the trustee was refusing to do so, and also sought remedies related thereto. For this reason, Lillian's attempt to assert the deadline under section 16061.7 (also § 16061.8) is misplaced, and she offers no argument or explanation to the contrary.

Despite this, Lillian appears to argue that section 16061.7's deadline was nonetheless violated because of something she claims was revealed in connection with the statutory notification given to Marleen under section 16061.7. That notification was sent to Marleen pursuant to section 16061.7 by Lillian's then attorney, Mark Drobny, along with the attorney's cover letter dated May 13, 2008, and the waiver form (together the notification papers).[23]

Before proceeding to examine Lillian's contention more closely, for the sake of context we briefly explain what a section 16061.7 notification is. Section 16061.7, subdivision (a)(1), provides in part that a trustee shall serve a notification pursuant to that section "When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors ...." The notification must include the

[23] Lillian focuses on the waiver form, but we note that all three of these documents have similar content.

following information: (1) the identity of the settlor or settlors of the trust and the date of execution of the trust instrument; (2) the name, mailing address and telephone number of each trustee of the trust; (3) the address of the physical location where the principal place of administration of the trust is located; (4) any additional information that may be required by the terms of the trust instrument; and (5) a notification that the recipient is entitled, upon reasonable request to the trustee, to receive from the trustee a true and correct copy of the terms of the trust. (§ 16061.7, subd. (g).) In addition, the notification in this case had to include a conspicuous warning that the recipient may not bring an action to contest the trust more than 120 days from the date of the notification. (§ 16061.7, subd. (h).)

On May 13, 2008, Attorney Drobney sent the required notification to Marleen. His accompanying cover letter summarized the statutory notification and also explained the reason for the attached waiver form: "In order to assist the Trustee in expediting the trust administration process, we request that you sign the enclosed Waiver, which waives your right to object to the trust within the statutory 120-day period. [¶] By signing the enclosed Waiver, it will allow the Trustee to more quickly administer the trust." The core provision of the waiver form stated that Marleen, by signing, was waiving "[her] statutory, common law, and/or other right to bring an action contesting [the Trust]."[24]

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[24] Marleen signed the waiver form under penalty of perjury.

In the notification papers sent by Attorney Drobney, it was briefly recited that the notification was being sent pursuant to section 16061.7 since "a portion of [the Trust] became irrevocable upon the death of ANGELO ... on March 27, 2008." The part of the Trust identified as irrevocable at that time was "The Angelo J. Pellegrini Marital Trust."[25] Lillian seizes on the fact that no other irrevocable portion of the Trust was mentioned, arguing that the notification papers, as a matter of law, gave Marleen actual or constructive knowledge in May 2008 that the Family Trust would never be funded by Lillian and would not be treated as irrevocable by her. We disagree. No such definite information about the Family Trust may reasonably be gleaned from the notification papers. Nothing in the notification papers denies that the Family Trust will be funded, and no apparent representation about the revocability of the Family Trust is made. On the other hand, the notification *does* plainly affirm: "Upon the death of the first Trustor, the Trust estate is to be divided into three separate trusts, designated as the 'Survivor's Trust', the 'Marital Trust', and the 'Family Trust'," and goes on to state that the Family Trust "shall consist of the balance of the Trust Estate representing the balance of the Deceased Spouse's interest in the Trustors' community property and the balance of the Deceased Spouse's separate property included in the Trust Estate but after the allocation of such property to the Marital Trust." Thus, if anything, the overall effect of the

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[25] This was in the notification and repeated in the cover letter and waiver form.

notification papers would have been to confirm that the Family Trust was going to be created and funded. Consistent with that assessment, Lillian subsequently submitted the 2010 Statement of Trust Assets (through her then attorney, Robert Sullivan), specifically representing that the amount of assets allocated to the Family Trust was $544,386.91.

In summary, section 16061.7 (also § 16061.8) was not violated in this case. Although the 120-day period was triggered by the service of the section 16061.7 notification, it applied only to actions to contest the trust, which was not the case here. Lillian's attempt to somehow make the section applicable by means of her argument that the notification papers revealed her true intentions is unpersuasive. In any event, nothing in the notification papers served on Marleen would have put Marleen on notice of Lillian's wrongdoing. In short, Lillian has failed to show a violation of section 16061.7.

2. Section 16460

Section 16460 provides a three-year statute of limitations for actions by a beneficiary against the trustee for breach of trust. The three-year period runs from the receipt of an interim or final account or other written report that adequately discloses the existence of a claim against the trustee for breach of trust. (§ 16460, subd. (a)(1).) If an interim or final account or other written report does not adequately disclose the existence of a claim against the trustee for breach of trust, or if a beneficiary does not receive any written account or report, then the three-year period runs from the time the beneficiary discovered, or reasonably should have discovered, the subject of the claim. (§ 16460, subd. (a)(2).)

Here, Marleen's petition to remove trustee, filed by her on July 3, 2012, was the pleading that commenced her claims for breach of trust.

As noted above, Lillian's 2010 Statement of Trust Assets specifically represented that the amount of assets allocated to the Family Trust was $544,386.91. Obviously, nothing in the 2010 Statement of Trust Assets disclosed that anything was remiss, since it represented Lillian's division of Trust assets and the funding of the Family Trust. The only other financial accounting or report provided by Lillian was on February 19, 2013, where Lillian's revised accounting disclosed that she did not allocate funds to the Family Trust after all. In Lillian's letter of September 27, 2011, she wrote to Marleen's attorney and made representations that there is no Family Trust and no assets were allocated to the Family Trust. Since the September 27, 2011, letter does not appear to be an accounting or report, the three-year period arguably was triggered when Marleen received the February 19, 2013, revised accounting. In any event, even if the three-year period was triggered by the September 27, 2011, letter, Marleen's pleading was well within the statutory period.

In conclusion, there is no merit to Lillian's contention that a statute of limitations deprived the trial court of jurisdiction or power to make the rulings that it did in the proceedings before it. The purported statute of limitations violations, if any such violations occurred, did not constitute jurisdictional error. In any event, Lillian failed to demonstrate that any statute of limitations violation actually did occur. Moreover, the judgments or orders of the trial court are presumed correct, and Lillian has failed to provide an adequate record of all of the potentially relevant evidence bearing on this issue. As a result, the failure to provide an adequate record provides a further ground for our rejection of Lillian's contention.

For all of the reasons discussed above, Lillian has failed to show that any jurisdictional error was committed by the trial court in the subject proceedings.

III. Lillian Cannot Attack the Funding Order

As we have explained above, Lillian's attempt to characterize the nature of the purported errors as jurisdictional as a means to possibly gain review of the subject orders by a writ of prohibition was unavailing. Consequently, because Lillian failed to file a timely appeal from the January 2015 Order (requiring that the Family Trust be funded) or the May 2015 Order (reiterating that requirement and directing Lillian to comply with it), she is not entitled to challenge them in the present appeal. She nevertheless attempts to do so, making a variety of further arguments that assert ordinary error in regard to the trial court's determinations, which arguments amount to claims of insufficient evidence to support the trial court's findings or of mistaken application of law to the facts. We summarily reject such claims of error. As a matter of law, Lillian's right to make such claims was lost by her failure to timely appeal from the subject orders (*In re Baycol Cases I & II, supra*, 51 Cal.4th at p. 761, fn. 8; *In re Marriage of Padilla, supra*, 38 Cal.App.4th at pp. 1215–1216), and we will not review or disturb the trial court's orders or rulings from which an appeal could previously have been taken, but was not (*In re Marriage of Rifkin & Carty, supra*, 234 Cal.App.4th at p. 1347; *In re Marriage of Weiss, supra*, 42 Cal.App.4th at p. 119; Code Civ. Proc., § 906).

Even if were to give brief consideration to Lillian's claims, we would have no difficulty rejecting them. The clear terms of the Trust, or a reasonable interpretation thereof, were sufficient to support the trial court's conclusion that the Family Trust must be funded. Additionally, case law adequately supported the trial court's determination that the San Francisco real property was no longer in joint tenancy once it was transferred by the trustors into the Trust (see *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1441– 1442). Moreover, Lillian has failed to provide a reporter's transcript to demonstrate any purported lack of substantial evidence regarding the contested rulings of the trial court. Thus, the above attacks also fail because of a lack of an adequate factual record. A failure to provide an adequate record on an issue requires that the issue be resolved against the appellant. (*Hernandez v. California Hospital Medical Center, supra*, 78 Cal.App.4th at p. 502.) As we recited previously: "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary* *matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence." (*Estate of Fain*, *supra*, 75 Cal.App.4th at p. 992.)

Although we completely reject Lillian's attacks on the trial court's orders requiring the funding of the Family Trust, we briefly comment on one of her arguments. Lillian asserts that the Family Trust became invalid as a result of the 2004 amendment because that amendment, by focusing primarily on the San Francisco *real* property, allegedly left out an explicit beneficiary designation for the *personal* property in the Family Trust upon the death of the surviving spouse. The trial court implicitly rejected Lillian's claim of invalidity because it's order requiring that the Family Trust be funded necessarily included the court's conclusion that the Family Trust was valid. Moreover, Lillian fails to explain why the issue she raises would not simply be one of trust construction, not of invalidity. As to the issue of trust construction, Lillian has failed to furnish an adequate record on appeal (i.e., no reporter's transcript). Such a record may well have included extrinsic evidence helping to resolve any potential ambiguity in regard to the effect of the 2004 amendment.[26] In any event, Lillian has not established the invalidity of the Family Trust. In

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[26] On the use of extrinsic evidence in construing a trust instrument, see *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 73–74.

addition to the issue being unsupported by an adequate record and unreviewable for failure to timely appeal from the subject appealable order, it is forfeited for the additional reason that Lillian has presented it in a perfunctory manner without adequate citation to California authority or legal discussion. (*Yield Dynamics, Inc. v. TEA Systems Corp., supra,* 154 Cal.App.4th at pp. 556–557; *People v. Stanley, supra,* 10 Cal.4th at p. 793; *Landry v. Berryessa Union School Dist., supra,* 39 Cal.App.4th at pp. 699–700.)

In summary, we reject all of Lillian's efforts to challenge the orders requiring the funding of the Family Trust, since she failed to appeal from such orders.

IV. No Reversible Error Shown in Regard to Postjudgment Enforcement Orders

The remainder of Lillian's appeal appears to be directed at the October 2015 postjudgment enforcement orders (the enforcement orders). Since Lillian *did* file an appeal from these orders, her right to seek appellate review is not forfeited at the outset as was the case with the prior appealable orders.

A. Notice and/or Due Process Arguments

The trial court granted the enforcement orders on an ex parte basis, and not at a noticed hearing. Consequently, Lillian claims that she did not receive due process. We begin our discussion of this claim by highlighting some of the procedural background that preceded the orders in question.

As the record in this case reveals, the trial court on three separate occasions had issued final orders or judgments requiring Lillian to fund the Family Trust, including the January 2015 Order, the May 2015 Order, and lastly the Damages Order issued on September 4, 2015. Nothing in the record suggests that Lillian ever made any attempt to voluntarily comply with the trial court's orders to fund the Family Trust.

In mid-October 2015, when still no action had been taken by Lillian to obey the trial court's orders, the successor trustee of the Family Trust (i.e., the Fresno County Public Guardian) filed an ex parte application seeking to enforce the judgment embodied in the Damages Order against an account held by Lillian at a financial institution known as UBS Financial Services. The application sought two alternative forms of relief: (1) an order freezing the account held by Lillian at UBS Financial Services and/or (2) an order directing UBS Financial Services to pay the successor trustee the sum of $1,528,271.44 in full satisfaction of the Damages Order against Lillian. It was further indicated in the application that the freezing of the account would be to preserve the status quo pending the issuance of the writ of execution and levy on the accounts.

The application explained that the relief was being sought on an ex parte basis because of Lillian's continuing statements that she would never fund the Family Trust, which created a reasonable likelihood that Lillian would attempt to move or conceal assets if a noticed motion were brought. As summarized by the successor trustee in its moving papers filed in the trial court: "To date, Lillian has failed and refused, and continues to fail and refuse, to fund the Family Trust. Lillian has a long established pattern of refusal to obey court orders, and based on her history of bad faith wrongful taking of trust property (as found by Judge Black at the August 25, 2015 trial), Lillian will continue to secrete and hide her assets rendering the judgment uncollectible or otherwise resulting in a multiplicity of suits." The application further asserted that enforcement of the judgment would not create financial hardship to Lillian because, other than the attorney fees recovery to Marleen, the entirety of the recovered funds would be placed into the Family Trust, and Lillian remained the beneficiary of the Family Trust during her lifetime. The application also informed the trial court that if, as requested, UBS Financial Services was ordered to transfer sufficient funds from the accounts held or possessed by Lillian to the successor trustee to satisfy the Damages Order, approximately $1 million in other funds or assets would still remain in Lillian's account at UBS Financial Services.

The legal basis argued by the successor trustee for the enforcement orders was the broad authority granted to the trial court under sections 850 to 859, under which authority Marleen's petition to recover property had been tried and the Damages Order entered. We briefly summarize these sections. Section 850 allows (among other things) a petition to be filed by an interested person for the recovery of property belonging to a trust or trustee, where such property is in the possession of another. (§ 850, subd. (a)(3)(A), (B)

& (C).) Section 856 provides, in relevant part, that "if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the ... person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief." In accordance with section 856, the trial court ordered in the Damages Order, as well as in the May 2015 Order,[27] that Lillian "shall pay" to the successor trustee the amounts set forth therein, including in the Damages Order an award of double damages under section 859. Section 857 declares the legal effect of such orders made in connection with proceedings under sections 850 to 859: "(a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer. [¶] (b) After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order." (See *Estate of Kraus* (2010) 184 Cal.App.4th 103, 110–118 [describing broad statutory and equitable powers of the trial court under sections 850–859 to recover and collect assets belonging to a trust or decedent's estate and to fashion appropriate

[27] The May 2015 Order was also, in part, granted pursuant to the petition to recover property (i.e., under §§ 850–859).

relief to accomplish same, including to recover improperly obtained funds from a wrongdoer's account].)

On October 20, 2015, the trial court granted the ex parte relief sought by the successor trustee, including the issuance of orders (1) freezing certain accounts of Lillian's at UBS Financial Services until the further order of the trial court and (2) requiring UBS Financial Services to transfer the sum of $1,528,271.44 (from certain accounts held by Lillian) to the successor trustee in satisfaction of the September 4, 2015, Damages Order that was entered against Lillian.[28] On November 18, 2015, at Lillian's request, we issued a temporary stay of the trial court's enforcement orders to allow briefing from the parties regarding Lillian's "REQUEST FOR A WRIT OF SUPERSEDEAS OR IN THE ALTERNATIVE WRIT OF PROHIBITION ...." After considering the parties' arguments, we denied Lillian's request for writ of supersedeas and/or prohibition, and we lifted the temporary stay. Lillian then petitioned for review to the California Supreme Court and applied for a further stay. On February 17, 2016, the Supreme Court denied

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[28] Apparently, not all of the assets in the UBS Financial Services account were in the form of cash. Because there was insufficient cash in the UBS Financial Services account to satisfy the entire judgment, it was necessary to liquidate some noncash assets in the UBS Financial accounts. A follow-up order dated November 16, 2015, further authorized the successor trustee to direct UBS Financial as to which noncash assets to liquidate. The November 16, 2015, order came after Lillian's notice of appeal, and she did not file a subsequent notice of appeal from the November 16, 2015, order.

both requests.

In the instant appeal, Lillian argues that because the enforcement orders entailed the taking or transfer of property, she was entitled to a noticed hearing, rather than such relief being granted by the trial court on an ex parte basis.[29] Since Lillian has failed to provide a sufficient record, we are not adequately apprised of the exact nature or extent of any alleged deficiency of notice or opportunity to be heard. (*Foust v. San Jose Construction Co., Inc., supra,* 198 Cal.App.4th at p. 187 ["""[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed."""].) Further, Lillian's appeal fails to address the issue of whether her ongoing defiance of the trial court's direct

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[29] Contrary to Lillian's suggestion, the ex parte grant of the enforcement orders in this case did not represent a failure by a probate court to adhere to a jurisdictional notice provision in a statute relating to a special proceeding, as was the case in *Olcese v. Superior Court* (1930) 210 Cal. 566 and *Texas Co. v. Bank of America etc. Assn.* (1935) 5 Cal.2d 35. Here, the relevant notice provision for purposes of section 850 et seq. proceedings was section 851, which provides that, at least 30 days in advance of the trial of the issues set forth in the petition, a notice of hearing along with a copy of the petition must be served on all interested parties. Lillian has not argued, and nothing in the record reflects, that this notice provision was not complied with here. Even on the meager record before us, there is no question that Lillian was present at, and participated in, the trial on the merits to determine the property recovery issues under section 850, et seq. It is evident that Lillian received notice of the section 850 et seq. petition and of the trial proceedings, she had her day in court, and she lost—resulting in the Damages Order that was thereafter enforced by the subject enforcement orders.

orders to fund the Family Trust, and the risk implied therefrom that she would seek to hide or conceal assets to prevent enforcement of the Damages Order may have provided justification for the trial court to proceed on an ex parte basis in this particular instance. Where exceptional circumstances are present, ex parte relief may be granted on extremely short notice (see, e.g., Cal. Rules of Court, rules 3.1200–3.1204; 6 Witkin, Cal. Procedure (5th ed., 2008) Proceedings Without Trial, §§ 58–59, pp. 483–485), and the Rules of Court relating to ex parte motions even include a provision to inform the trial court "[t]hat, for reasons specified, the applicant should not be required to inform the opposing party." (Cal. Rules of Court, rule 3.1204(b)(3).) Based on the foregoing, we conclude that Lillian has failed to adequately show error. But even if there was error, Lillian has failed to demonstrate that it was of a reversible or prejudicial nature. (Code Civ. Proc., § 475.) Lillian was personally liable for the amounts due under the Damages Order, and she has failed to show that if events had proceeded on a regularly noticed motion, the outcome could have turned out differently.

B. Failure to Join Indispensable Party

Lillian argues that all of the proceedings in the trial court below (including the orders from which she appealed) must be set aside based on an alleged failure to join Beverly as an indispensable party under Code of Civil Procedure section 389. The argument is that when Marleen filed her petitions as a remainder beneficiary, the other remainder beneficiary (Beverly) should have been joined. Lillian fails to cite anything in the record to indicate that she ever pursued a motion to bring Beverly in as a party or that she otherwise raised the argument in the trial court. Accordingly, Lillian has forfeited the issue.[30] (See *Jermstad v. McNelis, supra,* 210 Cal.App.3d at p. 538 [a claim of error based on failure to join a compulsory party is waived if not properly raised in the trial court].) Lillian argues the issue is jurisdictional, but that is not so. "'Since the 1971 revision of Code of Civil Procedure section 389, failure to join "indispensable" parties does not deprive a court of the power to make a legally binding adjudication between the parties properly before it.'" (*Golden Rain Foundation v. Franz* (2008) 163 Cal.App.4th 1141, 1155.) "'[T]he failure to join an "indispensible party" is not a "jurisdictional defect" in the fundamental sense; even in the absence of an "indispensable" party, the court still has the power to render a decision as to the parties before it which will stand.' [Citation.]" (*Ibid.*)

C. Fraud or Embezzlement

Finally, Lillian appears to argue that the trial court's rulings should be reversed because the trial court allegedly engaged in or abetted the commission of fraud and embezzlement when it permitted the judgment to be enforced against Lillian's financial account at UBS Financial Services. In support, she

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[30] Even though the issue was not properly raised in the trial court, it might still be considered on appeal if there was "some compelling reason of equity or policy which warrant[ed] belated consideration." (*Jermstad v. McNelis* (1989) 210 Cal.App.3d 528, 538.) Lillian presents no such compelling reason.

further claims in conclusory fashion that the ex parte petitions contained perjured declarations. We find Lillian's accusations on these points to be largely unintelligible and without any support in the record. "'A judgment or order of the lower court is *presumed correct*'" and, thus, "'error must be affirmatively shown.'" (*Denham v. Superior Court, supra,* 2 Cal.3d at p. 564.) "[A]n appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If he fails to do so, the argument is forfeited." (*Nielsen v. Gibson, supra,* 178 Cal.App.4th at p. 324.) Lillian has not met her fundamental burden as appellant concerning the accusations of fraud or embezzlement; accordingly, such claims are forfeited.

V. Reply Brief, New Exhibits and Motion to Strike

We have read and considered Lillian's appellant's reply brief. Nothing in that brief alters our analysis or conclusions stated in this opinion. Lillian's reply brief contains a new argument that was not presented in her opening brief or in the trial court. Specifically, she argues that Judge Black, who, prior to his appointment to the bench in 1998, had been with the Fresno law firm of McCormick Barstow et al., had a conflict of interest in the present action because Attorney Robert Sullivan (Lillian's attorney for a brief time in 2010-2011) was with the law firm of McCormick Barstow et al. Aside from the fact that no showing of any ground of disqualification or conflict of interest has been shown under Code of Civil Procedure section 170.1, or under any other law, Lillian's argument is "'doubly waived'" for failure to raise it in her opening brief or in the trial court. (*Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 776– 777.) The argument, therefore, is forfeited and will be disregarded.

Lillian has also submitted with her reply brief a number of documents that were not part of the record before the trial court at the time it entered the orders from which Lillian has appealed. The new documents were included in appellant's reply appendix (the reply appendix). Marleen has filed a motion to strike the improper exhibits from Lillian's reply appendix and also to strike any references to those exhibits in Lillian's reply brief. "An appellant's appendix may only include copies of documents that are contained in the superior court file." (*The Termo Co. v. Luther* (2008) 169 Cal.App.4th 394, 404 [striking noncompliant exhibits]; *Reserve Insurance Co. v. Pisciotta* (1982) 30 Cal.3d 800, 813 ["an appellate court will consider only matters which were part of the record at the time the judgment was entered"]; *C.J.A. Corp. v. Trans-Action Financial Corp.* (2001) 86 Cal.App.4th 664, 673 [granting motion to strike portions of brief that referred to evidence that was not part of the record].) We grant Marleen's motion to strike exhibits Nos. 2–6 and 16 from the reply appendix, along with any references thereto in the reply brief.

DISPOSITION

The judgment and orders of the trial court are affirmed. Costs on appeal are awarded to Marleen.

KANE, J.

WE CONCUR:

LEVY, Acting P.J.

DETJEN, J.

APPENDIX N

THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST

WHEREAS, ANGELO JOHN PELLEGRINI and LILLIAN DOROTHY PELLEGRINI declare that they are married and that they have two (2) children, to wit: A daughter, MARLEEN JOYCE MARCHANT and BEVERLY JEAN PELLEGRINI.

WHEREAS, Trustors desire to create a Trust; and

WHEREAS, Trustors desire to act in said Trust as Trustees;

IT IS, THEREFORE, AGREED:

ARTICLE I – ESTABLISHMENT OF TRUST

ANGELO JOHN PELLEGRINI and LILLIAN DOROTHY PELLEGRINI, called collectively the "Trustors" or "Trustee" depending on the context, declare that they have set aside and hold in trust the property described in Schedule A attached to this instrument.

ARTICLE II – TRUST ESTATE

A. *Community Property and Separate Property Considerations.* The property transferred to this Trust listed in Schedule A and its proceeds shall be referred to as the Trust Estate. It is the Trustors' intention that the Trustee shall have no more extensive power over any community property or separate property transferred to the Trust than either of the Trustors would have had under California Civil Code Sections 5125 and 5127 had this Trust not been created, and this instrument shall be so interpreted to achieve this intention. This limitation shall terminate on the death of either Trustor.

B. *Property to Retain its Character.* All property now or hereafter conveyed or transferred to the Trustee to be held by the Trustee pursuant to this Declaration which was community property or separate property at the time of such conveyance or transfer, shall remain, respectively, community property or the separate property of the Trustor or the Trustors, as the case may be, transferring such property to the Trustee.

ARTICLE III - DISTRIBUTION OF INCOME AND PRINCIPAL

A. *During Joint Lifetimes of Trustors*

1. *Community Property.* During the joint lifetimes of the Trustors, the Trustee shall pay to the Trustors for the account of the community, or shall apply for the Trustors' benefit, the net income of the community property in quarter-annual or more frequent installments. If the Trustee considers the net income insufficient, the Trustee shall pay to the Trustors for the account of the community, or apply for the Trustors' benefit, as much of the principal of the

community property as is necessary in the Trustee's discretion for the Trustors' proper health, support, maintenance, comfort, and welfare. The Trustor receiving payments shall have the same duty to use community income and principal received under this instrument for the benefit of the Trustors as he/she has with respect to any other community property.

2. *Separate Property.* During the joint lifetimes of the Trustors, the Trustee shall pay to or apply for the benefit of the Trustor whose separate property was transferred to the Trust the net income of that Trustor's separate property in quarter-annual or more frequent installments. Similarly, if the Trustee considers the net income of the separate property insufficient, the Trustee shall pay to or apply for the benefit of the Trustor whose separate property was transferred to the Trust, as much of the principal of that Trustor's separate property as is necessary in the Trustee's discretion for the proper health, education, support, maintenance, comfort and welfare of that Trustor and his/her spouse.

3. *One Trustor Incapacitated.* If at any time, as certified in writing by two licensed physicians, either Trustor has become physically or mentally incapacitated, whether or not a Court of competent jurisdiction has declared him/her incompetent, mentally ill, or in need of a Conservator, the Trustee shall pay to the other Trustor or apply for the benefit of either Trustor, the amounts of net income and principal necessary in the Trustee's discretion for the proper health, support, and maintenance of both Trustors, until the incapacitated Trustor, as certified

by two licensed physicians, is again able to manage his/her own affairs, or until the earlier death of either Trustor. The non-incapacitated Trustor may also withdraw from time to time accumulated Trust income and principal of community property. Income and principal from community property so paid or withdrawn shall be held and administered as community property by the non-incapacitated spouse. Any income in excess of the amounts applied for the benefit of the Trustors shall be accumulated and added to principal.

B. *After Death of First Trustor – Division into Three Trusts*. The first Trustor to die shall be called the "Deceased Spouse" and the living Trustor shall be called the "Surviving Spouse". On the death of the Deceased Spouse, the Trustee shall divide the Trust Estate, including any additions made to the Trust by reason of his/her death, such as from the decedent's Will or life insurance policies on the decedent's life, into three separate trusts, designated as the "Survivor's Trust", the "Marital Trust", and the "Family Trust".

1. *Survivor's Trust*

a. *Share Allocated to Survivor's Trust.* The principal of the Survivor's Trust shall consist of the Surviving Spouse's interest in the Trustors' community property and the Surviving Spouse's separate property, if any, included in or added to the Trust Estate in any manner, including any undistributed or accrued income on it.

b. *Distribution of Income and Principal to or for the Benefit of the Surviving Spouse.* The entire net income from the Survivor's Trust shall be distributed currently to the Surviving Spouse in quarter-annual or more frequent installments during his/her life. The Trustee may pay to or apply for the benefit of the Surviving Spouse so much of the principal of this Trust as the Trustee may deem proper or necessary to provide the Surviving Spouse with reasonable support, care, comfort or happiness. During the life of the Surviving Spouse, there shall be no invasion of the principal of this Trust for the benefit of any person except the Surviving Spouse. The Surviving Spouse shall have the right during his/her life to withdraw free of Trust any part of the principal of this Trust up to the whole thereof at such times and in such amounts as he/she, in his/her sole discretion, may from time to time designate by written instructions filed with the Trustee.

c. Upon the death of the Surviving Spouse, the principal of said Trust shall be added to the Family Trust and distributed in the same fashion as provided for hereinafter.

2. *Marital Trust ("Q-TIP TRUST")*

a. *Share Allocated to Marital Trust.* The share allocated and set apart for the Marital Trust shall consist of the minimum dollar amount necessary for a marital deduction to eliminate (or to reduce to the extent possible) any federal estate tax at the death of the Deceased Spouse, taking account of (I) available deductions and credits, and (ii) the net value of all other property included in the Deceased Spouse's gross estate which passes or has passed to or for the Surviving Spouse, under this instrument or otherwise, and which qualifies for the federal estate tax marital deduction. In determining the amount of this gift, final federal estate tax values shall control; and account shall not be taken of any item not deductible for estate tax purposes because claimed for income tax purposes, nor shall account be taken for death taxes paid in the estate of one whose death occurs after the death of the Deceased Spouse, or for any state death tax unless at least some such tax would be payable to the State regardless of the federal credit. This bequest may be satisfied in cash or in kind, or partly in each, only with assets to be valued at the date(s) they are distributed to the Marital Trust. Assets eligible for any foreign death tax credit shall be used only if other property of the deceased Spouse's estate is insufficient to fund this gift. It is the Deceased Spouse's intent that assets qualifying for the federal estate tax marital deduction shall be transferred to the Marital Trust only to the extent that such transfer would effect a reduction in the federal estate tax otherwise payable by the Deceased Spouse's estate.

(1) *Non-Productive Property.* During the Surviving Spouse's lifetime, he/she shall have the power to require the Trustee to make all or part of the principal of the Marital Trust productive or to convert promptly any unproductive part into productive property. This power shall be exercised by the Surviving Spouse in a written instrument delivered to the Trustee.

(2) *Marital Deduction.* It is the Trustors' intention to have the Marital Trust qualify for the marital deduction under Section 2056 of the Internal Revenue Code and the regulations pertaining to that section or any corresponding or substitute provisions applicable to the Trust Estate. In no event shall the Trustee take any action or have any power that will impair the marital deduction, and all provisions regarding the Marital Trust shall be interpreted to conform to this primary objective.

(3) *Q-TIP Election.* The Executor of the Deceased Spouse's Will, or in the event no such Executor is appointed, the Trustee of this Trust may elect to qualify all or any portion of the Marital Trust under this Article for the federal estate tax marital deduction. Such Executor (or Trustee) shall not be liable if the election causes more than an optimal amount of property to be later taxed in the Surviving Spouse's estate, but such Executor (or Trustee) is authorized to consider any factors that appear relevant regarding the timing and aggregate amount of taxes on the combined estates of both Trustors, such as the death or apparent life expectancy of the Surviving Spouse, the availability of credits for property taxed in the Estate of the Deceased Spouse or by foreign governments, and the like. Any portion of the Marital Trust not qualified for the marital deduction shall be held in a separate share of that Trust, subject to all of the rights, interests, powers and other terms prescribed for the Marital Trust.

b. *Distribution of Income and Principal to or for the Benefit of the Surviving Spouse.* The entire net income from the Marital Trust shall be distributed currently to the Surviving Spouse in quarter-annual or more frequent installments during his/her life. The Trustee may pay to or apply for the benefit of the Surviving Spouse so much of the principal, up to the whole thereof, as the Trustee deems appropriate for the surviving spouse's health, general welfare and support in accordance with his/her accustomed standard of living, taking into account, to the extent the Trustee deems advisable, any income or other resources of the Surviving Spouse that are known to the Trustee and reasonably available for these purposes.

c. *Distribution of Marital Trust on Surviving Spouse's Death.* On the death of the Surviving Spouse, the Trustee shall distribute any accrued or undistributed income of the Marital Trust to his/her estate as heretofore; provided the remaining principal of the Marital Trust shall be distributed, free of any trust, as follows: One (1) share for each of the Trustors' then living children and one (1) share for each group of issue of any deceased child by right of representation.

3. *Family Trust*

a. *Share Allocated to Family Trust.* The Family Trust shall consist of the balance of the Trust Estate representing the balance of the Deceased Spouse's interest in the Trustors' community property and the balance of the Deceased Spouse's separate property included in the Trust Estate but after the allocation of such property to the Marital Trust.

b. *Distribution of Income and Principal to or for the Benefit of the Surviving Spouse.* The Trustee shall distribute the income and so much of the principal as the Trustee deems appropriate in the event of accident, illness or like emergency to the Surviving Spouse or to maintain the Surviving Spouse in his or her accustomed standard of living or for extended care.

c. *Distribution of Family Trust on Surviving Spouse's Death.* Upon the death of the surviving spouse, the entire principal and any accrued income shall be distributed as follows : One (1) share for each of Trustors' then living children and one (1) share for each group of issue of any deceased child by right of representation.

ARTICLE IV - ADMINISTRATIVE PROVISIONS

A. *The Trustee Shall Have the Following Trust Powers in Administering the Trust.* To carry out the purposes of this Trust and subject to any additions or limitations stated elsewhere in this Trust, the Trustee is vested with the following powers with respect to the Trust Estate and any part of it, in addition to those powers now or hereafter conferred by law:

1. The Trustee shall have the power to invest and reinvest all or any part of the Trust Estate in such common or preferred stocks, shares of investment trusts and investment companies, bond, debentures, mortgages, deeds of trust, notes, real estate or other property, as the Trustee, in the Trustee's absolute discretion, may select; and the Trustee may continue

to hold in the form in which received (or the form to which changed by reorganization, split-up, stock dividend or other like occurrence) any securities or other property the Trustee may at any time acquire under this Trust, it being the Trustors' express desire and intention that the Trustee shall have full power to invest and reinvest the trust funds without being restricted to forms of investment that the Trustee may otherwise be permitted by law to make; and the investments need not be diversified.

2. The Trustee is expressly authorized to continue to hold any property and to operate at the risk of the Trust Estate any business that the Trustee received or acquires under the Trust, as long as the Trustee deems advisable.

3. The Trustee shall have all the rights, powers and privileges of an owner of the securities held in trust, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases, and, incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable.

4. The Trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair Trust property.

5. The Trustee shall have the power to lease

Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

6. The Trustee shall have the power to commence or defend such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable, at the expense of the Trust.

7. The Trustee shall have the power to borrow money, and to encumber or hypothecate Trust property by mortgage, deed of trust, pledge or otherwise; operate a margin account with any registered securities broker.

8. The Trustee shall have the power to compromise or otherwise adjust any claims or litigations against or in favor of the Trust.

9. The Trustee shall have the power to carry, at the expense of the Trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the Trust Estate and the Trustee against any hazard.

10. Except as otherwise specifically provided in this Trust, the determination of all matters with respect to what is principal and income of the Trust Estate and the apportionment and allocation of receipts and expenses between these accounts, shall be governed by the provisions of the California Principal

and Income Law from time to time existing. Any such matter not provided for either in this Trust or in the Principal and Income Law shall be determined by the Trustee, in the Trustee's discretion.

11. The Trustee shall not charge to income any depreciation with respect to any property held as assets of this Trust, and the cost of any improvements shall not be amortized or charged to income. The cost of ordinary repairs shall be charged to income, and the cost of extraordinary repairs or capital improvements shall be charged to principal.

12. Whenever the Trustee is directed to make a distribution of Trust assets or a division of Trust assets into separate trusts or shares on the death of a Trustor, the Trustee may, in the Trustee's discretion, defer such distribution or division until six (6) months after the Trustor's death. When the Trustee defers distribution or division of the Trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this instrument in the absence of this paragraph, and all rights given to the beneficiaries of such Trust assets under other provisions of this instrument shall be deemed to have accrued and vested as of such prescribed time.

B. *The Trust Created By This Instrument Shall Be Subject to the Following Provisions.*

1. *Perpetuities Savings Clause.* Unless sooner terminated with other provisions of this instrument, all trusts created under this instrument shall

terminate twenty-one (21) years after the death of the last survivor of the Trustors or of the Trustors' issue living on the date of the death of the first Trustor to die. The principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same proportion that the beneficiaries are entitled to receive income when the trust terminates. If at the time of such termination, the rights to income are not fixed by the terms of the trust, distribution under this clause shall be made, by right of representation, to the persons who are entitled or authorized, in the Trustee's discretion, to receive trust payments.

2. *Spendthrift Clause.* No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned, encumbered, or subject to creditor's claim or legal process before actual receipt by the beneficiary.

3. *Severability Clause.* If any provision of this Trust and instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

4. *No-Contest Clause.* In the event that any beneficiary under this Trust shall, singly or in conjunction with any other person or persons, contest in any Court the validity of this Trust or of a deceased Trustor's last will or shall seek to obtain an adjudication in any proceeding in any Court that this Trust or any of its provisions or that such will or any of its provisions is void, or seek otherwise to void, nullify, or set aside this Trust or any of its provisions, then the right of that person to take any interest given

to him by this Trust shall be determined as it would have been determined had the person predeceased the execution of this Declaration of Trust without surviving issue. The Trustee is hereby authorized to defend, at the expense of the Trust Estate, any contest or other attack of any nature on this Trust or any of its provisions.

5. *Residential Property.* The Surviving Spouse shall have the right to continue to occupy any real property free of rent in which the Trust holds an interest and which the Deceased Spouse and the Surviving Spouse were using regularly or occasionally as a residence or vacation home at the time of the Deceased Spouse's death; provided, however, that the Surviving Spouse in his/her discretion may direct the Trustee to sell any such property and replace it with another residence or other asset selected by the Surviving Spouse. The Trustee shall pay such portion of the mortgage or trust deed payments, property taxes, assessments, insurance, maintenance and ordinary repairs on all such property as is proportionate to the interest in such property held in the Trust.

6. *Additional Property.* Additional property acceptable to the Trustee may be added to the Trust by any person.

7. *Trustees.* The Trustors shall be Co-Trustees of the Trust herein created for the benefit of the Trustors during the joint lifetimes of the Trustors. Upon the death of the Deceased Spouse, the Surviving Spouse shall act as Surviving Trustee of the Family

Trust designated herein in Article III. The Surviving Spouse shall also act as sole Trustee of the "Survivor's Trust", and the "Marital Trust". If both Trustors are deceased or for any reason fail to qualify or cease to act as Trustee, then Trustors' daughters, MARLEEN JOYCE MARCHANT and BEVERLY JEAN PELLEGRINI shall act.

8. *Trustee's Bond.* No bond shall be required of any person named in this instrument as a Trustee, or of any person appointed as Trustee in the manner specified here, for the faithful performance of his/her duties as Trustee.

ARTICLE V – REVOCATION, TERMINATION AND AMENDMENT

A. *Revocation by Trustors.* During the joint lifetimes of the Trustors, this Trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either Trustor and delivered by certified mail to the Trustee and the other Trustor, and with respect to separate property by an instrument in writing signed by the Trustor who contributed that property to the Trust, delivered by certified mail to the Trustee.

B. *Amendment by Trustors.* The Trustors may at any time during their joint lifetimes amend any of the terms of this instrument by an instrument in writing signed by the Trustors and delivered to the Trustee.

C. *Revocation and Amendment By Surviving Spouse.* On the death of the Deceased Spouse, the

Surviving Spouse shall have the power to amend, revoke or terminate the Survivor's Trust, but the Marital Trust or the Family Trust may not be amended, revoked or terminated on the death of the Deceased Spouse.

ARTICLE VI – NAMES OF THE TRUSTS

The Trusts created in this instrument may be referred to collectively as the ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST.

Executed at San Francisco, California, on the 18th day of June, 1999.

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

TRUSTEES:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

WE CERTIFY THAT WE HAVE READ THE FOREGOING DECLARATION OF TRUST AND

THAT IT CORRECTLY STATES THE TERMS AND CONDITIONS UNDER WHICH THE TRUST ESTATE IS TO BE HELD, MANAGED, AND DISPOSED OF BY THE TRUSTEES. WE APPROVE THE DECLARATION OF TRUST IN ALL PARTICULARS AND REQUEST THAT THE TRUSTEES EXECUTE IT.

DATED: June 18, 1999.

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

SCHEDULE A

1. All that certain real property situated in the City and County of San Francisco, California, commonly known and designated as 2554 - 33rd Avenue, San Francisco, California

   Assessor's Parcel No. Vol. 18, Block 2433, Lot 23A

2. Fidelity Cas .Res. #0550005437512
   $74,208.560

3. Morgan Stanley Dean Witter
   U.S. Government Money Market (507413340) – $633.22

4. Wells Fargo Bank
   Checking Account #0067858423

5. Bayview Bank
   Account No. 60073297970
   Account No. 40020935821

6. Cal Fed Bank
   Account No. 0020682464

7. Bay View Bank
   Account No. 40041467986

8. World Savings
   Account No. 673497228

9. World Savings
   Account No. 00470157840-3

10. Wells Fargo Bank
    Account No. 105381903800

11. Bank of America
    Account No. 0101400967

12. Cal Fed
    Account No. 974006319-4

13. 819 Shares CSX CORP.

14. 300 Shares CYTECK CORP.

15. 797.846 Shares FIDELITY TREND
    Account No. 005/0304418916

16. 1166.122 Shares MANHATTAN FUND
    Acct. No. 114214900/6

17. 5056.782 Shares PUTNAM GRO. INC . A FUND
    Account No. A02 -1-545-07-5934-BBBH

18. 3428 Shares MORGAN STANLEY DEAN WITTER High Yield C Acct. 115416309

19. 1000 Shares MORGAN STANLEY DEAN WITTER Van Campen Sen. Inc.

20. 17,557 Shares FIRST ENERGY

21. 123.4813 Shares OCCIDENTAL PETROLEUM CORP.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
CITY & County of SAN FRANCISCO

On June 18, 1999, before me, GEORGIA K. BREGANTE, NOTARY PUBLIC personally appeared ANGELO JOHN PELLEGRINI and LILLIAN DOROTHY PELLEGRINI

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

[NOTARY SEAL]

/s/
Signature of Notary Public

OPTIONAL

Though the Information below is not required by law, it may prove valuable ro persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: ____________________

Document Date: __________ Number of Pages: ____

Signer(s) Other Than Named Above: ____________

Capacity(ies) Claimed by Signer
Signer's Name: ________________
☐ Individual
☐ Corporate Officer - Title(s): ______________
☐ Partner - ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
Other: ____________________

Signer is Representing: _____________

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

FIRST AMENDMENT
TO THE ANGELO JOHN PELLEGRINI
AND LILLIAN DOROTHY PELLEGRINI
REVOCABLE LIVING TRUST

WHEREAS, Trustor desires to amend their revocable living tiust dated June 18, 1999, as follows:

THEREFORE, Trustor deletes ARTICLE III, Subparagraph (B)(3)c. on page 10 in its entirety and substitutes the following:

"c. *Distribution of Family Trust on Surviving Spouse's Death*. Upon the death of the Surviving Spouse, our daughter, BEVERLY J. PELLEGRINI, ("BEVERLY") shall be granted an estate for her lifetime to occupy the real property commonly known and designated as 2554 - 33rd Avenue, San Francisco, California, ("the real property") including the contents therein, rent free, or until such time as she voluntarily terminates her possession of said premises for a continuous period of one year.

Upon BEVERLY's death or her voluntary termination of her right to possession by vacating the property for a continuous period of one year, her life estate shall cease and the property shall be sold and the trustees shall divide the proceeds equally among our daughters BEVERLY and MARLEEN J. MERCHANT ("MARLEEN"). The contents of the property shall be equally divided between MARLEEN and BEVERLY. Upon BEVERLY's death, her interest shall be delivered to her issue by right of representation, if any, and if none, to any person or entity she designates in her last will or trust in effect as of the date of her death. If BEVERLY's share is given to her as a result of a vacation of the property for more than one year, as provided above, her share of the proceeds from the sale of the property shall be delivered to her if she is alive, or to any person or entity she may direct in her last will or trust. If MARLEEN is deceased at the time BEVERLY's life estate is terminated by death or by vacating the property for more than one year, her share shall be delivered to her issue by right of representation.

"During the time that BEVERLY occupies the real property, she shall have the obligation to maintain the property and the obligation to pay the taxes imposed on the property by the City and County of San Francisco as well as the cost of adequately insuring it from loss resulting from fire and other damage; and she will not be required to pay for earthquake insurance."

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

TRUSTEES:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

WE CERTIFY THAT WE HAVE READ THE FOREGOING FIRST AMENDMENT TO THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST AND THAT IT CORRECTLY STATES THE TERMS AND CONDITIONS UNDER WHICH THE TRUST ESTATE IS TO BE HELD, MANAGED, AND DISPOSED OF BY THE TRUSTEES. WE APPROVE THE FIRST AMENDMENT TO THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST TRUST IN ALL PARTICULARS AND REQUEST THAT THE TRUSTEES EXECUTE IT.

DATED: August 11, 2004.

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On August 11, 2004 before me, Leonida B Domingo, a notary public, personally appeared *ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI,* personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed in the within instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/
NOTARY PUBLIC IN AND FOR SAID STATE

[NOTARY SEAL]

APPENDIX O

SCHEDULE A
(ANNOTATED)

1. All that certain real property situated in the City and County of San Francisco, California, commonly known and designated as 2554 - 33rd Avenue, San Francisco, California

   Assessor's Parcel No. Vol. 18, Block 2433, Lot 23A

   Purchase Date: February 27, 1950
   Title: Joint tenancy
   Grant Deed 1950 (Appendix P)

2. Fidelity Cas .Res. #0550005437512
   $74,208.560

   The first Fidelity account was opened on June 16, 1966 in joint tenancy with right of survivorship. The Fidelity account was transferred to the Fidelity Cash Reserve account ending 7512; this account was transferred to a Fidelity account ending 9617; on June 28, 1999 it was transferred to the trust account by joint tenants Angelo and Lillian Pellegrini to Acct. T155832417

3. Morgan Stanley Dean Witter
   U.S. Government Money Market (507413340) -
   $633.22
   JTWROS

Withdrawn 1999

4. Wells Fargo Bank checking account balance Lillian Pellegrini's property based on using social security deposits first; Lillian Pellegrini's supplemental income second.

5. Bayview Bank
Account No. 60073297970

   Bayview Bank Account No. 60073297970 Opened: September 18, 1997 Joint tenancy with right of survivorship Account No. 40020935821 Opened: June 27, 1996 Joint tenancy with right of survivorship

6. Cal Fed Bank
Account No. 0020682464
Combined with Cal. Fed. Bank Account No. 974006319-4
Owner: Lillian Pellegrini

7. Bay View Bank
Account No. 0020682464
Owner: Lillian Pellegrini

8. World Savings
Account No. 673497228
Owner: Lillian Pellegrini

9. World Savings
Account No. 00470157840-3
Owner: Lillian Pellegrini

10. Wells Fargo Bank
    Account No. 105381903800
    Owner: Lillian Pellegrini

11. Bank of America
    Account No. 0101400967
    Owner: Lillian Pellegrini

12. Cal Fed
    Account No. 974006319-4
    (merged with Cal. Fed account in Item 6)
    Owner: Lillian Pellegrini

13. 819 Shares CSX CORP.
    Acquired through merger with Texas Gas Transmissions purchased on March 19, 1971
    Title: JTWROS
    Owners: Angelo and Lillian Pellegrini, Joint tenants

14. 300 Shares CYTECK CORP.
    Date: June 10, 1994
    Owners: Angelo and Lillian Pellegrini, joint tenants
    Title: JTWROS
    CYTEC shares were a spin-off from the original holding in American Cyanamid Company purchase of 100 shares on May 19, 1969 by owners Angelo and Lillian Pellegrini as joint tenants
    Title: JTWROS

15. 797.846 Shares FIDELITY TREND
    Account No. 005/0304418916

Opened: June 16, 1966 with purchase of 100 shares through Harris Upham & Co.
Title: Joint tenancy with right of survivorship
Owners: Angelo and Lillian Pellegrini, joint tenants

16. 1166.122 Shares MANHATTAN FUND
Account No. 11422214900/6
Original Purchase: 50 shares in 1966
Owners: Angelo and Lillian Pellegrini, joint tenants
Title: JTWROS

17. 5056.782 Shares PUTNAM GRO. INC. A FUND
Account No. A02--1-545-07-5934-BBBH
Original Purchase: 50 shares March 10, 1961
Owners: Angelo and Lillian Pellegrini, Joint tenants
Title: JTWROS

18. 3428 Shares MORGAN STANLEY DEAN WITTER
High Yield C Acct. 115416309
Purchased: April 16, 1988
Owners: Angelo and Lillian Pellegrini, Joint tenants
Title: JTWROS

19. 1000 Shares MORGAN STANLEY DEAN WITTER
Van [K}ampen Sen. Inc.
Purchased: June 26, 1998
Owners: Angelo and Lillian Pellegrini, Joint tenants

Title: JTWROS

20. 17,557 Shares First Energy
    Formed through merger Toledo Edison that was purchased May 11, 1973
    Owners: Angelo and Lillian Pellegrini, Joint tenants
    Title: JTWROS

21. 123,4813 Shares OCCIDENTAL PETROLEUM CORP.
    Owner: Lillian Pellegrini

APPENDIX P

BOOK 5389 PAGE 166
GRANT DEED (Joint Tenancy)
T-447579

For value received Esther A. Jones and Benjamin L. Jones, her husband, GRANT S to: Angelo J. Pellegrini and Lillian D. Pellegrini, as **Joint Tenants,** all that real property situate in the City and County of San Francisco, State of California, described as follows:

Commencing at a point on the easterly line of 33rd avenue distant thereon 250 feet northerly from the northeasterly corner of 33rd avenue and Vicente street; running thence northerly along said easterly line of 33rd avenue 25 feet; thence at a right angle easterly 120 feet; thence at a right angle southerly 25 feet and thence at a right angle westerly 120 feet to the point of commencement. Being a portion of Outside Land Block No. 1205.

WITNESS our hands this 27 day of February, 1950.
Benjamin L. Jones
Esther A Jones

STATE OF CALIFORNIA }
City and County of San Francisco } ss.

On March 1, 1950 before me, Irene [C]erespi a Notary Public, in and for said City and County and State, personally appeared Benjamin L. Jones and Esther A Jones, his wife known to me to be the persons

whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.
Irene [C]erespi
My commission expires Jan 3, 1951

For Recorder's Use Only
V52928
BOOK 5389 PAGE 166

RECORDED AT REQUEST OF
TITLE INS. & GUARANTY CO.
At 50 Min. Past 12 P.M.
MAR 3 — 1950
....Official Records, p. ....
City and County of San Francisco, Calif.

RECORDER [signature]

Form 86A 10M 10-48

RBB-CC

APPENDIX Q

ITEMIZED LIST OF LILLIAN PELLEGRINI'S PROPERTY

2001 Activity	**Amount**
Purchase Buick May 2000	$25,352
Deposit UBS from World Sav.	$34,543.44
Deposit UBS from Wells Fargo	$65,456.56
2005 Activity	
Direct Merchants Bank income	$1,189.20
2006 Activity	
Sale Occidental Petroleum (May 2006)	$64,278.26
Deposit UBS from Cal Fed	$26,653.17
Sale Occidental Petroleum (Aug. 2006)	$46,482.09
2007 Activity	
Interest from Lehman Bros.	$4,550.00
Sale of Cytec	$11,213.26
Deposit from Citibank (formerly a Cal Fed account)	$91,069.03
Deposit from State Farm	$82,399.00
Deposit from Bank of America CD	$107,695.58
Deposit from World Savings	$129,000.00
Deposit to checking account	$7,568.48
Deposit from World Savings	$185,074.97
Interest from World Sav. CD	$45,690.50

2008 Activity

Veterans Life Insurance	$39.600.44
Sale of Chevron	$14,193.87
Sale of Chevron	$8,404.56
Sale of Bank of America	$8,404.56
Deposit from sister's estate	$6,428.56
Sale of First Energy	$5,652.33
Sale of Chevron	$9.596.14
Sale of Bank of America	$14,659.16
Deposit Jackson Life Annuity	$28,966.37
Deposit Jackson Life Annuity	$41,455.42

2009 Activity

Checking account	$21,518.18
Total Financial Assets	$1,091,398.86

2009 Activity

Deposit Proceeds SF property sale	$684,558.25
Total Property Value	$1,775,057.71

APPENDIX R

14-JAN-2015
07:44AM
Minute order Judge Cardoza
Entry:
Dept: 52 Judge: Jane Cardoza Clerk: Rosemary Nunez Reporter: Miranda Anthony Hearing: Trial The Court finds that the Family Trust was required to be funded after Mr. Pellegrini's death. The Court finds that the title to the San Entry: Francisco real property did not maint its joint tenancy characterization after being transferred into the Trust. Atty Corey to prepare an order after hearing no later thatn 013015. Set for 020215 900 303 for Status RE: Petition to Recover Property belonging to the Trust. SEE ADDITIONAL MINUTES tl 011514 SEE MINUTES.

APPENDIX S

Excerpts from Reporter's Transcript, January 14, 2015

Page 572, Lines 16-18: ..."the Court finds that, yes, the family trust was required to be funded after Mr. Pellegrini's death."

Page 573, Lines 3-6: ..."the Court finds that the title to the San Francisco real property did not maintain its joint tenancy characterization after being transferred into the trust."

Page 573, Lines 9-13: ..."Mr. Corey, you're to prepare an order after hearing for the Court's signature. And if you would provide that to the court by no later than – on or before January the 30th, 2015, directly to this department for the Court's signature."

APPENDIX T

DANIEL C. CEDERBORG,
County Counsel-SBN 124260
Heather Kruthers, Chief Deputy-SBN 192195
County of Fresno
2220 Tulare Street, Suite 500
E-Mail: Fresno, California 93721-2128
HKruthers@fresnocountyca.gov
Telephone: (559) 600-3479
Facsimile: (559) 600-3480

Attorneys for Fresno County Public Guardian

E-FILED
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Superior Court of California
County of Fresno
By: Seng Yang, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION**

In the Matter of the
ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999.

Case No. 10CEPR00683

THIRD AND FINAL ACCOUNT CURRENT AND REPORT OF SUCCESSOR TRUSTEE;

PETITION FOR ALLOWANCE OF COMPENSATION TO TRUSTEE AND ATTORNEY AND DISTRIBUTION

[Probate Code §§ 15681; 15688; 16062; 16063]

Hearing Date: 6/10/24
Time: 9:00 a.m. Department: 97A

The Fresno County Public Guardian presents her verified third and final account current and report as trustee of the LILLIAN PELLEGRINI TRUST, and petition for allowance of compensation for services as trustee and to her attorney, Fresno County Counsel, for legal services rendered.

Petitioner alleges:

1. On 11/6/23, the surviving spouse, Lillian Pellegrini died. Attached hereto as Exhibit "A" is the First Amendment to the Lillian Pellegrini Trust, providing for distribution of the remaining assets to Beverly Pellegrini and Marleen Merchant.

2. The Public Guardian's second account was approved on June 26, 2018. This third and final account covers the period of March 24, 2018 through March 12, 2024.

3. Petitioner is chargeable and is entitled to the credits as set forth in this and incorporated in this petition by reference. The schedules are set up pursuant to the requirements for schedules pertaining to conservatorships.

SUMMARY OF ACCOUNT

CHARGES

BALANCE FORWARD from Second Account		
Cash Assets.	Schedule "PH1"	$1,079,738.49
RECEIPTS		
Interest.	Schedule "A2"	$ 4.643.74
Other Receipts,	Schedule "A6"	$ 185.96
TOTAL CHARGES		$1,084,568.19

CREDITS

DISBURSEMENTS		
Fiduciary and Attorney Fees,	Schedule "C4"	$7,257.00
General Admin Expenses,	Schedule "C5"	$16.00
Other Expenses,	Schedule "C11"	$ 2,081.35
PROPERTY ON HAND		
Cash Assets,	Schedule "E1"	$1,075,213.84
TOTAL CREDITS		$1,084,568.19

4. No compensation has been received by petitioner for services as trustee during the period of this accounting. Probate Code Section 15681 state that the is entitled to reasonable compensation. Petitioner's statement of services, attached hereto as Exhibit "C", shows the reasonable value of her services to be $1,731.84.

5. Petitioner has retained the services of Fresno County Counsel as the attorney in all matters concerning the trust administration. No compensation has been received by the petitioner's attorney for legal services rendered during this period of accounting. Probate Code Section 15688(b)(3) states that compensation to be paid to the Public Guardian's attorney shall be reasonable. Local 7.16 prescribes the amount allowed for an attorney. The attorney provided the same services to the beneficiary as he would a conservatee. Therefore. petitioner requests that the Court find that the reasonable amount for her attorney's services is $7.500.00 ($1,250/year x 6 years). However. he will accept $2,500.00 for his services.

6. Pursuant to the provisions of Probate Code Section 2942, the Public Guardian requests authorization to pay from the estate a bond fee of $16,128.18; as calculated below, to be deposited in the County treasury.

	$1.075,213.84 (cash)
	$0.00(personal property)
	$0.00 (no annual income)
TOTAL:	$1,079,738.49

On first $10,000.00	$ 25.00
Plus 1/4 of 1% of $1,065,213.84	$2,663.03
Bond Fee per Year	$2,688.03 x 6 years
	= $16,128.18

7. After payment of the above fees and commissions (in addition to $438.75 that the Public Guardian will have to pay to file this account) totaling

$20,798.77, the remaining cash of $1,054,415.07 shall be distributed in equal shares to Beverly Pellegrini and Marleen Merchant, pursuant to the terms in Exhibit "A".

8. The Public Guardian requests authority to deposit with the Fresno County Treasurer any distribution she cannot make or that is refused.

9. Claims against the trustee for breach of trust may not be made after the expiration of three years from the date a beneficiary receives an account or report disclosing facts giving rise to the claim.

10. No one has filed a request for special notice.

WHEREFORE, petitioner prays that:

1. The Court find that notice of hearing of this third and final account, report, and petition has been given as required by law and make an order approving, allowing and settling the attached account and report of the trustee;

2. The Court authorize petitioner $1,731.84 and her attorney $2,500.00 as compensation for services rendered to the trust during the period of this accounting;

3. The Court authorize petitioner to pay from the trust a bond fee in the amount of $16,128.18 to be deposited in the County treasury;

4. The Court authorized distribution and/or deposit as set forth above; and

5. The Court make any other orders that it considers proper.

DATED: April 10, 2024

Fresno County Public Guardian

By: /s/
JOSHUA COCHRON, Deputy

DATED: April 10, 2024

DANIEL C. CEDERBORG
County Counsel

By: /s/
HEATHER KRUTHERS, Chief Deputy
Attorneys for Petitioner

VERIFICATION

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on April 10, 2024, at Fresno, California.

Fresno County Public Guardian

By: /s/
JOSHUA COCHRON, Deputy

FIRST AMENDMENT
TO THE ANGELO JOHN PELLEGRINI
AND LILLIAN DOROTHY PELLEGRINI
REVOCABLE LIVING TRUST

WHEREAS, Trustor desires to amend their revocable living trust dated June 18, 1999, as follows:

THEREFORE, Trustor deletes ARTICLE III, Subparagraph (B)(3)c. on page 10 in its entirety and substitutes the following:

"c. *Distribution of Family Trust on Surviving Spouse's Death.* Upon the death of the Surviving Spouse, our daughter, BEVERLY J. PELLEGRINI, ("BEVERLY") shall be granted an estate for her lifetime to occupy the real property commonly known and designated as 2554 - 33rd Avenue, San Francisco, California, ("the real property") including the contents therein, rent free, or until such time as she voluntarily terminates her possession of said premises for a continuous period of one year.

Upon BEVERLY's death or her voluntary termination of her right to possession by vacating the property for a continuous period of one year, her life estate shall cease and the property shall be sold and the trustees shall divide the proceeds equally among our daughters BEVERLY and MARLEEN J. MERCHANT ("MARLEEN"). The contents of the property shall be equally divided between MARLEEN and BEVERLY. Upon BEVERLY's death, her interest shall be delivered to her issue by right of representation, if any, and if none, to any person or entity she designates in her last will or trust in effect as of the date of her death. If BEVERLY's share is given to her as a result of a vacation of the property for more than one year, as provided above, her share of the proceeds from the sale of the property shall be delivered to her if she is alive, or to any person or entity she may direct in her last will or trust. If MARLEEN is deceased at the time BEVERLY's life estate is terminated by death or by vacating the property for more than one year, her share shall be delivered to her issue by right of representation.

"During the time that BEVERLY occupies the real property, she shall have the obligation to maintain the property and the obligation to pay the taxes imposed on the property by the City and County of San Francisco as well as the cost of adequately insuring it from loss resulting from fire and other damage; and she will not be required to pay for earthquake insurance."

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

TRUSTEES:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

WE CERTIFY THAT WE HAVE READ THE FOREGOING FIRST AMENDMENT TO THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST AND THAT IT CORRECTLY STATES THE TERMS AND CONDITIONS UNDER WHICH THE TRUST ESTATE IS TO BE HELD, MANAGED, AND DISPOSED OF BY THE TRUSTEES. WE APPROVE THE FIRST AMENDMENT TO THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST TRUST IN ALL PARTICULARS AND REQUEST THAT THE TRUSTEES EXECUTE IT.

DATED: August 11, 2004.

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On August 11, 2004 before me, Leonida B Domingo, a notary public, personally appeared *ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI,* personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed in the within instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/
NOTARY PUBLIC IN AND FOR SAID STATE

[NOTARY SEAL]

THIRD AND FINAL ACCOUNT

AS TRUSTEE OF
LILLIAN PELLEGRINI TRUST

Account #: 109983 court #: 10cepr00683
period covered: 03/24/2018 through 12/2024

SUMMARY OF ACCOUNT
[ANNOTATED]
[$ ADDED BEFORE EACH CASH ENTRY]

CHARGES

BALANCE FORWARD FROM SECOND ACCOUNT PERIOD ENDED 03/23/2018:

PROPERTY ON HAND, CASH ASSETS	$1,079,738.49
PROPERTY ON HAND, NON-CASH ASSETS	-
RECEIPTS, INTEREST	$4,643.74
RECIEPTS(sic), OTHER RECEIPTS	
5/28/2019 FED TAX REFUND 2018	$3.00
5/3/2023 INTREST(sic) ADJUSTMENT FOR WELLS FARGO ACCT #: 6136	$182.96
TOTAL, OTHER RECEIPTS	$185.96
TOTAL CHARGES	**$1,084,568.19**

CREDITS

DISBURSEMENTS, FIDUCIARY & ATTORNEY FEES

7/16/2018 PG FEE 2ND ACCT PER CRT ORD 6/26/18 109983 L. PELLEGRINI $0

0WED VENDOR: FRESNO COUNTY TREASURER $1,508.00

7/16/2018 LEGAL FEE 2ND ACT PER CRT ORD 6/26/18 109983 L. PELLEGRINI $0

OWED VENDOR: FRESNO COUNTY COUNSEL $1,250.00

7/16/2018 PG BOND FEE 2ND ACT PER CRT ORD 6/26/18 109983 VENDOR: FRESNO COUNTY TREASURER $4,499.00

TOTAL FIDUCIARY & ATTORNEY FEES $7,257.00

DISBURSEMENTS, GENERAL ADMIN EXPENSES

6/29/2018 – 3/31/2018 CALIFORNIA BANK AND TRUST ACCOUNT #: -8940

QUARTERLY PAPER STATEMENT FEES FOR EIGHT QUARTERS AT $2.00 PER QUARTER $16.00

DISBURSEMENTS, OTHER EXPENSES

5/10/2018 TAX PREPARATION 2017 YEAR 2/28-4/17/18 VENDOR GARY ISTANBOULIAN CPA
$412.00

EFILING FEE, 2ND ACCOUNT ENV#: 1494962 VENDOR FRESNO COUNTY SUPERIOR COURT
$438.75

TAX PREPARATION 2018 YEAR 3/7-4/6/19 VENDOR GARY ISTANBOULIAN, CPA
$428.00

8/20/2020 EFFECTUAL DEPOSIT, TEST DEPOSIT VENDOR WELLS FARGO $1.00

4/22/2021 EFFECTUAL DEPOSIT, TEST DEPOSIT VENDOR BANK OF AMERICA $1.00

WELLS FARGO PLATINUM SAVINGS ACCT #: -6136 6/29/2018 THROUGH 2/5/2024 FEDERAL TAX WITHHOLDING TOTAL $800.60

TOTAL DISBURSEMENTS, OTHER EXPENSES
$2,081.35

PROPERTY ON HAND, CASH ASSETS
$1,075,213.84

PROPERTY ON HAND, NON-CASH ASSETS -

TOTAL CREDITS **$1,084,568.19**

APPENDIX U

DANIEL C. CEDERBORG,
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Attorneys for Fresno County Public Guardian

[DATE STAMP]
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8/15/2024 10:59 AM
Superior Court of California
County of Fresno
By: Randi Long, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION

In the Matter of the

ANGELO JOHN PELLEGRINI AND
LILLIAN DOROTHY PELLEGRINI
REVOCABLE LIVING TRUST dated
June 18, 1999.

Case No. 10CEPR00683

RESPONSE TO EXAMINER NOTES REGARDING THIRD AND FINAL ACCOUNT

[Probate Code §§ 15681; 15688; 16062; 16063]

Hearing Date: September 18, 2024
Time: 9:00 a.m.
Department: 97A

The Fresno County Public Guardian (PG) presents her response to the examiner notes regarding her third and final account as trustee.

1. The PG filed her third and final account of the ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999 on April 11, 2024. It was set for hearing on June 10, 2024; however, it was continued due to objections being filed.

2. Paragraph 1 of the account refers to the attachment as an amendment to the Lillian Pellegrini Trust. There is no such document, and what was attached was an amendment to the trust referenced above.

3. The examiner noted the above discrepancy, which prompted County Counsel to review her file. Throughout the 14-year period of this trust, the same case number, 10CEPR00683, has been referred to as Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust, Lillian Pellegrini Trust and a sub-trust referred to as the family trust. This made it unclear how distribution should be made.

4. The PG asserts that the correct document is the ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999, a copy of which is attached hereto as Exhibit "A". Distribution is set forth on page 10 of the document.

5. With this clarification, the PG requests that her account be approved as filed, including distribution as set forth on the attachment.

DATED:August15,2024

DANIEL C. CEDERBORG
County Counsel

By: /s/
HEATHER KRUTHERS, Chief Deputy
Attorneys for Petitioner

VERIFICATION

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on August 15, 2024, at Fresno, California.

Fresno County Public Guardian

By: /s/
JOSHUA COCHRON, Deputy

THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST

WHEREAS, ANGELO JOHN PELLEGRINI and LILLIAN DOROTHY PELLEGRINI declare that they are married and that they have two (2) children, to wit: A daughter, MARLEEN JOYCE MARCHANT and BEVERLY JEAN PELLEGRINI.

WHEREAS, Trustors desire to create a Trust; and

WHEREAS, Trustors desire to act in said Trust as Trustees;

IT IS, THEREFORE, AGREED:

ARTICLE I – ESTABLISHMENT OF TRUST

ANGELO JOHN PELLEGRINI and LILLIAN DOROTHY PELLEGRINI, called collectively the "Trustors" or "Trustee" depending on the context, declare that they have set aside and hold in trust the property described in Schedule A attached to this instrument.

ARTICLE II – TRUST ESTATE

A. *Community Property and Separate Property Considerations.* The property transferred to this Trust listed in Schedule A and its proceeds shall be referred to as the Trust Estate. It is the Trustors' intention that the Trustee shall have no more extensive power over any community property or separate property transferred to the Trust than either of the Trustors would have had under California Civil Code Sections 5125 and 5127 had this Trust not been created, and this instrument shall be so interpreted to achieve this intention . This limitation shall terminate on the death of either Trustor.

B. *Property to Retain its Character.* All property now or hereafter conveyed or transferred to the Trustee to be held by the Trustee pursuant to this Declaration which was community property or separate property at the time of such conveyance or transfer, shall remain, respectively, community property or the separate property of the Trustor or the Trustors, as the case may be, transferring such property to the Trustee.

ARTICLE III - DISTRIBUTION OF INCOME AND PRINCIPAL

A. *During Joint Lifetimes of Trustors*

1. *Community Property.* During the joint lifetimes of the Trustors, the Trustee shall pay to the Trustors for the account of the community, or shall apply for the Trustors' benefit, the net income of the community property in quarter-annual or more frequent installments. If the Trustee considers the net income insufficient, the Trustee shall pay to the Trustors for the account of the community, or apply for the Trustors' benefit, as much of the principal of the community property as is necessary in the Trustee's discretion for the Trustors' proper health, support, maintenance, comfort, and welfare. The Trustor

receiving payments shall have the same duty to use community income and principal received under this instrument for the benefit of the Trustors as he/she has with respect to any other community property.

2. *Separate Property.* During the joint lifetimes of the Trustors, the Trustee shall pay to or apply for the benefit of the Trustor whose separate property was transferred to the Trust the net income of that Trustor's separate property in quarter-annual or more frequent installments. Similarly, if the Trustee considers the net income of the separate property insufficient, the Trustee shall pay to or apply for the benefit of the Trustor whose separate property was transferred to the Trust, as much of the principal of that Trustor's separate property as is necessary in the Trustee's discretion for the proper health, education, support, maintenance, comfort and welfare of that Trustor and his/her spouse.

3. *One Trustor Incapacitated.* If at any time, as certified in writing by two licensed physicians, either Trustor has become physically or mentally incapacitated, whether or not a Court of competent jurisdiction has declared him/her incompetent, mentally ill, or in need of a Conservator, the Trustee shall pay to the other Trustor or apply for the benefit of either Trustor, the amounts of net income and principal necessary in the Trustee's discretion for the proper health, support, and maintenance of both Trustors, until the incapacitated Trustor, as certified by two licensed physicians, is again able to manage his/her own affairs, or until the earlier death of either Trustor. The non-incapacitated Trustor may also

withdraw from time to time accumulated Trust income and principal of community property. Income and principal from community property so paid or withdrawn shall be held and administered as community property by the non-incapacitated spouse. Any income in excess of the amounts applied for the benefit of the Trustors shall be accumulated and added to principal.

B. *After Death of First Trustor - Division into Three Trusts.* The first Trustor to die shall be called the "Deceased Spouse" and the living Trustor shall be called the "Surviving Spouse". On the death of the Deceased Spouse, the Trustee shall divide the Trust Estate, including any additions made to the Trust by reason of his/her death, such as from the decedent's Will or life insurance policies on the decedent's life, into three separate trusts, designated as the "Survivor's Trust", the "Marital Trust", and the "Family Trust".

1. *Survivor's Trust*

a. *Share Allocated to Survivor's Trust.* The principal of the Survivor's Trust shall consist of the Surviving Spouse's interest in the Trustors' community property and the Surviving Spouse's separate property, if any, included in or added to the Trust Estate in any manner, including any undistributed or accrued income on it.

b. *Distribution of Income and Principal to or for the Benefit of the Surviving Spouse.* The entire net income from the Survivor's Trust shall be distributed currently to the Surviving Spouse in quarter-annual or more frequent installments during his/her life. The Trustee may pay to or apply for the benefit of the Surviving Spouse so much of the principal of this Trust as the Trustee may deem proper or necessary to provide the Surviving Spouse with reasonable support, care, comfort or happiness. During the life of the Surviving Spouse, there shall be no invasion of the principal of this Trust for the benefit of any person except the Surviving Spouse. The Surviving Spouse shall have the right during his/her life to withdraw free of Trust any part of the principal of this Trust up to the whole thereof at such times and in such amounts as he/she, in his/her sole discretion, may from time to time designate by written instructions filed with the Trustee.

c. Upon the death of the Surviving Spouse, the principal of said Trust shall be added to the Family Trust and distributed in the same fashion as provided for hereinafter.

2. *Marital Trust ("Q-TIP TRUST")*

a. *Share Allocated to Marital Trust.* The share allocated and set apart for the Marital Trust shall consist of the minimum dollar amount necessary for a marital deduction to eliminate (or to reduce to the extent possible) any federal estate tax at the death of the Deceased Spouse, taking account of (I) available deductions and credits, and (ii) the net value of all other property included in the Deceased Spouse's gross estate which passes or has passed to or for the Surviving Spouse, under this instrument or otherwise, and which qualifies for the federal estate tax marital deduction. In determining the amount of this gift, final federal estate tax values shall control; and account shall not be taken of any item not deductible for estate tax purposes because claimed for income tax purposes, nor shall account be taken for death taxes paid in the estate of one whose death occurs after the death of the Deceased Spouse, or for any state death tax unless at least some such tax would be payable to the State regardless of the federal credit. This bequest may be satisfied in cash or in kind, or partly in each, only with assets to be valued at the date(s) they are distributed to the Marital Trust. Assets eligible for any foreign death tax credit shall be used only if other property of the deceased Spouse's estate is insufficient to fund this gift. It is the Deceased Spouse's intent that assets qualifying for the federal estate tax marital deduction shall be transferred to the Marital Trust only to the extent that such transfer would effect a reduction in the federal estate tax otherwise payable by the Deceased Spouse's estate.

(1) *Non-Productive Property.* During the Surviving Spouse's lifetime, he/she shall have the power to require the Trustee to make all or part of the principal of the Marital Trust productive or to convert promptly any unproductive part into productive property. This power shall be exercised by the Surviving Spouse in a written instrument delivered to the Trustee.

(2) *Marital Deduction.* It is the Trustors' intention to have the Marital Trust qualify for the marital deduction under Section 2056 of the

Internal Revenue Code and the regulations pertaining to that section or any corresponding or substitute provisions applicable to the Trust Estate. In no event shall the Trustee take any action or have any power that will impair the marital deduction, and all provisions regarding the Marital Trust shall be interpreted to conform to this primary objective.

(3) *Q-TIP Election.* The Executor of the Deceased Spouse's Will, or in the event no such Executor is appointed, the Trustee of this Trust may elect to qualify all or any portion of the Marital Trust under this Article for the federal estate tax marital deduction. Such Executor (or Trustee) shall not be liable if the election causes more than an optimal amount of property to be later taxed in the Surviving Spouse's estate, but such Executor (or Trustee) is authorized to consider any factors that appear relevant regarding the timing and aggregate amount of taxes on the combined estates of both Trustors, such as the death or apparent life expectancy of the Surviving Spouse, the availability of credits for property taxed in the Estate of the Deceased Spouse or by foreign governments, and the like. Any portion of the Marital Trust not qualified for the marital deduction shall be held in a separate share of that Trust, subject to all of the rights, interests, powers and other terms prescribed for the Marital Trust.

b. *Distribution of Income and Principal to or for the Benefit of the Surviving Spouse.* The entire net income from the Marital Trust shall be distributed currently to the Surviving Spouse in quarter-annual or more frequent installments during his/her life. The

Trustee may pay to or apply for the benefit of the Surviving Spouse so much of the principal, up to the whole thereof, as the Trustee deems appropriate for the surviving spouse's health, general welfare and support in accordance with his/her accustomed standard of living, taking into account, to the extent the Trustee deems advisable, any income or other resources of the Surviving Spouse that are known to the Trustee and reasonably available for these purposes.

c. *Distribution of Marital Trust on Surviving Spouse's Death.* On the death of the Surviving Spouse, the Trustee shall distribute any accrued or undistributed income of the Marital Trust to his/her estate as heretofore; provided the remaining principal of the Marital Trust shall be distributed, free of any trust, as follows: One (1) share for each of the Trustors' then living children and one (1) share for each group of issue of any deceased child by right of representation.

3. *Family Trust*

a. *Share Allocated to Family Trust.* The Family Trust shall consist of the balance of the Trust Estate representing the balance of the Deceased Spouse's interest in the Trustors' community property and the balance of the Deceased Spouse's separate property included in the Trust Estate but after the allocation of such property to the Marital Trust.

b. *Distribution of Income and Principal to or for the Benefit of the Surviving Spouse.* The Trustee shall distribute the income and so much of the principal as the Trustee deems appropriate in the event of accident, illness or like emergency to the Surviving Spouse or to maintain the Surviving Spouse in his or her accustomed standard of living or for extended care.

c. *Distribution of Family Trust on Surviving Spouse's Death.* Upon the death of the surviving spouse, the entire principal and any accrued income shall be distributed as follows : One (1) share for each of Trustors' then living children and one (1) share for each group of issue of any deceased child by right of representation.

ARTICLE IV - ADMINISTRATIVE PROVISIONS

A. *The Trustee Shall Have the Following Trust Powers in Administering the Trust.* To carry out the purposes of this Trust and subject to any additions or limitations stated elsewhere in this Trust, the Trustee is vested with the following powers with respect to the Trust Estate and any part of it, in addition to those powers now or hereafter conferred by law:

1. The Trustee shall have the power to invest and reinvest all or any part of the Trust Estate in such common or preferred stocks, shares of investment trusts and investment companies, bond, debentures, mortgages, deeds of trust, notes, real estate or other property, as the Trustee, in the Trustee's absolute discretion, may select; and the Trustee may continue to hold in the form in which received (or the form to which changed by reorganization, split-up, stock

dividend or other like occurrence) any securities or other property the Trustee may at any time acquire under this Trust, it being the Trustors' express desire and intention that the Trustee shall have full power to invest and reinvest the trust funds without being restricted to forms of investment that the Trustee may otherwise be permitted by law to make; and the investments need not be diversified.

2. The Trustee is expressly authorized to continue to hold any property and to operate at the risk of the Trust Estate any business that the Trustee received or acquires under the Trust, as long as the Trustee deems advisable.

3. The Trustee shall have all the rights, powers and privileges of an owner of the securities held in trust, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases, and, incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable.

4. The Trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair Trust property.

5. The Trustee shall have the power to lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration

for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

6. The Trustee shall have the power to commence or defend such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable, at the expense of the Trust.

7. The Trustee shall have the power to borrow money, and to encumber or hypothecate Trust property by mortgage, deed of trust, pledge or otherwise; operate a margin account with any registered securities broker.

8. The Trustee shall have the power to compromise or otherwise adjust any claims or litigations against or in favor of the Trust.

9. The Trustee shall have the power to carry, at the expense of the Trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the Trust Estate and the Trustee against any hazard.

10. Except as otherwise specifically provided in this Trust, the determination of all matters with respect to what is principal and income of the Trust Estate and the apportionment and allocation of receipts and expenses between these accounts, shall be governed by the provisions of the California Principal and Income Law from time to time existing. Any such matter not provided for either in this Trust or in the

Principal and Income Law shall be determined by the Trustee, in the Trustee's discretion.

11. The Trustee shall not charge to income any depreciation with respect to any property held as assets of this Trust, and the cost of any improvements shall not be amortized or charged to income. The cost of ordinary repairs shall be charged to income, and the cost of extraordinary repairs or capital improvements shall be charged to principal.

12. Whenever the Trustee is directed to make a distribution of Trust assets or a division of Trust assets into separate trusts or shares on the death of a Trustor, the Trustee may, in the Trustee's discretion, defer such distribution or division until six (6) months after the Trustor's death. When the Trustee defers distribution or division of the Trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this instrument in the absence of this paragraph, and all rights given to the beneficiaries of such Trust assets under other provisions of this instrument shall be deemed to have accrued and vested as of such prescribed time.

B. *The Trust Created By This Instrument Shall Be Subject to the Following Provisions.*

1. *Perpetuities Savings Clause.* Unless sooner terminated with other provisions of this instrument, all trusts created under this instrument shall terminate twenty-one (21) years after the death of the last survivor of the Trustors or of the Trustors' issue

living on the date of the death of the first Trustor to die. The principal and undistributed income of a terminated trust shall be distributed to the then income beneficiaries of that trust in the same proportion that the beneficiaries are entitled to receive income when the trust terminates. If at the time of such termination, the rights to income are not fixed by the terms of the trust, distribution under this clause shall be made, by right of representation, to the persons who are entitled or authorized, in the Trustee's discretion, to receive trust payments.

2. *Spendthrift Clause.* No interest in the principal or income of any trust created under this instrument shall be anticipated, assigned, encumbered, or subject to creditor's claim or legal process before actual receipt by the beneficiary.

3. *Severability Clause.* If any provision of this Trust and instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

4. *No-Contest Clause.* In the event that any beneficiary under this Trust shall, singly or in conjunction with any other person or persons, contest in any Court the validity of this Trust or of a deceased Trustor's last will or shall seek to obtain an adjudication in any proceeding in any Court that this Trust or any of its provisions or that such will or any of its provisions is void, or seek otherwise to void, nullify, or set aside this Trust or any of its provisions, then the right of that person to take any interest given to him by this Trust shall be determined as it would have been determined had the person predeceased the

execution of this Declaration of Trust without surviving issue. The Trustee is hereby authorized to defend, at the expense of the Trust Estate, any contest or other attack of any nature on this Trust or any of its provisions.

5. *Residential Property.* The Surviving Spouse shall have the right to continue to occupy any real property free of rent in which the Trust holds an interest and which the Deceased Spouse and the Surviving Spouse were using regularly or occasionally as a residence or vacation home at the time of the Deceased Spouse's death; provided, however, that the Surviving Spouse in his/her discretion may direct the Trustee to sell any such property and replace it with another residence or other asset selected by the Surviving Spouse. The Trustee shall pay such portion of the mortgage or trust deed payments, property taxes, assessments, insurance, maintenance and ordinary repairs on all such property as is proportionate to the interest in such property held in the Trust.

6. *Additional Property.* Additional property acceptable to the Trustee may be added to the Trust by any person.

7. *Trustees.* The Trustors shall be Co-Trustees of the Trust herein created for the benefit of the Trustors during the joint lifetimes of the Trustors. Upon the death of the Deceased Spouse, the Surviving Spouse shall act as Surviving Trustee of the Family Trust designated herein in Article III. The Surviving Spouse shall also act as sole Trustee of the "Survivor's

Trust", and the "Marital Trust". If both Trustors are deceased or for any reason fail to qualify or cease to act as Trustee, then Trustors' daughters, MARLEEN JOYCE MARCHANT and BEVERLY JEAN PELLEGRINI shall act.

8. *Trustee's Bond.* No bond shall be required of any person named in this instrument as a Trustee, or of any person appointed as Trustee in the manner specified here, for the faithful performance of his/her duties as Trustee.

ARTICLE V – REVOCATION, TERMINATION AND AMENDMENT

A. *Revocation by Trustors.* During the joint lifetimes of the Trustors, this Trust may be revoked in whole or in part with respect to community property by an instrument in writing signed by either Trustor and delivered by certified mail to the Trustee and the other Trustor, and with respect to separate property by an instrument in writing signed by the Trustor who contributed that property to the Trust, delivered by certified mail to the Trustee.

B. *Amendment by Trustors.* The Trustors may at any time during their joint lifetimes amend any of the terms of this instrument by an instrument in writing signed by the Trustors and delivered to the Trustee.

C. *Revocation and Amendment By Surviving Spouse.* On the death of the Deceased Spouse, the Surviving Spouse shall have the power to amend, revoke or terminate the Survivor's Trust, but the

Marital Trust or the Family Trust may not be amended, revoked or terminated on the death of the Deceased Spouse.

ARTICLE VI – NAMES OF THE TRUSTS

The Trusts created in this instrument may be referred to collectively as the ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST.

Executed at San Francisco, California, on the 18th day of June, 1999.

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

TRUSTEES:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

WE CERTIFY THAT WE HAVE READ THE FOREGOING DECLARATION OF TRUST AND THAT IT CORRECTLY STATES THE TERMS AND CONDITIONS UNDER WHICH THE TRUST

ESTATE IS TO BE HELD, MANAGED, AND DISPOSED OF BY THE TRUSTEES. WE APPROVE THE DECLARATION OF TRUST IN ALL PARTICULARS AND REQUEST THAT THE TRUSTEES EXECUTE IT.

DATED: June 18, 1999.

TRUSTORS:

/s/
ANGELO JOHN PELLEGRINI

/s/
LILLIAN DOROTHY PELLEGRINI

SCHEDULE A

1. All that certain real property situated in the City and County of San Francisco, California, commonly known and designated as 2554 - 33rd Avenue, San Francisco, California

   Assessor's Parcel No. Vol. 18, Block 2433, Lot 23A

2. Fidelity Cas .Res. #0550005437512
   $74,208.560

3. Morgan Stanley Dean Witter
   U.S. Government Money Market (507413340) -
   $633.22

4. Wells Fargo Bank
   Checking Account #0067858423

5. Bayview Bank
   Account No. 60073297970
   Account No. 40020935821

6. Cal Fed Bank
   Account No. 0020682464

7. Bay View Bank
   Account No. 40041467986

8. World Savings
   Account No. 673497228

9. World Savings
   Account No. 00470157840-3

10. Wells Fargo Bank
Account No. 105381903800

11. Bank of America
Account No. 0101400967

12. Cal Fed
Account No. 974006319-4

13. 819 Shares CSX CORP.

14. 300 Shares CYTECK CORP.

15. 797.846 Shares FIDELITY TREND
Account No. 005/0304418916

16. 1166.122 Shares MANHATTAN FUND
Acct. No. 114214900/6

17. 5056.782 Shares PUTNAM GRO. INC . A FUND
Account No. A02 -1-545-07-5934-BBBH

18. 3428 Shares MORGAN STANLEY DEAN WITTER High Yield C Acct. 115416309

19. 1000 Shares MORGAN STANLEY DEAN WITTER Van Campen Sen. Inc.

20. 17,557 Shares FIRST ENERGY

21. 123.4813 Shares OCCIDENTAL PETROLEUM CORP.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
CITY & County of SAN FRANCISCO

On June 18, 1999, before me, GEORGIA K. BREGANTE, NOTARY PUBLIC personally appeared ANGELO JOHN PELLEGRINI and LILLIAN DOROTHY PELLEGRINI

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within Instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the Instrument.

WITNESS my hand and official seal.

[NOTARY SEAL]

/s/
Signature of Notary Public

OPTIONAL

Though the Information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: ____________________

Document Date: __________ Number of Pages: ____

Signer(s) Other Than Named Above: ____________

Capacity(ies) Claimed by Signer
Signer's Name: ________________
☐ Individual
☐ Corporate Officer - Title(s):______________
☐ Partner - ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
Other: ____________________

Signer is Representing:_____________

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

APPENDIX V

Confirmation

UBS UBS Financial Services Inc.
315 Deaderick Street
C-198971
Nashville, TN 37238-8971

ubs.com/fs

Your Financial Advisor
VALLECORSE, ROBERT C.
415-954-6700/800-826-7014

00013279 01 MB 0.436 01 TR 00054 BCDD12D1 000000 cpi

LILLIAN D. PELLEGRINI & BEVERLY PELLEGRINI TTEES FBO THE LILLIAN D. PELLEGRINI REVOCABLE LVING TRUST U/A DTD 8/31/2011
3345 EAST HUNTINGTON BOULEVARD
FRESNO CA 93702-3219

Send checks/correspondence to:
UBS FINANCIAL SERVICES INC.
555 California Street
46th Floor
San Francisco, CA 94104-1711

January 27, 2016

We confirm the following transaction

Please review carefully and retain this confirmation for your records. If you did not authorize a transaction, please contact us at 201-352-7627.

Check Issued

PAYEE:
Fresno County Public Guardian
2085 E Dakota Ave
C/O Joshua Cochron
Deputy Public Guardian
Fresno CA 93726

Account debited
6N 06844

Transaction date
01/27/16

BRANCH CHK# 1023561

Amount paid
$1,528,271.44

Purpose: Other:Court Order

Approved Payees
Where indicated, as a **convenience** *to you, we will retain the payment instructions for payees indicated and after 60 days, we will consider them "Approved Payees" unless you notify us otherwise. This means, for these payees, you will no longer receive separate*

confirmations for each payment or transfer that follows these instructions, even if you alter the amount. All payments and transfers to and from your account will continue to be reflected on your account statements, which you should review carefully.

We will not require letters of authorization for future payments and transfers to your Approved Payees.

We will continue sending separate confirmations for all payments and transfers that are not associated with an Approved Payee or that involve a different type of payment /transfer or different accounts.

If you wish to remove Approved Payees, please contact your Financial Advisor.

Questions

If you have any questions, please contact your Financial Advisor, VALLECORSE, ROBERT C., at 415-954-6700/800-826-7014

Thank you for allowing us to serve your wealth management needs.

UBS Financial Services Inc is an indirect subsidiary of UBS AG and an affiliate of UBS Securities LLC.
D01 1 010679 00006871 00676648600 0 0001E

APPENDIX W

Beverly Pellegrini

From: Beverly Pellegrini [bjpellegrini@sbcglobal.net]

Sent: Monday, February 01, 2016 2:13 PM

To: 'robert.valtecorse@ubs.com'

Cc: 'sergio.ermotti@ubs.com'; 'axel.weber@ubs.com'; 'david.sidwell@ubs.com'; 'reto.francioni@ubs.com'; 'ann.godbehere@ubs.com'; 'helmut.panke@ubs.com'; 'axel.lehmann@ubs.com'; 'william.parrett@ubs.com'; 'iromy@froriep.ch'; 'beatrice.weder@uni-mainz.de'; 'joseph.yam@ubs.com'; 'luzius.cameron@ubs.com'

Subject: DEPUTY PUBLIC GUARDIAN IS NOT AN APPROVED PAYEE

Attachments: ubs check made payable to public guardian.pdf; ubs confirmation or unauthorized payee and withdrawal029.pdf

Dear Robert,
According to the confirmation **for the unauthorized sale and withdrawal of all transactions occurring between January 21–January 27, 2016,** we are stating emphatically that the Deputy Public Guardian is NOT AN AUTHORIZED PAYEE.

UBS Financial Services has not acted under any enforceable court order.

UBS has deliberately and intentionally misrepresented trust information to facilitate fraud and embezzlement of funds.

UBS has failed to uphold its contractual and custodial duty to Lillian Pellegrini as rightful owner of all funds held in the Lillian D. Pellegrini Revocable Living Trust date 8/31/2011.

UBS knew that all funds held in the above-mentioned trust account was property belonging to the Surviving Settlor Lillian Pellegrini of the 1999 Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust and UBS knew the conditions and manner in which funds were distributed to subtrusts by an attorney approved and recommended by UBS Financial Services in 2008.

UBS Financial Services was fully aware at the time of the misrepresentation that the Family Trust never existed and that the decedent spouse had no property that could have been used to fund such a trust.

UBS Financial Services facilitated the embezzlement of all funds, denied Lillian Pellegrini the opportunity to proceed in the Court to settle this matter.

UBS was fully aware that only Lillian Pellegrini and/or Lillian Pellegrini and Beverly Pellegrini are authorized to undertake any activity of any kind on this trust account. UBS had received notification of which UBS had notarized the paper documenting that only Lillian Pellegrini and/or Lillian Pellegrini and Beverly Pellegrini are the ONLY authorized persons on this trust account.

UBS is fully liable for all damages resulting from this fraudulent transfer and taking of property without due process from Lillian Pellegrini.

THE DEPUTY PUBLIC GUARDIAN IS NOT AN APPROVED PAYEE.

Very truly yours,
Lillian Pellegrini and Beverly Pellegrini

APPENDIX X

Liquidated Assets without Authorization from the Lillian D. Pellegrini Revocable Living Trust dated August 31, 2011

<u>Transactions Dated January 22, 2016</u>

Cal. St Gen. Obl. 5%, 13063CMW7

Gross Amount: $59,929.00	
Price:	$119.858
Quantity:	50,000
Interest:	$805.56
Fees:	$5.25

Cal. St. Gen. Obl. 5% 13063CPRS

Gross Amount:	$59,974.50
Price:	118.949
Quantity:	50,000
Interest:	$1,222.22
Fees:	$5.25

Cit. Bk Salt Lake City UT CD 17284CH80

Gross Amount:	$98,705.00
Price:	$98.705
Quantity:	100,000
Interest:	$473.42

JP Morgan/Chase/Step Rt CD 48124JMA3

Gross Amount:	$196,912.50
Price:	$99.456250
Quantity:	200,000
Interest:	$731.51

Transactions Dated January 21, 2016

AT&T (T)	
Gross Amount:	$38,375.53
Price:	$34.57
Quantity	1,110
Fees:	$5.96
Commission:	$342.76
Cisco Systems Inc. (CSCO)	
Gross Amount:	$23,001.00
Price:	$23.00
Quantity:	1000
Fees:	$5.67
Commission:	$243.76
Colgate Palmolive (CL)	
Gross Amount:	$19,057.20
Price:	$63.52
Quantity:	300
Fees:	$5.60
Commission:	$209.25
General Mills (GIS)	
Gross Amount:	$26,943.50
Price:	$53.89
Quantity:	500
Fees:	$5.75
Commission:	$274.16
International Paper (IP)	
Gross Amount:	$14,198.80
Price:	$35.50
Quantity:	400
Fees:	$5.51

Commission:	$166.74

Johnson & Johnson (JNJ)	
Gross Amount:	$28,755.36
Price:	$95.85
Quantity:	300
Fees:	$5.78
Commission:	$285.03

Pfizer (PFE)	
Gross Amount:	$22,944.68
Price:	$30.59
Quantity:	750
Fees:	$5.67
Commission:	$243.77

Proctor & Gamble (PG)	
Gross Amount:	$26,897.50
Price:	$76.85
Quantity:	350
Fees:	$5.74
Commission:	$273.89

Schlumberger LTD (SLB)	
Gross Amount:	$12,455.40
Price:	$62.28
Quantity:	200
Fees:	$5.48
Commission:	$151.49

United Parcel Service (UPS)	
Gross Amount:	$17,772.20
Price:	$88.86
Quantity:	200

Fees:	$5.58
Commission:	$198.01

Verizon Communications (VZ)

Gross Amount:	$22,945.50
Price:	$45.89
Quantity:	500
Fees:	$5.67
Commission:	$243.28

Cal.St.Var. Purp. Gen. Obl. 5% 13063AJK1

Gross Amount:	$53,157.00
Price:	$106.314
Quantity:	50,000
Interest:	$590.28
Fees:	$5.25

Cal. St. Gen. Obl. 5% 13063BC91

Gross Amount:	$57,904.00
Price:	$115.904
Quantity:	50,000
Interest:	$1,006.94
Fees:	$5.25

Burlingame CA El. Sch Dist 5%121457FL4

Gross Amount:	$58,008.00
Price:	$116.016
Quantity:	50,000
Interest:	$1,215.28
Fees:	$5.25

Cal. St Gen. Obl. 4.5% 13063CYY0

Gross Amount:	$40,612.00
Price:	$101.53
Quantity:	40,000

Interest:	$575.00
Fees:	$5.25

U.S. Treasury 3.125% 912810QT8	
Gross Amount:	$107,437.50
Price:	$107.4375
Quantity:	100,000
Interest:	$583.79
Fees:	$5.25

U.S. Treasury 3.125% 912810AUS	
Gross Amount:	$107,200.23
Price:	$107.200234
Quantity:	100,000
Interest:	$1,358.70
Fees:	$5.25
Fees:	$5.25

Cash	$496,039.05
Total (Gross Amount + Interest)	$1,597,788.14
Net Liquidated Assets (Total less Fees and Commissions)	$1,595,051.59
Amount of Check	$1,528,271.44
Unaccounted Difference (Net Liquidated Assets less Amount of Check)	$66,780.15
Unaccounted Difference plus Fees and Commissions	$69,516.70

APPENDIX Y

UBS

UBS FINANCIAL SERVICES INC.
555 California Street
46^{th} Floor
San Francisco CA 94104-1711

Check Date 01/27/2016

Check Number 0001023561

Account Number XX XXX44 *#
FA

VR

Short Name

PELLEGRINI

Fresno County Public Guardian
Lillian Pellegrini Family Trus

Activity
WITHDRAWAL

Description	**Amount**
WITHDRAWAL FROM ACCOUNT	$1,528,271.44
TOTAL	$1,528,271.44

$1,528,271.44

The attached check is in payment for items described above. Detach and retain this stub for your records.

[Picture of check]

THE FACE OF THIS DOCUMENT HAS A BLUE AND ORANGE BACKGROUND ON WHITE PAPER. HOLD AT AN ANGLE TO VIEW WATERMARK ON BACK.

UBS UBS FINANCIAL SERVICES INC.
555 California Street
46th Floor
San Francisco CA 94104-1711

[Bank on which check was drawn]
THE BANK OF NEW YORK MELLON
NEW YORK CITY, NY 10286
60-160-433

CHECK NUMBER 0001023561
DATE ISSUED 0127/2016

$1,528,271.44

MEMO:
PAY *** ONE MILLION FIVE HUNDRED TWENTY-EIGHT THOUSAND ***TWO HUNDRED SEVENTY-ONE AND 44/100 DOLLARS $1,528,271.44

TO THE ORDER OF
Fresno County Public Guardian
Lillian Pellegrini Family Trus

XX XXX44 1 *#

THIS CHECK IS NOT NEGOTIABLE AFTER 180 DAYS FROM DATE ISSUED

UBS Financial Services Inc.
Authorized Signature
▪ 0 001023561 ▪ :04330160 121 3850 ▪

APPENDIX Z

Transcript of California Schedule K-1 (541)
[only the form's line items with entries are shown]

CALIFORNIA SCHEDULE
K-1 (541)
Taxable Year
2016
Beneficiary's Share of Income, Deductions, Credits, etc.

For calendar year 2016
Name of estate or trust
PELLEGRINI FAMILY TRUST
Estate or trust's FEIN
90-6282995
Beneficiary's name, address (number and street, suite, Apt., PO box, or PMB no.).

LILLIAN D. PELLEGRINI
3345 E HUNTINGTON BLVD
FRESNO, CA 93702-3219

Fiduciary's name, address (number and street, suite, Apt., PO box, or PMB no.), City, State, and Zip Code. If there is more than one fiduciary or trustee, list all of the fiduciaries or trustees' names, addresses and indicate if fiduciary is a nonresident. If more space is needed, add an attachment, include the estate's or trust's FEIN at the top of each separate attachment.

JOSHUA COCHRON, DEPUTY

FRESNO COUNTY PUBLIC GUARDIAN
2085 E. DAKOTA AVE.
FRESNO, CA 93726-4804

A Beneficiary's percentage of distribution at year end 100.0000000%
C What type of entity is this beneficiary? Individual
D Is this beneficiary a resident of California? . . Yes
E Is the fiduciary a resident of California? . . . . Yes

(a) Allocable share Item	(b) Amount from Federal Schedule K-1 (Form 1041)
1 Interest	NO REPORTABLE AMOUNTS

BENEFICIARY 1

APPENDIX AA

IRS Department of the Treasury
Internal Revenue Service
Cincinnati Service Center
CINCINNATI OH 45999-0038

In reply refer to:	0241377544
Aug. 23, 2017	LTR 147C C3
	90-6282995 000000 00 X
Input Op:	0241377544 00001318
	BODC: SB

PELLEGRINI FAM TR
BEVERLY J PELLEGRINI
3345 E HUNTINGTON BLVD
FRESNO CA 93702

Employer identification number: 90-6282995

Dear Taxpayer:

We received your request of Aug. 14, 2017, asking us to verify your employer identification number and name.

Thank you for responding to our request for information about Employer Identification Number.

The information you provided allowed us to update our records.

We can't reproduce the CP 575/576, Employer

Identification Number (EIN) Assignment. However, this letter will serve as proof of EIN assignment verification.

This Employer Identification number (EIN) was established May of 2017 with a business operating date of January of 2016.

You can get any of the forms or publications mentioned in this letter by calling 800-TAX-FORM (800-829-3676) or visiting our website at www.irs.gov/forms-pubs.

If you have questions, you can call us at 800-829-0115.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include this letter and provide in the spaces below, your telephone number with the hours we can reach you.
Keep a copy of this letter for your records.

Telephone number [(559) 237-8189]
Hours: [anytime]

[second page of letter]

0241377544
Aug. 23, 2017 LTR 147C C3
000000 00 X
Input Op: 0241377544 00001319

PELLEGRINI FAM TR
BEVERLY J PELLEGRINI

3345 E HUNTINGTON BLVD
FRESNO CA 93702

Sincerely yours,

Susan M. O'Neill
Susan M. O'Neill, Operations Mgr.
Accounts Management Operations 2

Enclosures:
Copy of this letter

APPENDIX BB

Fraudulent Accounts held by Fresno County Public Guardian

1. **Lillian Pellegrini Family Trust**

   The name on the check issued by UBS drawn on the Lillian D. Pellegrini Revocable Living Trust dated August 31, 2011 (Ref. UBS Check)

   Check was issued January 27, 2016 This trust did not exist at the time the check was issued. Because the withdrawal was not authorized by owner Lillian Pellegrini or cotrustee Beverly Pellegrini, a trust could not be created under Probate Code §15200.

2. **Lillian Pellegrini Trust**

   Comerica Bank

   Pooled Trust Account

   Opened January 28, 2016 with stolen proceeds from unauthorized liquidation of Lillian Pellegrini's invested assets held in Lillian Pellegrini's revocable trust. (Ref. Notes September 21, 2016 First accounting filed by Fresno County Public Guardian

   Interest reported: $61.00

Deductions: $7285.00

No reporting was made of $439,497.62 distributed to Weintraub Tobin February 2016.

3. **Pellegrini Family Trust**

Comerica Bank

Savings Account

October 31, 2017: (Ref. Telephone conversation) Comerica Bank informs Beverly Pellegrini that the following account was opened December 2016 using Lillian Pellegrini's individual social security number. Comerica Bank Savings Account Number 1895198164

Account opened: December 2016

EIN: 90-6282995 obtained May 2017 (according to IRS records)

Tax return filed July 24, 2017 for calendar year 2016

4. **Pellegrini Revocable Living Trust Family Trust dated February 1, 2016**

Bank of America

3790 N. Blackstone

Fresno, CA 93726

559-445-7722

Account opened January 30, 2018

Deposited $249,000 February 2018

Account Number: xxxx-xxxx-8251 (Second Account filed by Fresno County) (Account number from bank statement: 3251 0524 9251 EIN: 90-6282995

5. **The Pellegrini Irrevocable Trust**

Account opened at Wells Fargo

Account Number: 7896226136

Opened: June 22, 2018

6. **The Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust, Fresno County Trustee**

California Bank and Trust Company

5240 North Palm Avenue, Suite 100

Fresno, CA 93704

559-438-2651

Account Number: xxxx-xx-8940 (Ref. Fresno County's Second Account)

Account Number: 5793898940 (Ref. Bank Statement)

EIN: 90-6282995

2 hours spent to open the account on January 31, 2018

Account actually opened March 1, 2018 The public guardian was not appointed trustee of the 1999 Trust. This is an overt act of fraud.

7-8. Two accounts of unknown names opened at Central Valley Community Bank on March 12, 2024

Pooled Trust Account: 109983 (formerly at Comerica Bank)

Account Balance March 12, 2024: $505,652.14 (Ref. Fresno County Final Account)

Money Market Savings Account Balance: $569,561.70

Account Number: 9163220 (Ref. Fresno County Final Account)

APPENDIX CC

[Date Stamped]
Filed October 16, 2015
Fresno County Superior Court
By__________________
Deputy

DANIEL C. CEDERBORG
Fresno County Counsel – SBN 124260
Heater H. Kruthers, Senior Deputy – SBN 192195
County of Fresno
2220 Tulare Street, Suite 500
Fresno, California 93721
Telephone: (559) 600-3479
Facsimile (559) 600-3480

Attorneys for the Fresno County Public Guardian

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION

In the Matter of

THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999

Case No. 10CEPR00683

***EX PARTE* PETITION FOR ORDER FREEZING ACCOUNTS HELD IN THE NAME OF LILLIAN**

DOROTHY PELLEGRINI AT UBS FINANCIAL, INC., OR IN THE ALTERNATIVE FOR ORDER DIRECTING UBS FINANCIAL TO PAY $1,528,271.44 TO THE FRESNO COUNTY PUBLIC GUARDIAN AS SUCCESSOR TRUSTEE OF THE FAMILY TRUST IN SATISFACTION OF COURT ORDERS

[PROBATE CODE §856 and §857]

The Fresno County Public Guardian, in its capacity as Successor Trustee of the Family Trust created under the Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust dated June 18, 1999 (hereinafter "Public Guardian" or "Petitioner"), hereby petitions for an order freezing accounts held in the name of Lillian Dorothy Pellegrini at UBS Financial, Inc., or in the alternative, for an order directing UBS Financial, Inc. to pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in satisfaction of the Court's orders.

Petitioner alleges:

1. On January 14, 2015, the Court, Judge Jane A. Cardoza, found that respondent Lillian D. Pellegrini (hereinafter "Lillian" or "Respondent") should have funded the Family Trust upon the death of her husband, Angelo J. Pellegrini.

2. On May 11, 2015, the Court ordered that the findings and orders made on January 20, 2015 by Judge Cardoza be carried out and that the Family

Trust be funded as previously ordered. The Court also removed Lillian as trustee of the Family Trust and appointed the Public Guardian as Successor Trustee. Lillian was ordered to fund the Family Trust in the amount of $544,386.91.

3. Because Lillian and her daughter Beverly Pellegrini (hereinafter "Beverly") emphatically told County Counsel and the Court Investigator following the May 11, 2015 hearing that Lillian was not going to fund the Family Trust and was not going to give up any of her own money, on August 6, 2015, Petitioner filed an Ex Parte Petition for Authorization to Access and View All Statements for All Accounts Held in the Name of Lillian Dorothy Pellegrini at UBS Financial (hereinafter "Ex Parte Petition for Authorization"). Petitioner requested that the Ex Parte Petition for Authorization be considered ex parte, because if notice was provided to Lillian, it was likely that she would move or hide any other money that she has at UBS Financial (hereinafter "UBS"). Petitioner likewise requests that this matter be considered ex parte. As set forth below, Lillian has now been ordered to pay additional sums to the Public Guardian as Successor Trustee, and if notice is required for Lillian or Beverly, it is likely that Lillian will move or hide the money that she has at UBS.

4. On August 25, 2915, the Court, Judge Donald S. Black, found that Lillian in bad faith wrongfully took assets belonging to the Family Trust, and awarded double damages pursuant to Probate Code section 859. Judge Black also found that Lillian breached the standard of care with respect to her

duties as trustee, and that Lillian's conduct justified an award of attorneys' fees and costs in favor of Marleen Merchant (hereinafter "Marleen"), a beneficiary of the Family Trust and the petitioner throughout these proceedings.

5. On September 4, 2015, the Findings and Order After Trial (Phase Two of Trial) was filed. Pursuant to the Findings and Order After Trial, Lillian was ordered to pay double damages in the amount of $544,386.91 to the Public Guardian as the Successor Trustee of the Family Trust. This amount is in addition to the $544,386.91 that Lillian was ordered to pay to the Public Guardian on May 11, 2015. Lillian was also surcharged for the attorneys' fees and costs that Marleen incurred in this matter in the amount of $439,497.62, which Lillian was ordered to pay to the Public Guardian, who is directed to thereafter pay this amount ($439,497.62) to Marleen.

6 The total amount that Lillian has been ordered to pay to the Public Guardian pursuant to the May 11, 2015 and September 4, 2015 orders is $1,528,271.44. Petitioner has submitted a Writ of Execution to enforce the judgment against Lillian. However, since Lillian has failed to fund the Family Trust and has stated that she is not giving up any of her own money, Petitioner requests an order freezing accounts held in Lillian's name at UBS, pending the issuance of the Writ of Execution and levying of the accounts. If the accounts are not frozen pending the issuance of the Writ of Execution, it is likely that Lillian will move or hide the money that is necessary to satisfy the judgment, and that Lillian will further

conceal the funds from the Public Guardian as Successor Trustee. Petitioner is informed and believes that Lillian stated in her opening statement at the August 25, 2015 trial that she will be "damned" if anyone will take control of her assets, and that she "does not care who says it. ., I can do anything I want with my money."

7. In the alternative, Petitioner requests an order directing UBS to pay to the Public Guardian as Successor Trustee of the Family Trust the total amount of $1,528,271.44 from the UBS accounts in Lillian's name, in order to satisfy the Court's May 11, 2015 and September 4, 2015 orders.

8. Pursuant to the order that was issued on the Ex Parte Application for Authorization, Petitioner received statements from UBS for two accounts held in Lillian's name, specifically:

a. UBS Financial Services, Inc. Account No. 6N 03955 VR; and

b. UBS Financial Services, Inc. Account No. 6N 06844 VR (hereinafter collectively referred to as "the UBS Accounts").

9. As of July 31, 2015, the UBS Accounts held assets totaling $2,475,843.14. Petitioner requests that the UBS Accounts be frozen until further order of the Court, or in the alternative, that UBS be directed to pay to the Public Guardian from the UBS Accounts the total amount of $1,528,271.44, in satisfaction of the Court's May 11, 2015 and September 4, 2015 orders.

10. The Court has the authority under Probate Code sections 856 and 857 to issue the orders that are requested herein. The May 11, 2015 and September 4, 2015 orders were made, in part, on the Petition to Recover Property Belonging to Trust, For Award of Double Damages, and For recovery of Attorney's Fees and Costs (hereinafter "Petition to Recover Property") that was filed by Marleen on January 13, 2014. The Petition to Recover Property was filed under Probate Code sections 850 and 859.

Under Probate Code section 856,

> if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto...

Here, on May 11, 2015, Judge Kanzanjian made an order directing Lillian to transfer to the Public Guardian the sum of $544,386.91. Thus, the Court has already made an order directing Lillian, as the person having title to or possession of the trust assets, to transfer those assets to the Public Guardian. In fact, this court has issued two orders directing Lillian to pay the Public Guardian a total sum of $1,528,271.44, yet no such payment has been made by Lillian.

11. Probate Code section 856 further provides that if a Court is so satisfied, "...the court shall make

an order...granting other appropriate relief." In that vein, the Court, in its broad and equitable powers, has the authority to issue the requested order to freeze Lillian's accounts at UBS, to enable the Public Guardian to enforce the Court's previous orders requiring Lillian's payment of $1,528,271.44 to the Public Guardian.

12. Probate Code section 857(b) provides that

> After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order. (Emphasis added.)

Under this section, given that two orders have been entered that Lillian convey or transfer a total $1,528,271.44 to the Public Guardian, the Public Guardian, as the person entitled under the orders, has the right to possession of the property, and the right to hold the property according to the terms of the May 11, 2015 and September 4, 2015 orders. The Public Guardian is the rightful owner of the funds ordered by this Court to be paid to the Public Guardian, and has the right to hold the funds that are currently held in Lillian's UBS accounts, as though such a transfer has already been made. This Court may, therefore, not only freeze the UBS accounts, but it is within the

Court's power under Probate Code 857(b) to direct UBS to pay the Public Gurdian directly an amount sufficient to satisfy the full judgment in this matter.

13. Further, Lillian will not be harmed by an order freezing the UBS Accounts pending the issuance of the Writ of Execution and levying of accounts, or by an order directing UBS to pay $1,528,271.444 to the Public Guardian from the UBS Accounts. Petitioner is informed and believes that Lillian has other accounts at UBS in addition to the UBS Accounts that are reference herein. Further even if UBS is directed to pay $1,528,271.44 to the Public Guardian from the UBS Accounts, a balance of approximately $947,571.00 will remain in the UBS Accounts in Lillian's name and under her control.

14. Moreover, the $1,528,271.44 will be paid to the Public Guardian as Successor Trustee of the Family Trust, and Lillian is the sole beneficiary of the Family Trust during her lifetime. Thus, while the Public Guardian is directed to pay $439,497.62 of the funds to Marleen for the attorneys' fees and costs that she has incurred (see the September 4, 2015 order), $1,088,773.82 will remain in the Family Trust, and Lillian will continue to receive the net income from these funds held in the Family Trust for her lifetime.

15. However, if the UBS Accounts are not frozen, or if UBS is not directed to pay $1,528,271.44 to the Public Guardian from the UBS Accounts, it is likely that Lillian will move or hide the money held in the UBS Accounts, as well as any other money that she has at UBS. To date, Lillian has failed and

refused, and continues to fail and refuse, to fund the Family Trust. Lillian has a long established pattern of refusal to obey court orders, and based on her history of bad faith wrongful taking of trust property (as found by Judge Black at the August 25, 2015 trial), Lillian will continue to secrete and hide her assets rendering the judgment uncollectible or otherwise resulting in a multiplicity of suits.

16. Absent an order freezing the UBS Accounts, thereby restraining Lillian's likely and foreseeable obstructionist conduct, Marleen and the Public Guardian, as Successor Trustee of the Family Trust, will lose the ability to secure, preserve, and collect trust assets, and the Court ordered attorneys' fees and costs awarded to Marleen, and both the Family Trust and Marleen will suffer irreparable injury.

17. As set forth above, the Public Guardian requests that this matter be considered ex parte. If notice is required for Lillian or Beverly, it is likely that Lillian and Beverly will move or hide the funds held in the UBS Accounts, as well as any other money that Lillian has at UBS.

WHEREFORE, Petitioner prays as follows:

1. The Court find good cause and order that UBS Financial Services, Inc. Account No. 6N 03955 VR and UBS Financial Services Inc. Account No. 6N 06844 VR, or any other accounts held in the name of Lillian Pellegrini at UBS Financial Services, Inc. be frozen until further order of the Court;

2. The Court find good cause and order that UBS Financial Services, Inc. pay or transfer to the Public Guardian as Successor Trustee of the Family Trust the total amount of $1,528,271.44 from UBS Financial Services, Inc. Account No. 6N 03955 VR and UBS Financial Services, Inc. Account No. 6N 06844 VR, or any other accounts held in the name of Lillian Pellegrini at UBS Financial Services, Inc., in satisfaction of the May 11, 2015 and September 4, 2015 orders of the Court; and,

3. The Court make any other orders it deems appropriate.

Dated: October 15, 2015

Fresno County Public Guardian

By: Joshua Cochron
JOSHUA COCHRON, Deputy

Dated October 15, 2015

DANIEL C. CEDERBORG
County Counsel

By: Heather H. Kruthers
HEATHER H. KRUTHERS, Senior Deputy
Attorneys for Petitioner, Public Guardian

VERIFICATION

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration is executed on October 15, 2015, at Fresno, California.

Fresno County Public Guardian

By: Joshua Cochron
JOSHUA COCHRON, Deputy

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[Date Stamp] Filed October 20, 2015
Fresno County Superior Court
By: LA, Deputy

SUPERIOR COURT OF CALIFORNIA COUNTY OF FRESNO CENTRAL DIVISION

In the Matter of

THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999

Case No. 10CEPR00683

EX PARTE ORDER FREEZING ACCOUNTS HELD IN THE NAME OF LLLIAN DOROTHY PELLEGRINI AT UBS FINANCIAL SERVICES, INC.

The Ex Parte Petition for Order Freezing Accounts Held in the Name of Lillian Dorothy

Pellegrini at UBS Financial, Inc., Or in the Alternative, For Order Directing UBS Financial to Pay $1,528,271.44 To The Fresno County Public Guardian As Successor Trustee of the Family Trust in Satisfaction of Court Orders (hereinafter "Ex Parte Petition") came on ~~for~~ ex parte ~~hearing~~ on October 19, 2015, in Department ______________ ~~of the above-entitled court.~~

After considering the Ex Parte Petition, and good cause therefor,

IT IS HEREBY ORDERED that:

1. The Ex Parte Petition is GRANTED with respect to the request for an order freezing accounts held in the name of Lillian Dorothy Pellegrini at UBS Financial Services, Inc.

2. UBS Financial Services, Inc. Account No. 6N 03955 VR is hereby frozen, and no transfers or withdrawals shall be made from the account until further order of the Court.

3. UBS Financial Services, Inc. Account No. 6N 06844 VR is hereby frozen, and no transfers or withdrawals shall be made from the account until further order of the Court.

4. Any other accounts held in the name of Lillian Dorothy Pellegrini at UBS Financial Services, Inc. are hereby frozen, and no transfers or withdrawals shall be made from the account(s) until further order of the Court.

IT IS SO ORDERED.

Dated: 10-20-15
JMB
JUDGE OF THE SUPERIOR COURT

APPENDIX DD

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Attorneys for the Fresno County Public Guardian

[DATE STAMP]
FILED
NOV 12 2015
FRESNO COUNTY SUPERIOR COURT
By /s/

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION

In the Matter of

THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999.

Case No. 10CEPR00683

EX PARTE PETITION FOR FURTHER INSTRUCTIONS REGARDING OCTOBER 20,

2015 ORDER DIRECTING UBS FINANCIAL SERVICES, INC. TO PAY $1,528,271.44 TO THE FRESNO COUNTY PUBLIC GUARDIAN AS SUCCESSOR TRUSTEE OF THE FAMILY TRUST IN SATISFACTION OF COURT ORDERS, AND FOR ORDER GRANTING FULL AUTHORITY TO PUBLIC GUARDIAN AS TO LIQUIDATION OF FAMILY TRUST ASSETS

[PROBATE CODE §856 and §857]

The Fresno County Public Guardian, in its capacity as Successor Trustee of the Family Trust created under the Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust dated June 18, 1999 (hereinafter "Public Guardian" or "Petitioner"), hereby petitions for further instruction regarding the Court's October 20, 2015 Ex Parte Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

Petitioner alleges:

1. On October 20, 2015, pursuant to the Public Guardian's *Ex Parte* Petition for Order Freezing Accounts Held in the Name of Lillian Dorothy Pellegrini at UBS Financial, Inc., Or In the Alternative, For Order Directing UBS Financial to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders (hereinafter "Ex Parte Petition"), the Court granted both an order freezing

accounts held in the name of Lillian Dorothy Pellegrini ("Lillian") at UBS Financial Services, Inc. ("UBS") and an order directing UBS to pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust, in satisfaction of the May 11, 2015 and September 4, 2015 orders of this Court.

2. On October 20, 2015, the Public Guardian provided UBS with a copy of the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of The Family Trust in Satisfaction of Court Orders (hereinafter "Order to Pay"), as well as the Court's *Ex Parte* Order Freezing Accounts Held in the Name of Lillian Dorothy Pellegrini at UBS Financial Services, Inc. (hereinafter "Ex Parte Order Freezing Accounts"). Although UBS has frozen the UBS accounts pursuant to the Ex Parte Order Freezing Accounts, upon receipt of the Order to Pay, counsel for UBS informed the Public Guardian that there are insufficient *cash* assets in the UBS accounts in Lillian's name to satisfy the Order to Pay, which necessitates liquidation of certain securities, bonds, and/or other investments in order to pay the funds to the Public Guardian pursuant to the October 20, 2015 Order to Pay. UBS has informed the Public Guardian that UBS cannot make decisions as to which assets to sell in order to generate the necessary cash to pay the amount set forth in the Order to Pay, and requested that the Public Guardian and Beverly Pellegrini (who Petitioner is informed and believes holds a power of attorney for Lillian) provide a joint instruction as to which assets to liquidate. Petitioner is informed and believes that Beverly Pellegrini

(hereinafter "Beverly") has advised UBS that she and Lillian want no assets liquidated. Moreover, Petitioner contacted Beverly to request instruction from her, on behalf of Lillian, as to which assets should be sold in order to generate sufficient cash to pay the $1,528,271.44 set forth in the October 20, 2015 Order to Pay. Beverly responded by stating, among other things, that the Family Trust was not created. Beverly also accused Petitioner of perjury with respect to the Ex Parte Petition, and alleged that Petitioner's alleged perjury was a misrepresentation with intent to engage in embezzlement of funds.

3. Inasmuch as an agreement cannot be reached with Lillian or Beverly as to which assets to liquidate, the Public Guardian now requests further, more specific instructions that the Public Guardian be given the sole authority and discretion to direct UBS as to which assets should be sold in order to generate adequate cash to satisfy the Order to Pay.

4. As in granting the underlying *Ex Parte* Petition, the Court has the authority under Probate Code sections 856 and 857 to issue the orders that are requested herein. The May 11, 2015 and September 4, 2015 orders were made, in part, on the Petition to Recover Property Belonging to Trust, For Award of Double Damages, and For Recovery of Attorneys' Fees and Costs (hereinafter "Petition to Recover Property") that was filed by Marleen Merchant (hereinafter "Marleen") on January 13, 2014. The Petition to Recover Property was filed under Probate Code sections 850 and 859. Under Probate Code section 856,

> if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief.

Furthermore, on October 20, 2015, Judge Donald Black signed an order directing UBS to pay to the Public Guardian the sum of $1,528,271.44 from UBS accounts currently controlled by Lillian. Judge Black based this order, in part, on this Court's prior May 11, 2015 and September 4, 2015 orders directing Lillian, as the person having title to or possession of the trust assets, to transfer those assets to the Public Guardian.

5. Probate Code section 857(b) provides that

> after entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, ***the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.*** (Emphasis added.)

Under this section, given that two orders have been entered that Lillian convey or transfer a total of $1,528,271.44 to the Public Guardian, the Public Guardian, as the person entitled under the orders, has the right to possession of the property, and the right to hold the property according to the terms of the May 11, 2015 and September 4, 2015 orders. The Public Guardian is the rightful owner of the funds ordered by this Court to be paid to the Public Guardian, and has the right to hold the funds that are currently held in Lillian's UBS accounts, as though such a transfer has already been made. This Court may, therefore, not only direct UBS to pay the Public Guardian "as if the property had been conveyed or transferred" to the Public Guardian in compliance with the October 20, 2015 Order to Pay, but it is within the Court's power under Probate Code section 857(b) to give the Public Guardian full authority with respect to the funds, and to grant the Public Guardian the sole discretion and authority to direct UBS as to how many shares and which positions, bonds, common stocks, securities, or other assets should be sold or liquidated in order to comply with the Order to Pay.

6. Further, Lillian will not be harmed by the Court's order and requested instructions. Notwithstanding liquidation of the assets owed to the Public Guardian, a balance of approximately $947,571.00 will remain in the UBS accounts in Lillian's name and under her control.

7. Moreover, the $1,528,271.44 will be liquidated in order to be paid to the Public Guardian as Successor Trustee of the Family Trust, and Lillian is the sole

beneficiary of the Family Trust during her lifetime. Thus, while the Public Guardian is directed to pay $439,497.62 of the funds to Marleen for the attorneys' fees and costs that she has incurred (see the September 4, 2015 order), $1,088,773.82 will remain in the Family Trust, and Lillian will continue to receive the net income from these funds held in the Family Trust for her lifetime.

8. As stated previously, UBS has requested that the Public Guardian confer with Lillian or her daughter Beverly in order to determine how many shares of which positions it should sell to generate the necessary funds to pay the amount set forth in the Order to Pay. The Public Guardian has conferred with Beverly, who responded by stating that the Family Trust was not created. As this Court is well aware, it is not likely that Lillian or Beverly will ever agree with the Public Guardian as to which assets to liquidate; and, therefore, the Public Guardian must be given the sole authority and discretion to direct UBS as to which assets to liquidate.

9. Petitioner is informed and believes that Lillian stated in her opening statement at the August 25, 2015 trial that she will be "damned" if anyone will take control of her assets, and that she does not "care who says it. .. , I can do anything I want with my money." Therefore, if UBS is not instructed that the Public Guardian is the rightful owner of the $1,528,271.44 and has sole discretion and complete authority to make decisions as to liquidation of assets sufficient to pay the Judgment, Lillian and Beverly will continue to delay resolution of this matter and

obstruct collection of the Judgment. To date, Lillian has failed and refused, and continues to fail and refuse, to fund the Family Trust. Lillian has a long established pattern of refusal to obey court orders, and based on her history of bad faith wrongful taking of trust property (as found by Judge Black at the August 25, 2015 trial), Lillian will continue to engage in bad faith in order to prevent the Public Guardian from funding the Family Trust.

10. Absent further instructions and an order granting the Public Guardian full authority to determine which assets to liquidate in order to pay the amount set forth in the Order to Pay, thereby relieving the Public Guardian from the requirement to confer and agree with Lillian and/or Beverly as to which assets and positions to liquidate/sell, Marleen and the Public Guardian, as Successor Trustee of the Family Trust, will lose the ability to collect trust assets, and Court ordered attorneys' fees and costs awarded to Marleen, and both the Family Trust and Marleen will suffer irreparable injury.

11. As of July 31, 2015, UBS account number 6N 06844 VR held cash and other assets totaling $2,146,776.81. Petitioner requests authority to direct UBS as to which assets (common stock, certificates of deposit, corporate bonds and notes, municipal securities) should be liquidated from this account in order to generate cash in the amount of $1,528,271.44 to pay said amount to the Public Guardian pursuant to the Court's October 20, 2015 Order. Even after liquidating assets in this amount from this account, funds will remain for Lillian, and UBS account

number 6N 03955 VR will remain untouched, with a balance of $329,066.33 as of July 31, 2015.

12. The Public Guardian requests that this matter be considered ex parte. If notice is required for Lillian or Beverly, it is likely that Lillian and Beverly will continue to file frivolous pleadings to attempt to stay or stop these proceedings and will continue to harass UBS and/or the Public Guardian.

WHEREFORE, Petitioner prays as follows:

1. The Court find that good cause exists for dispensing with notice to Lillian Pellegrini and Beverly Pellegrini.

2. The Court find good cause and order that the Public Guardian be vested with the sole authority and discretion with respect to directing UBS Financial Services, Inc. as to how many shares and which positions to sell and/or liquidate of those assets held in UBS Financial Services, Inc. Account No. 6N 06844 VR, in order to generate cash sufficient to satisfy the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

3. The Court find good cause and order that UBS Financial Services, Inc. shall act based on the sole instructions from, and authority granted to, the Public Guardian with respect to how many shares and which positions to sell and/or liquidate of those assets

held in UBS Financial Services, Inc. Account No. 6N 06844 VR, in order to generate cash necessary to satisfy the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

4. The Court find good cause and order that, pursuant to the direction of the Fresno County Public Guardian, UBS Financial Services, Inc., shall liquidate whatever assets of any kind and in whatever form, including securities, cash, or bonds, held within account number 6N 06844 VR, that are necessary to generate cash in the total amount of $1,528,271.44, without the necessity or requirement of an agreement or instruction from Lillian Pellegrini or Beverly Pellegrini, in order to pay the Fresno County Public Guardian as Successor Trustee of the Family Trust created under the Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust dated June 18, 1999 the amount of $1,528,271.44 in satisfaction of the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc., to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

5. The Court find good cause and order that UBS shall act promptly upon the instructions of the Public Guardian so that cash in the amount of $1,528,271.44 is paid to the Fresno County Public Guardian as Successor Trustee of the Family Trust

within ten (10) business days of the date of the Court's order.

6. The Court make any other orders it deems appropriate.

Dated: November 9, 2015

Fresno County Public Guardian

By: /s/
JOSHUA COCHRON, Deputy

Dated: November 12, 2015

DANIEL C. CEDERBORG
County Counsel

By: /s/
HEATHER H. KRUTHERS, Senior Deputy
Attorneys for Petitioner, Public Guardian

VERIFICATION

I declare under penalty of perjury, under the laws of the State of California, that the foregoing Is true and correct and that this declaration is executed on November 9, 2015, at Fresno, California.

Fresno County Public Guardian

By: /s/
JOSHUA COCHRON, Deputy

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Attorneys for the Fresno County Public Guardian

[DATE STAMP]
FILED
NOV 16 2015
FRESNO COUNTY SUPERIOR COURT
By ___________
DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
CENTRAL DIVISION

In the Matter of

THE ANGELO JOHN PELLEGRINI AND LILLIAN DOROTHY PELLEGRINI REVOCABLE LIVING TRUST dated June 18, 1999.

Case No. 10CEPR00683

EX PARTE **ORDER GRANTING FULL AUTHORITY TO THE FRESNO COUNTY PUBLIC GUARDIAN, AS SUCCESSOR**

TRUSTEE, AS TO LIQUIDATION OF FAMILY TRUST ASSETS

The Ex Parte Petition for Further Instructions Regarding October 20, 2015 Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno County Public Guardian As Successor Trustee of the Family Trust In Satisfaction of Court Orders, and for Order Granting Full Authority to Public Guardian as to Liquidation of Family Trust Assets (hereinafter "Ex Parte Petition") came on for ex parte hearing on 11-16-15 2015 in Department 502 of the above-entitled court.

After considering the Ex Parte Petition, and good cause therefor,

IT IS HEREBY ORDERED that:

1. The Ex Parte Petition is granted.

2. Notice to Lillian Pellegrini and Beverly Pellegrini is dispensed with.

3. The Fresno County Public Guardian is granted the sole authority and discretion with respect to directing UBS Financial Services, Inc. as to how many shares and which positions to sell and/or liquidate of those assets held in UBS Financial Services, Inc. Account No. 6N 06844 VR, in order to generate cash sufficient to satisfy the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno

County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

4. UBS Financial Services, Inc. shall act based on the sole instructions from, and authority granted to, the Fresno County Public Guardian with respect to how many shares and which positions to sell and/or liquidate of those assets held in UBS Financial Services, Inc. Account No. 6N 06844 VR, in order to generate cash necessary to satisfy the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc. to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

5. Pursuant to the direction of the Fresno County Public Guardian as Successor Trustee, UBS Financial Services, Inc., shall liquidate whatever assets of any kind and in whatever form, including securities, cash, or bonds, held within account number 6N 06844 VR, that are necessary to generate cash in the total amount of $1,528,271.44, without the necessity or requirement of an agreement or instruction from Lillian Pellegrini or Beverly Pellegrini, in order to pay the Fresno County Public Guardian as Successor Trustee of the Family Trust created under the Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable Living Trust dated June 18, 1999 the amount of $1,528,271.44 in satisfaction of the Court's October 20, 2015 *Ex Parte* Order Directing UBS Financial Services, Inc., to Pay $1,528,271.44 to the Fresno County Public Guardian as Successor Trustee of the Family Trust in Satisfaction of Court Orders.

6. UBS Financial Services, Inc. shall act promptly upon the instructions of the Fresno County Public Guardian so that cash in the amount of $1,528,271.44 is paid to the Fresno County Public Guardian as Successor Trustee of the Family Trust within ten (10) business days of the date of the Court's order.

IT IS SO ORDERED.

Dated: 11-16-15

/s/
JUDGE OF THE SUPERIOR COURT

APPENDIX EE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in pertinent part that no person shall be "deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

The Fourteenth Amendment provides, "nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. §1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

42 U.S.C. §1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Federal Rules of Civil Procedure Rule 19. Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(b) WHEN JOINDER IS NOT FEASIBLE. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

California Probate Code § 24

"Beneficiary" means a person to whom a donative transfer of property is made or that person's successor in interest and: (b) As it relates to the testate estate of a decedent, means a devisee. (c) As it relates to a trust, means a person who has any present or future interest, vested or contingent.

California Probate Code § 48

(a) Subject to subdivision (b), "interested person" includes any of the following:

(1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. ...

(b)The meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

Probate Code §850

(a) The following persons may file a petition requesting that the court make an order under this part:

(3) The trustee or any interested person in any of the following cases:

(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another.

(B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another.

(b) The petition shall set forth facts upon which the claim is based.

Probate Code §856

Except as provided in Sections 853 and 854, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other fiduciary, or the person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto, or granting other appropriate relief.

Probate Code §857

(a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other fiduciary or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative, other fiduciary, or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

Probate Code §5305

(b) Notwithstanding Sections 2581 and 2640 of the Family Code, the presumption established by this section is a presumption affecting the burden of proof and may be rebutted by proof of either of the following:

(1) The sums on deposit that are claimed to be separate property can be traced from separate property unless it is proved that the married persons made a written agreement that expressed their clear intent that the sums be their community property.

(2) The married persons made a written agreement, separate from the deposit agreement, that expressly provided that the sums on deposit, claimed not to be community property, were not to be community property.

Probate Code §7050. Jurisdiction over estate administration

The superior court has jurisdiction of proceedings under this code concerning the administration of the decedent's estate.

Probate Code §§9923, 9948(d), 9966, 9983,10264, 10316

The following code sections (§9923, §9948(d), §9966, §9983, §10264, and §10316 are essentially the same. For each of these sections, the Law Revision Commission Comments provided, "If the court lacks jurisdiction, §9923, §9948, §9966, §9983, §10264, and §10316, does not cure the defect. See *Texas Co. v. Bank of America Nat'l Trust & Sav. Ass'n.*, 5 Cal.2d 35 (1935). These sections do not limit the court's authority to set aside an order made through mistake, inadvertence, surprise, or excusable neglect.

Probate Code § 9923

No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this chapter.

Probate Code $9948(d) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the lease made pursuant to an order made under this chapter.

Probate Code §9966 No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the granting of an option pursuant to an order made under this chapter.

Probate Code §9983 No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the transfer or conveyance made pursuant to an order made under this chapter.

Probate Code §10264 No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

Probate Code §10316

No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

Probate Code § 13050

(a) For the purposes of this part:

(1) Any property or interest or lien thereon that, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or that was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value. This excluded property shall include, but not be limited to, property in a trust revocable by the decedent during the decedent's lifetime.

California Probate Code §13110

Liability to persons having superior rights; fraudulent transactions; limitations of actions;

(a) Except as provided in subdivision (b), a transferee is personally liable to any person having a superior right to the transferred property by testate or intestate succession from the decedent.

(1) The fair market value of the transferred property at the time the affidavit or declaration is presented under this chapter...

(2) Income received from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(3) If the property has been disposed of, interest on the fair market value of the transferred property from the date of disposition at the rate of 7 percent per annum. ...Fair market value of the transferred property means the fair market value of the transferred property, determined as of the time of the disposition of the property.

(b) In addition to any other liability the transferee has under this section a person who fraudulently secures the payment, delivery, or transfer of the decedent's property under this chapter is liable to the person having a superior right to that property by testate or intestate succession from the decedent for three times the fair market value of the property. For the purposes of this subdivision, the fair market value of the property is the fair market value of the property paid, delivered, or transferred to the person liable under this subdivision, valued as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter to the holder of the decedent's' property.

Probate Code §15205

(a) A trust, other than a charitable trust, is created only if there is a beneficiary.

Probate Code §16440

(a) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest.

(2) Any profit made by the trustee through the breach of trust, with interest.

(3) Any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(b) If the trustee has acted reasonably and in good faith under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subdivision (a) if it would be equitable to do so.

Probate Code §17200

(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

Civil Code § 683

A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy ... when granted or devised to executors or trustees as joint tenants.

Code of Civil Procedure § 389

(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.

Code of Civil Procedure §473(d)

The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

Code of Civil Procedure §663

A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment:

1. Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected.

Code of Civil Procedure §1008

(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.