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9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN MATEO  
11

11 In Re the Matter of the  
12 TRUST A UNDER THE JAMES F. HO  
13 AND GRACE C. HO DECLARATION OF  
14 TRUST DATED SEPTEMBER 11, 1992 as  
amended

Case Number: **17PRO00973**

**SECOND AMENDED PETITION FOR  
RETURN OF TRUST PROPERTY (Probate  
Code§ 850), FOR FINANCIAL ELDER ABUSE,  
AND FOR RELATED RELIEF, INCLUDING  
CANCELLATION OF DEED AND QUIET  
TITLE**

Trial Date:

Department: **28**

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18 PETITIONER PETER C. HO, TRUSTEE  
OF TRUST A OF THE JAMES F. HO  
19 AND GRACE C. HO DECLARATION OF  
TRUST DATED SEPTEMBER 11, 1992 as  
20 amended

21 Petitioner,

22 vs.

23 DEBBY CHANG, and ,DOES 1 through  
20, inclusive

24 Respondents.  
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1 I.

2 INTRODUCTION

3 1. James Ho died September 5, 2017 at the age of 84 after a long battle with a variety of medical  
4 issues. His wife of 32 years, Grace, predeceased him in 1995. Before their deaths, James and Grace executed  
5 The James F. Ho and Grace C. Ho Declaration of Trust dated September 11, 1992.<sup>1</sup> Upon Grace's death, the  
6 trust was split into Trust A (hereafter, the "Trust") and Trust B. James and Grace's three children are the sole  
7 beneficiaries of these trusts.

8 2. Shortly after Grace's death, James began spending time with Respondent Debby Chang.  
9 Debby and James would have an on-again, off-again companionship relationship for most of James'  
10 remaining years. They maintained separate residences until the last two years of his life, when James' mental  
11 and physical condition had significantly deteriorated and he became more vulnerable to Debby and the  
12 pressure she applied on him.

13 3. James' health problems are traceable to 2006, when an MRI revealed he had a brain tumor.  
14 Over time, the tumor caused James' executive function to deteriorate. By 2012, his cognition was noticeably  
15 impaired.

16 4. James' age and health made him increasingly reliant on Debby over time. For her part, Debby  
17 could hardly stand to be around James. This was an open secret that caused great angst among those who  
18 loved James. Debby would constantly complain about James directly to him, and even to his children. In one  
19 voicemail message to James' eldest daughter, Debby complained, "Ughh ... I can't deal with him, Shan-Yuan  
20 .... He is so dirty, I can't take it anymore ... I can't stand it anymore ... he is just too dirty .... " This voicemail  
21 message was left in 2014. Debby continued to maintain a relationship with James for a simple reason:  
22 Money. His declining mental and physical condition increasingly presented too good of an opportunity for  
23 financial gain for Debby to pass up.

24 5. Debby took advantage of James' weakness and his dependence on her. To generate liquidity  
25 from James' primary asset, his longtime home in San Mateo, Debby pressured him in 2014 to sell it,  
26 resulting in a six-figure tax hit to James. James was highly frugal with his money throughout his life, and  
27 would never have allowed this if he were in full control of his faculties.

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<sup>1</sup>Given the commonality of surnames in this proceeding, first names will at times be used herein for clarity.

1           6.       Over the next two years, James lived in various residences in Foster City. During this period,  
2 Debby moved in with James for the first time. James paid the entirety of the housing costs and other living  
3 expenses. Debby would most often take the master suites. James would stay in a guest bedroom.

4           7.       In 2016, James was diagnosed with a malignant and aggressive form of blood cancer. He  
5 endured intensive chemotherapy and radiation treatments. The cancer, treatments and medications left James  
6 weak and fatigued. He could barely walk. He became dependent on Debby for preparing meals, grocery  
7 shopping, personal hygiene and taking medications, burdens which Debby frequently complained about  
8 directly to James and to others. A common refrain from Debby was that she should be getting far more in  
9 compensation for taking care of James than she was receiving. Despite occasionally referring to herself as  
10 James' "friend" or "girlfriend," Debby in fact saw herself- and was - a caregiver to James.

11           8.       Debby had managed for years to extract various forms of financial benefits from James. But  
12 she saved her largest score for the last year of James' life, when he was at his weakest. In February 2017, she  
13 had James provide her nearly \$1.2 million so she could buy a house in Redwood City that was inappropriate  
14 for a man in his frail condition. She took title solely in her own name. As she had done previously, she  
15 claimed the master bedroom. While James had a bedroom upstairs, the climb up the stairs proved too much  
16 for him in his weakened condition, and within six weeks he was sleeping on a cot next to the kitchen. Debby  
17 made James pay thousands of dollars in rent to live in the new home that she claimed as her own and which  
18 she had purchased using his money.

19           9.       Months later, Debby scrambled to find an estate planning attorney who would be willing to  
20 visit James in the Redwood City property. The goal: to secure an after-the-fact blessing of the \$1.2 million  
21 as a gift to Debby. James did not want to meet with the attorney, but Debby forced him to.

22           10.      As discussed below, the meeting that took place makes a mockery of the concept of the  
23 attorney-client relationship. The attorney who visited James was for all intents and purposes Debby's  
24 attorney.

25           11.      The day after the attorney house call, James had no recollection of what might have been  
26 discussed with the man who had come to the house.

27           12.      The following day, Debby announced to James' family that she would no longer care for him.  
28 James was left confused and despondent. He died two weeks later. Debby signed a listing agreement to sell

1 the Redwood City property the day after his death.

2 13. James' funeral was a few days later. Debby knew about it but did not attend.

3 14. Peter, as trustee of the Trust, brings this petition to recover the approximately \$1.2 million  
4 that Debby obtained through her wrongful actions, and for the further relief requested herein.

5 **II.**

6 **PARTIES**

7 15. Petitioner is Peter C. Ho, trustee of Trust A of The James F. Ho and Grace C. Ho Declaration  
8 of Trust dated September 11, 1992, as amended.

9 16. Respondent is Debby Chang.

10 17. The true names and capacities of Respondents Does 1 through 20, inclusive, whether  
11 individual, corporate, or otherwise, are unknown to Petitioner at this time. When the true identities of said  
12 Respondents become known to Petitioner, he will seek leave of Court to amend this Petition to allege the  
13 same. Petitioner is informed and believes and alleges on that basis that each of the Respondents, both named  
14 and fictitious, are responsible in some manner for the occurrences and damages described herein.

15 **III.**

16 **JURISDICTION AND VENUE**

17 18. Respondent is a resident of San Mateo County, California, where the Trust has its principal  
18 place of administration.

19 19. Jurisdiction for this proceeding is conferred on this Court pursuant to Probate Code sections  
20 850, et seq., 17000 through 17004, and 17200.

21 20. Venue is proper in this Court pursuant to the provisions of Probate Code sections 17002 and  
22 17005.

23 **IV.**

24 **NOTICE**

25 21. The names, ages and residences of those people entitled to notice, so far as known to  
26 Petitioner, are:

<u>Name and Relationship</u>	<u>Age</u>	<u>Address</u>
Debby Chang, Caregiver	Adult	c/o David W. Baer, Esq. Hartog, Baer & Hand, APC 4 Orinda Way, Suite 200-D Orinda, CA 94563
Shan-Yuan Ho, Daughter	Adult	5607 Clay Avenue Austin, TX 78756
Della N. Lau, Daughter	Adult	35108 King Court Fremont, CA 94536

V.

**FACTUAL BACKGROUND**

22. James died on September 5, 2017. His wife, Grace C. Ho, predeceased him in 1995. Before their deaths, James and Grace executed the Trust Agreement. A copy of the Trust Agreement is attached as **Exhibit A**. The Trust Agreement provides for the establishment of Trust A (hereafter, the "Trust") and Trust B upon Grace's death. James and Grace's three children, Shan-Yuan<sup>2</sup> Ho, Della N. Lau<sup>3</sup>, and Peter C. Ho, are the beneficiaries of both trusts. Peter is trustee of the Trust, from which the misappropriated funds originated.

23. Soon after Grace's death, James began spending time with Debby Chang. They maintained separate residences until James' mental and physical condition weakened in the last two years of his life. Debby resided in her home in El Cerrito. James lived in his home in San Mateo where he had lived with Grace and raised his three children. Until he was in a diminished state at the end of his life, he was watchful of his finances and conservative with his use of funds. Indeed, Debby would frequently complain to James and others that he was "cheap."

24. James amended the trust twice - first in 1995 to eliminate a charitable devise, and again in 2002 to modify trustees. His children remained the sole remainder beneficiaries at all times. Copies of the 1995 amendment and 2002 amendment are attached as **Exhibits B and C**, respectively.

25. In the last decade of his life, James battled a series of health issues. An initial health challenge was presented in 2006, when doctors discovered a meningioma (a brain tumor) that was compressing his frontal lobe. The frontal lobe is central to decision making, impulse control, motor function and memory.

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<sup>2</sup>Shan-Yuan is referred to as "Diane S. Ho" in the Trust. Her formal name is Shan-Yuan Ho.

<sup>3</sup>Della N. Lau is referred to as "Della N. Ho" in the Trust. Her married name is Della N. Lau.

1 James elected a wait-and-see approach to monitor growth as recommended by his doctors.

2 26. That same year, apparently to help Debby build her credit, James transferred title to an  
3 income property that he owned with Debby entirely into her trust.<sup>4</sup> However, James continued to receive  
4 fifty percent of the rental income, which was used to make the mortgage payments, and continued to pay  
5 fifty percent of the expenses. His tax returns reflected these allocations. He also remained the principal  
6 borrower on the loan that encumbered the property. The intention was always that he retain an equitable  
7 interest in the property. On information and belief, this property is now worth more than \$1.4 million, with  
8 a mortgage of only approximately \$600,000.

9 27. In 2012, James' neuro oncologist noted that his patient showed a "reduction in cognitive  
10 function." James was forgetting names and could not find the words he wanted to say. He struggled to  
11 maintain his train of thought.

12 28. In 2014, James turned 81. His age and brain tumor had caught up with him. The tumor's  
13 increased size meant more compression on his frontal lobe. His cognitive issues continued. He was  
14 depressed. He feared living alone. Debby took advantage of his weakness. After years of pressuring him to  
15 sell his San Mateo residence, he relented. Ordinarily, James would have consulted with his son and  
16 daughters before making such a major financial decision, but Debby convinced him not to. But by this time,  
17 his tumor had compromised his ability to make sound financial decisions. James sold the home in January  
18 2014. He incurred more than \$180,000 in capital gains taxes. Debby made him write her a personal check  
19 for \$30,000 after the sale. Moreover, in his weakened condition, James could not protect the family's  
20 keepsakes stored at the San Mateo home from Debby. Yearbooks, diplomas, trophies, childhood art and  
21 most of his deceased wife's belongings were thrown into the trash by Debby.

22 29. While Debby pressured James to sell his longtime home, she retained her own home in El  
23 Cerrito and converted it to a rental property.

24 30. James moved to a property in Foster City. Debby moved in with him, commandeering the  
25 master suite for herself. James slept in a guest room. James covered all the expenses, including housing,  
26 utilities and food for both of them.

27 31. James purchased a home in Foster City a few months later. Debby again lived with him

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28 <sup>4</sup>The property is located at 1627 McCollum Street in Los Angeles (hereafter, the "Los Angeles property").

1 rent-free and James covered all the expenses for the home, including utilities, from May 2014 through March  
2 2016. At this time, Debby received rental income from her home and from the Los Angeles property.

3 32. In March 2016, James and Debby moved to a condominium in Foster City. Debby made  
4 James pay the entirety of the rent - \$5,200 a month - and all the expenses. Debby again occupied the master  
5 bedroom suite, leaving a smaller bedroom for James.

6 33. The compression on James' frontal lobe continued to increase. He experienced more and more  
7 lightheadedness, loss of memory, and confusion. His walking deteriorated substantially. He became  
8 increasingly reliant on Debby. She grudgingly took care of him, frequently complaining to James and others  
9 that he did not compensate her sufficiently.

10 34. In the spring of 2016, Debby convinced James to allow her to claim all of the income on the  
11 Los Angeles property as her own. Debby claimed this was necessary to secure a loan she wanted to obtain.  
12 James remained the principal borrower on the mortgage for the Los Angeles property.

13 35. In July 2016, James began a regimen of radiation therapy. He would eventually endure 27  
14 treatments. Peter accompanied him to 25 of them; Debby accompanied him only twice, and only because  
15 Peter was unavailable. The radiation caused James' brain to swell. His medicine, Decadron, impacted his  
16 already deteriorating cognition yet further.

17 36. In November 2016, Debby had James designate her as the beneficiary on one of his  
18 investment accounts worth more than \$300,000.

19 37. By December 2016, James needed help dressing himself and getting to the bathroom. He was  
20 confined to a wheelchair.

21 38. That same month James was diagnosed with multiple myeloma - a malignant, aggressive and  
22 inevitably fatal form of blood cancer. James began chemotherapy to prolong his life. The chemotherapy left  
23 him fatigued. Though he was eventually able to do without the wheelchair, he was unable to walk long  
24 distances and relied on a three-pronged cane and walker. The radiation treatments caused major swelling  
25 in his brain. His left leg was weak, causing two falls during his final year of life. He took steroids for his leg,  
26 which caused insomnia.

27 39. James continued to suffer from memory loss. His neuro oncologist directed his staff to relay  
28 care instructions to James' son, Peter, because James would forget. His primary care oncologist reported that

1 James "has a difficult time retaining information and things have to be repeated multiple times. He appears  
2 to have memory loss (dementia). Despite explaining things he would forget soon thereafter."

3 40. James became even more reliant on Debby. She continued to prepare meals and shopped for  
4 him. She helped him with basic hygiene. She helped him take his various medications for his brain and  
5 blood cancers and leg weakness. She assisted with his mobility. She did all of this while constantly  
6 complaining to others about having to do so and about how she "deserved [more] compensation."

7 41. Debby tried hard to keep others away. Friends and family members will describe Debby's  
8 attempts to isolate James during his final two years of life. She controlled his phone and answered the door.  
9 She repeatedly would tell people hoping to visit with James the same thing: it was not a convenient time.  
10 She plotted to get James to self-isolate - she frequently made statements to James designed for him to  
11 question his children's affection for him, suggesting that they did not care about him or only wanted his  
12 money. She also tried to sow discord among his children by badmouthing one or both of the other siblings.  
13 Debby viewed James' children as the primary obstacle in the way of her goal of stealing from him.

14 42. James' children tried to speak with their father about moving in with one of them, but he  
15 would always respond that he did not want to inconvenience them. He assured them that Debby would take  
16 care of him.

17 43. Beginning in 2016, Debby got James to write her checks that would total \$68,575 before his  
18 death. He wrote several in the amount of \$10,000. James also wrote checks to "cash" totaling \$20,680  
19 between December 2016 and April 5, 2017, amounts that would only have gone to Debby.

20 44. In early February 2017, Debby and her real estate broker began discussions with the owners  
21 of a residence located at 229 Fulton Street in Redwood City (the "Redwood City property"). James' signature  
22 and initials as a buyer appear along with Debby's on dozens of seller disclosure documents.

23 45. On February 16, 2017, an MRI revealed that James was experiencing major swelling in his  
24 brain from his past radiation treatments. James was at his most vulnerable. The sellers' counteroffer for the  
25 sale of the Redwood City property is dated the next day. James' signature appears as a buyer. Attached as  
26 **Exhibit D** is a copy of this document.

27 46. On February 19, 2017, James wrote a check for \$67,050 to Old Republic Title Co. as the  
28 deposit for the Redwood City property. On February 22, 2017, Debby caused him to issue a cashier's check

1 to her for \$1.1 million, an amount representing most of the Trust's assets. As it would turn out, Debby would  
2 use only approximately \$1,053,000 of the \$1,100,000 million toward the purchase of the Redwood City  
3 property. She pocketed the remaining approximately \$47,000.

4 47. Peter was aware that around this time Debby had been pressuring James to lend her funds  
5 to purchase a home, which she would repay on his death or before. Peter was opposed to this, but he knew  
6 how dependent his father was on Debby and shared his father's concern that if he did not agree, Debby would  
7 stop assisting James with his care. Given the debilitated condition his father was in, his care was paramount.  
8 Peter reasoned that a "loan was a loan" - it had to be repaid, and if necessary Peter would make sure that it  
9 was. Most importantly, James was to be listed as an owner on title to the Redwood City property to secure  
10 the loan.

11 48. Debby had other plans. After obtaining the \$1,167,050 to purchase the Redwood City  
12 property, and despite James appearing as a buyer on the transaction documents, Debby engineered the  
13 transaction so that only she appeared on title.

14 49. Less than two weeks after Debby received the \$1.1 million cashier's check, James' neuro  
15 oncologist reported, "[c]ognitive function has declined 'severely,' more memory loss."

16 50. In April 2017, James' financial advisor, Ted Cotton, called Peter to express concern. Peter  
17 was James' attorney-in-fact under James' durable power of attorney. Mr. Cotton explained that James was  
18 making strange requests - for example, James wanted to access an account that had been closed three years  
19 prior.

20 51. James' health problems continued. In June 2017, James' neuro oncologist observed "cognitive  
21 changes due to medical disorder." He reported that James was "having fatigue and cognitive impairment."  
22 James was able to recall none of three objects after a five minute time lapse. Soon after that visit, James fell  
23 in his bedroom because of weakness in his legs.

24 52. In mid-June 2017, Debby moved James and herself into the Redwood City property. The  
25 home was ill-suited for James' condition. All of the bedrooms were located on the second floor. James  
26 struggled to climb the stairs to the second floor bedroom due to his fatigue and weakness from two forms  
27 of cancer and their treatment. When James' children raised concerns, Debby angrily retorted that she would  
28 "push on James' butt" to get him up the stairs. They would soon learn that Debby eventually did not bother

1 with that effort - they saw that their father slept on a cot in a corner next to the kitchen.

2 53. Incredibly, having extracted nearly \$1.2 million of James' money to purchase the property  
3 and take title to it in her name, Debby made James pay thousands of dollars in rent to live there. She also  
4 made him pay thousands of dollars to furnish it. For good measure, she made him pay for the internet and  
5 PG&E bills.

6 54. Around this time, Peter queried Debby about when she intended to repay the loan. Debby  
7 casually replied that the money had not been a loan but a gift from James. Peter demanded that the money  
8 must be returned. Peter immediately realized what he and Debby both knew: by this point James' cognition  
9 was so compromised that, with enough effort, Debby could get James to say whatever she wanted.

10 55. Discovery has revealed that shortly after this discussion, in August 2017, Debby began  
11 looking for an estate planning attorney who would be willing to bless the \$1,167,050 as a gift to Debby.  
12 Debby eventually found John Martin, Esq. of Menlo Park. On information and belief, Debby coerced James  
13 into meeting with Mr. Martin by threatening to leave James.

14 56. The night before the appointment was to happen, James' son, Peter, learned of it and spoke  
15 to his father about it. James did not understand why an attorney wanted to meet with him. He did not want  
16 to meet with an attorney. The next day, Peter called Mr. Martin's office, informed the person with whom he  
17 spoke that he was James' attorney-in-fact, and explained that it was inappropriate for the appointment to go  
18 forward. Subpoenaed records show that soon after Peter's call to cancel the appointment, Debby called Mr.  
19 Martin, put James on the line, and had him reinstate the appointment.

20 57. Undaunted by these red flags, Mr. Martin made the house call. His notes of the meeting were  
21 obtained by subpoena in this proceeding. They depict a tired and disoriented James, but on one key issue  
22 his memory aligned with reality, consistent with his deal with Debby: in connection with the payment of  
23 funds for the purchase of the Redwood City property, James informed Mr. Martin that he was an owner of  
24 the property. The notes indicate that when Mr. Martin informed James that, in fact, sole title to the residence  
25 was in Debby's name, James told Mr. Martin that, well, there was nothing he (James) could do about it now.  
26 There is no indication anywhere in the notes that Mr. Martin explored the basis for James' belief that he was  
27 owner of the property, or that Mr. Martin offered any suggestions to James about corrective steps that could  
28 be taken. Instead, Mr. Martin called Debby into the room to give her an audience. The notes continue in

1 caricature fashion: During the 30-minute discussion, (i) Debby insisted the \$1.1 + million was a gift from  
2 James, (ii) Debby accused Peter of being the real elder abuser, and (iii) James fell asleep in his chair. All  
3 of this was sufficient for Mr. Martin to conclude that James had intended to make a gift of at least \$1.1  
4 million to Debby six months earlier, and Mr. Martin would sign a "Certificate of Independent Review" to  
5 this effect.

6 58. Emails show that Debby's daughter Rita Chang and her boyfriend, Reinhard Oesterle, had  
7 assisted Debby in setting up Mr. Martin's house call. Mr. Oesterle and Rita Chang had spoken with Mr.  
8 Martin two weeks before the fateful visit. After Mr. Martin's visit, Mr. Oesterle sent an email thanking Mr.  
9 Martin, adding, "I may consult you for my own estate planning needs in the future."

10 59. The day after Mr. Martin's house call, Peter took James to a previously scheduled acupuncture  
11 appointment. In their discussion, James said he vaguely recalled meeting a man the day before, but could  
12 not recall what else had happened. Now 84 years old, James did not remember what he had told the man.  
13 He did not recall what the man had asked about. He did not remember whether he had signed any  
14 documents. Peter, concerned that Debby might have reinstated the appointment with Mr. Martin, brought  
15 James to Mr. Martin's office to inquire about what had happened. Mr. Martin refused to see his supposed  
16 client. James left a handwritten note requesting that Mr. Martin provide any of his estate planning documents  
17 to Peter. Mr. Martin later responded to Peter by email that he did not have any such documents. The  
18 subpoenaed records in this case show this was false - he had penned a purported Certificate of Independent  
19 Review and charged James for it.

20 60. Given the disturbing incident with Debby and Mr. Martin, Peter had James stay at his home  
21 that night.

22 61. Debby's response was telling. She left a voicemail for Peter's wife in which she said, "I can  
23 no longer take care of [James] anymore .... " She confirmed this in a text to Peter, adding, "besides I want  
24 to take a vacation to Taiwan and LA."

25 62. James called Debby twice that day, August 23, 2017, but did not succeed in speaking to her  
26 until the following day. Three hours after that call, Debby left a voice message for Peter confirming that she  
27 did not want James to return to the Redwood City property.

28 63. For the three days from August 25, 2017 through August 27, 2017, Debby did not attempt

1 to call James. She finally called once on August 28, 2017 without leaving a message. The same day she  
2 cashed an incomplete \$5,000 check that James had previously given to her. Debby added to the memo line:  
3 "Jun Rent & food."

4 64. On August 29, 2017, Debby did not call James or Peter before placing a call to the Redwood  
5 City Police Department. She claimed she was James' wife and could not find him. Debby knew exactly  
6 where he was. Her purpose in calling the police was obvious: she wanted to create a paper trail to counter  
7 any later claim that she abandoned James.

8 65. James died on September 5, 2017. Debby signed a listing agreement with a broker to sell the  
9 Redwood City property the next day.

10 66. James' funeral took place on September 10, 2017. Debby was invited to attend, but she did  
11 not. The following day, she put the Redwood City property up for sale.

## 12 VI.

### 13 CAUSES OF ACTION

#### 14 A. **The \$1,167,050 In Payments Were the Result of Respondent's Undue Influence.**

15 67. Petitioner incorporates by reference as though fully set forth herein the allegations in  
16 Paragraphs 1 through 66 above.

17 68. As described above, in February 2017 Respondent convinced James to "loan" her \$1,167,050,  
18 to be repaid on or before his death (the "Stolen Funds"). As later events demonstrated, she had no intention  
19 of ever paying him back. Her plan was to obtain the funds, delay repayment as James' condition declined,  
20 and then eventually claim the funds were a gift.

21 69. During their relationship, Respondent occupied a position of trust and confidence with James  
22 at a time when his health progressively worsened. Over time, he became increasingly dependent on her as  
23 he underwent chemotherapy and radiation treatments and suffered from memory loss.

24 70. By reason of their close relationship and James' diminished health condition, Respondent was  
25 able to exert control and influence over his mind and actions. Eventually, Respondent's control was such that  
26 James was no longer capable of protecting his own interests regarding financial matters. Because of pressure  
27 and manipulation by Respondent, James' convictions or desires became the convictions or desires imposed  
28 on him by Respondent. The Stolen Funds were the direct result of Respondent's undue influence.

1           71. Undue influence is defined as "excessive persuasion that causes another person to act or  
2 refrain from acting by overcoming that person's free will and results in inequity." Welfare & Institutions  
3 Code § 15610.70. In determining whether a result was produced by undue influence, all of the following  
4 shall be considered:

5           (1) The vulnerability of the victim. Evidence of vulnerability may include,  
6 but is not limited to, incapacity, illness, disability, injury, age, education,  
7 impaired cognitive function, emotional distress, isolation, or dependency, and  
8 whether the influencer knew or should have known of the alleged victim's  
9 vulnerability;

10           (2) The influencer's apparent authority. Evidence of apparent authority may  
11 include, but is not limited to, status as a fiduciary, family member, care  
12 provider, health care professional, legal professional, spiritual adviser, expert,  
13 or other qualification;

14           (3) The actions or tactics used by the influencer. Evidence of actions or  
15 tactics used may include, but is not limited to, all of the following:

16           (A) *Controlling necessities of life, medication, the victim's interactions  
17 with others*, access to information, or sleep.

18           (C) *Initiation of changes in personal or property rights, use of haste or  
19 secrecy in effecting those changes, effecting changes at inappropriate times  
20 and places*, and claims of expertise in effecting changes.

21 *Id.* (emphasis added).

22           72. Due to James' age, brain tumor, blood cancer, chemotherapy, radiation treatments, fatigue,  
23 physical disability, and memory loss in 2016 and 2017, James was extremely vulnerable when Respondent  
24 took the Stolen Funds. During this time period, Respondent functioned as James' "care custodian" within  
25 the meaning of Probate Code section 21362, in that she assisted James for compensation by cooking and  
26 shopping for him, administering medications, performing housekeeping, and assisting with his hygiene.  
27 Based on his weakened condition - both mentally and physically - James was a "dependent adult" under  
28 Probate Code section 21366 during the same time period that Respondent assisted with his care.

          73. As a result, a presumption arises that the Stolen Funds were obtained by means of  
Respondent's fraud or undue influence. This presumption can only be rebutted by clear and convincing  
evidence. See Probate Code § 21380(b).

          74. On information and belief, Respondent learned of this presumption at some point after she  
coerced James into giving her nearly \$1.2 million in February 2017. This led her to orchestrate the retention

1 of attorney Martin to obtain the Certificate of Independent Review. (A valid Certificate of Independent  
2 Review eliminates the presumption of undue influence that otherwise attends a monetary transfer to a  
3 caregiver. See Probate Code § 21384.)

4 75. However, the Certificate of Independent Review here fails in a number of respects. The  
5 evidence will overwhelmingly show that Mr. Martin was an attorney for Respondent and her children, not  
6 James. Indeed, the evidence will show that Mr. Martin failed miserably to protect "his client" James from  
7 Respondent, and in fact that he enabled Respondent's financial elder abuse of James.

8 76. Even if the Certificate of Independent Review is facially valid, it will still be Respondent's  
9 burden to disprove undue influence under well-established common law rules.<sup>5</sup> Because Respondent was  
10 in a relationship of trust with James, actively participated in procuring the Stolen Funds, and received an  
11 undue benefit from them, Respondent will have the burden of proof at trial to demonstrate that the Stolen  
12 Funds were transferred to her as a result of James' genuine wishes and intent rather than Respondent's undue  
13 influence. Rice v. Clark (2002) Cal.4th 89, 97 (setting forth elements of common law presumption of undue  
14 influence). Moreover, where, as here, a suspect transfer is inter vivos, "the susceptibility to imposition, the  
15 extreme age and infirmity, of the grantor, together with slight evidence of circumstances from which it may  
16 be inferred that the instrument was the product of coercion, will suffice to shift the burden and require the  
17 beneficiary to show affirmatively that the transaction was fair and free from influence." O'Neil v. Spillane  
18 (1975) 45 Cal.App.3d 147, 155.

19 77. Underlying Respondent's burden will be the independent rule that the donee of a gift has the  
20 capacity of establishing an inter vivos gift by clear and convincing evidence. In re Walsh's Estate (1944) 66  
21 Cal.App.2d 704, 708. "Clear and convincing" evidence requires a finding of high probability. The evidence  
22 must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating  
23 assent of every reasonable mind." In re Jerome D. (2000) 84 Cal.App.4th 1200, 1205-1206 (citations  
24 omitted) (emphasis in original). Respondent will come nowhere near meeting this high standard.

25 78. Respondent induced James into lending the Stolen Funds. James would not have made the  
26 payments but for this undue influence. Accordingly, the payments are void and the Stolen Funds must be  
27

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28 <sup>5</sup>Probate Code section 21392(b) provides that "[i]t is the intent of the Legislature that this part supplement the common  
law on undue influence, without superseding or interfering in the operation of that law."

1 returned to the Trust with interest from the date of the transfers.

2 79. As an alternative remedy, title to the Redwood City property should be modified to reflect  
3 its ownership by Petitioner as Trustee, as the property was acquired using the Stolen Funds.

4 **B. The Stolen Funds Were Procured by Fraud.**

5 80. Petitioner incorporates by reference as though fully set forth herein the allegations in  
6 Paragraphs 1 through 79 above.

7 81. Respondent falsely represented to James that she wished to borrow the Stolen Funds from  
8 him. She knew this statement was false when made, as she had no intention of repaying him. By making this  
9 misrepresentation, Respondent intended to induce James to give her the Stolen Funds, which in fact he did.  
10 James reasonably relied on Respondent's misrepresentation, as he was highly vulnerable at this time and had  
11 no reason to think that Respondent - who by this time functioned as his paid caregiver - would plot to hurt  
12 him. James was damaged when Respondent converted the Stolen Funds by claiming them as a gift.

13 82. Respondent defrauded James intentionally, recklessly, oppressively, and/or maliciously.  
14 Accordingly, punitive damages should be assessed against Respondent pursuant to Civil Code section 3294,  
15 sufficient to deter her from continuing this pattern of illegal conduct, and to serve as an example to other  
16 persons that such conduct will not be tolerated in our community.

17 **C. The Stolen Funds Were Procured by Conversion.**

18 83. Petitioner incorporates by reference as though fully set forth herein the allegations in  
19 Paragraphs 1 through 82 above.

20 84. In carrying out her scheme to obtain the Stolen Funds, Respondent converted James' property  
21 to her own use, and damaged him thereby. Accordingly, she is liable for conversion.

22 85. Respondent converted the Stolen Funds intentionally, recklessly, oppressively, and/or  
23 maliciously. Accordingly, punitive damages should be assessed against Respondent pursuant to Civil Code  
24 section 3294, sufficient to deter her from continuing this pattern of illegal conduct, and to serve as an  
25 example to other persons that such conduct will not be tolerated in our community.

26 **D. The Stolen Funds Were Procured by James' Mistake.**

27 86. Petitioner incorporates by reference as though fully set forth herein the allegations in  
28 Paragraphs 1 through 85 above.

1 87. The Stolen Funds were obtained through mistake, and James would not have transferred the  
2 subject funds but for this mistake.

3 88. James agreed to transfer the Stolen Funds under a material mistake of law and fact, in that  
4 he was unaware of the nature and legal effect of doing so, and unaware of Respondent's scheme to claim the  
5 Stolen Funds as a gift.

6 89. Accordingly, the Stolen Funds should be returned to the Trust.

7 90. As an alternative remedy, title to the Redwood City property should be modified to reflect  
8 its ownership by Petitioner as Trustee, as the property was acquired using the Stolen Funds.

9 **E. Respondent is Liable for Financial Elder Abuse.**

10 91. Petitioner incorporates by reference as though fully set forth herein the allegations in  
11 Paragraphs 1 through 90 above.

12 92. The Elder Abuse and Dependent Adult Civil Protection Act (the "Act") is a broad remedial  
13 statutory scheme enacted to protect California's elderly and dependent population. California courts  
14 recognize the importance of these remedial goals. See, e.g., Keyle v. Remery (2005) 134 Cal.App.4th 1, 5  
15 (the Act was enacted "to afford extra protection to a vulnerable portion of the population from mistreatment  
16 by abuse or neglect") (citing Delaney v. Baker (1999) 20 Cal.4th 23, 33).

17 93. Welfare & Institutions Code section 15610.30, et seq. imposes liability where a person takes  
18 property belonging to an elder or dependent adult. This includes "taking" property by means of undue  
19 influence. To foster its remedial purpose, courts construe the Act liberally. People ex rel. Dept. of  
20 Transportation v. Muller (1984) 36 Cal.3d 263, 269.

21 94. Respondent's acts in procuring well over one million dollars from James, qualify as financial  
22 elder abuse under the Act.

23 95. Pursuant to Civil Code section 2224, Respondent is a constructive trustee of the property  
24 taken from James, and she holds that property for the benefit of the Trust. To the extent any such property  
25 is no longer within her possession, custody or control, Respondent is liable to the Trust for any shortfall,  
26 including interest thereon, and damages caused thereby, including lost opportunity costs.

27 96. As a result of her actions, Respondent is liable under Welfare & Institutions Code section  
28 15657.5(a) for Petitioner's reasonable attorneys' fees and costs in pursuing this action.

1           97. Any of Respondent's family members, friends or associates who participated in the  
2 misappropriation of James' property, as described above, are also liable under the Act. Petitioner will amend  
3 this Petition to add any such individuals he identifies in discovery and as part of his further investigation,  
4 and those individuals will likewise be liable for damages to the Trust under the Act, punitive damages under  
5 Civil Code section 3294, and attorneys' fees and costs incurred by Petitioner in pursuing this litigation under  
6 Welfare & Institutions Code section 15657.5(a). Petitioner reserves the right to further amend this Petition  
7 to add additional Respondents and additional facts as revealed through discovery.

8 **F. The Property Misappropriated From the Trust Must Be Returned Pursuant to Probate Code**  
9 **Section 850.**

10           98. Petitioner incorporates by reference as though fully set forth herein the allegations in  
11 Paragraphs 1 through 97 above.

12           99. Probate Code section 850(a), subsection (3)(B), provides that a trustee may bring an action  
13 to recover trust property wrongfully held by another. Under this provision, Petitioner seeks to reclaim from  
14 Respondent the \$1,167,050 she misappropriated from the Trust, along with any funds paid to Respondent  
15 during the time that she was acting as a caregiver to James that are in excess of conventional caregiver  
16 compensation.

17           100. Under Probate Code section 859, Respondent, and any other responsible party, is further  
18 liable for twice the value of any property restored to James' estate.

19 **G. The Trust Holds Equitable Title to the Los Angeles Property and, In the Alternative to the**  
20 **Claims Asserted Above, the Trust Holds Equitable Title to the Redwood City Property.**

21           101. Petitioner incorporates by reference as though fully set forth herein the allegations in  
22 Paragraphs 1 through 100 above.

23           102. Trust assets were used for the down payment on the Los Angeles property and to pay the  
24 mortgage on the property. James was and remains the principal borrower on the mortgage. He made  
25 mortgage payments with the rent collected from the property. He also paid to maintain the property. These  
26 allocations were reflected on his tax returns. James, after transferring the property in 2006, at all times  
27 remained an equitable owner. Petitioner, as James' successor-in-interest, now holds equitable title to the Los  
28 Angeles property. Pursuant to Probate Code section 17200(b), the Court should order that legal title be  
modified to reflect this.

1 103. Petitioner also requests that the Court, in the alternative to the relief sought above, determine  
2 that Petitioner, as Trustee, holds equitable title to the Redwood City property and accordingly that legal title  
3 should be modified to reflect this, as the property was purchased using the Stolen Funds.

4 **H. The Deed from James to Debby's Revocable Trust for the Los Angeles Property Should Be**  
5 **Cancelled.**

6 104. Petitioner incorporates by reference as though fully set forth herein the allegations in  
7 Paragraphs 1 through 103 above.

8 105. On April 21, 2006, James signed a Deed that purported to transfer his interest in certain real  
9 property located at 1627 McCollum Street, Los Angeles, California 90026, and more particularly described  
10 as follows:

11 Lot 10 in Block 6 of Berkeley Tract, in the city of Los Angeles, County of  
12 Los Angeles, State of California, as per map recorded in Book 36, Pages 9  
and 10 of miscellaneous records in the office of the County Recorder of said  
County.

13 APN: 5423-014-008. Said Deed was recorded on June 12, 2006, in the Los Angeles County Recorder's  
14 Office as Document No. 06 1285101. A true and correct copy of the Deed is attached hereto and  
15 incorporated herein by this reference as **Exhibit E**.

16 106. If the purported Deed is left outstanding, James' property may be sold by Debby and all  
17 proceeds therefrom taken without any payment to James or his Trust.

18 107. Petitioner hereby offers to restore any consideration furnished by Debby for the purported  
19 Deed, on condition that Debby deliver the purported Deed to the Court for cancellation.

20 108. Debby has proceeded to take possession of the income and profits from the above-described  
21 property. As a result, Petitioner has suffered and will suffer damages in an amount not yet ascertained.

22 109. Petitioner did not previously make a demand to Debby for the return of the above-mentioned  
23 property because, prior to the date Petitioner sought return of the property, Petitioner did not know the  
24 property had been wrongfully taken.

25 110. Debby's wrongful taking of the property as herein alleged was not previously discovered by  
26 Petitioner until after a date within three years of the commencement of this action. Petitioner could not with  
27 due diligence have discovered Debby's wrongful taking of the property until on or about this date because  
28 James was of unsound mind and James was subjected to the undue influence of Debby. Furthermore, at all

1 times herein mentioned, Debby was acting as the care giver, agent, and fiduciary of Decedent.

2 111. Petitioner is informed and believes, and thereupon alleges, that at the time of the execution  
3 of the aforementioned Deed, James was not of sound and disposing mind. Petitioner is further informed and  
4 believes, and thereupon alleges, that at the time the purported Deed was executed, James did not have  
5 sufficient mental capacity to understand the nature of his actions in agreeing to his executing the deed,  
6 understand and recollect the nature and situation of his property, or remember and understand his relations  
7 to his family members. During this period of time, James was of unsound mind and did not have the  
8 capacity to contract in general, or donative or testamentary capacity, in particular.

9 **I. The Court Should Quiet Title to the Los Angeles Property.**

10 112. Petitioner incorporates by reference as though fully set forth herein the allegations in  
11 Paragraphs 1 through 111 above.

12 113. At the time of his death, James was an owner of certain real property located at 1627  
13 McCollum Street, Los Angeles, California 90026, and more particularly described as follows:

14 Lot 10 in Block 6 of Berkeley Tract, in the city of Los Angeles, County of  
15 Los Angeles, State of California, as per map recorded in Book 36, Pages 9  
16 and 10 of miscellaneous records in the office of the County Recorder of said  
17 County.

18 APN: 5423-014-008.

19 114. The basis of James' title is a Grant Deed from Erik A. Eff and Julia Michele Collins,  
20 Husband and Wife as Joint Tenants, granting the Los Angeles property to James and Debby as tenants in  
21 common, and recorded in the Official Records of the County of Los Angeles on September 2, 2005, as  
22 Document No. 08 2124878. Petitioner claims title to the Los Angeles property as James' successor-in-  
23 interest and as the successor trustee of James' Trust. A true and correct copy of the Deed is attached hereto  
24 and incorporated herein by this reference as **Exhibit F**.

25 115. Debby claims ownership of a present interest in the Los Angeles property by virtue of a  
26 purported Deed executed by James and recorded as set forth above. However, Petitioner is informed and  
27 believes that said Deed is invalid and is subject to cancellation by this Court, as alleged above.

28 116. The adverse claim described in the preceding paragraphs are all without any right whatever,  
and Debby has no right, title, estate, lien or interest whatever in James' interest in the Los Angeles property.

117. Petitioner seeks to quiet title to the Los Angeles property, against all adverse claims of all

1 claimants, known or unknown, as of June 12, 2006, the date the purported Deed from James was executed  
2 and recorded.

3 **J. The Court Should Quiet Title to the Redwood City Property.**

4 118. Petitioner incorporates by reference as though fully set forth herein the allegations in  
5 Paragraphs 1 through 117 above.

6 119. At the time of his death, James was an owner of certain real property located at 229 Fulton  
7 Street, Redwood City, California 94062, and more particularly described as follows:

8 The land referred to is situated in the County of San Mateo, City of Redwood  
9 City, State of California, and is described as follows:

10 PARCEL ONE:

11 Parcel 2, as delineated upon that certain Map entitled "PARCEL MAP NO.  
12 88-12, BEING A SUBDIVISION OF LOTS 3, 4 AND 6, BLOCK 21 AS  
13 DELINEATED UPON THAT CERTAIN MAP ENTITLED 'DINGEE  
14 PARK'", filed for record in the Office of the Recorder of the County of San  
15 Mateo, State of California, on July 9th, 1908 in Book 6 of Maps, at Pages 25  
16 and 26, in the map which was filed in the Office of the Recorder of the  
17 County of San Mateo, State of California, on December 15, 1988, in Book 61  
18 of Parcel Maps at Pages 54 and 55.

19 PARCEL TWO:

20 TOGETHER WITH a private sanitary sewer easement over the Northeasterly  
21 9 feet of Parcel I, as delineated upon that certain Map entitled "PARCEL  
22 MAP NO. 88-12, BEING A SUBDIVISION OF LOTS 3, 4 AND 6, BLOCK  
23 21, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED  
24 'DINGEE PARK'", filed for record in the Office of the Recorder of the  
25 County of San Mateo, State of California, on July 9th, 1908 in Book 6 of  
26 Maps, at Pages 25 and 26, in the Map which was filed in the Office of the  
27 Recorder of the County of San Mateo, State of California, on December 15,  
28 1988, in Book 61 of Parcel Maps at Pages 54 and 55.

APN: 052-241-260.

120. The basis of James' title is his payment of over \$1.1 million of the consideration for the  
purchase of the Redwood City property, with the expectation that he would be on title to the Redwood City  
property upon purchase. James would have been on title to the Redwood City property upon the close of  
escrow on the purchase of the Redwood City property but for the dishonest way in which Debby caused  
James to be removed as a buyer on the purchase contract for the Redwood City property.

121. Debby claims ownership of a present interest in the Redwood City property by virtue of a  
purported Grant Deed from Mikhail Minkevich and Tatiana Minkevich, husband and wife, to Debby Chang,

1 recorded in the Official Records of the County of San Mateo on March 28, 2017, as Document No. 2017-  
2 026885. A true and correct copy of the Deed is attached hereto and incorporated herein by this reference as

3 **Exhibit G.**

4 122. The adverse claim described in the preceding paragraphs are all without any right whatever,  
5 and Debby has no right, title, estate, lien or interest whatever in James' interest in the Redwood City  
6 property.

7 117. Petitioner seeks to quiet title to the Redwood City property, against all adverse claims of all  
8 claimants, known or unknown, as of March 28, 2017, the date the Redwood City property was purchased  
9 by James and Debby.

10 **VII.**

11 **PRAAYER FOR RELIEF**

12 WHEREFORE, Petitioner respectfully requests that the Court make the following orders:

13 1. That the Stolen Funds were wrongfully taken and shall be returned to the Trust, with interest.

14 2. That any Trust funds paid to Respondent during the time that she was acting as a caregiver  
15 to James that are in excess of conventional caregiver compensation shall be returned to the Trust.

16 3. That Respondent be deemed to hold all property misappropriated from the Trust as a  
17 constructive trustee under Civil Code section 2224, and that Respondent be ordered to return such property  
18 to the Trust.

19 4. With respect to the funds used to acquire the Redwood City property, in the alternative, that  
20 title to the Redwood City property, having been acquired with James' funds from Trust A, should be  
21 modified to reflect its ownership by Petitioner as Trustee of Trust A.

22 5. That Petitioner be deemed to hold equitable title in the Redwood City property, and that title  
23 to the property be modified to reflect this ownership interest.

24 6. That Petitioner be deemed to hold equitable title in the Los Angeles property, and that title  
25 to the property be modified to reflect this ownership interest.

26 7. That Respondent, and any of Respondent's family members, friends or associates who  
27 participated in the misappropriation of James' property, be found liable to Petitioner for the resulting  
28 damages, punitive damages based on their recklessness, oppression, fraud, and/or malice in the commission

1 of the above-described acts, double damages under Probate Code section 859, and Petitioner's reasonable  
2 attorneys' fees and costs under Welfare & Institutions Code section 15657.5(a).

3 8. For an order declaring that certain Grant Deed recorded on June 12, 2006, in the Los Angeles  
4 County Recorder's Office as Document No. 06 1285101 is of no force or effect, and ordering Debby Chang  
5 to present that purported Grant Deed to the Court for cancellation.

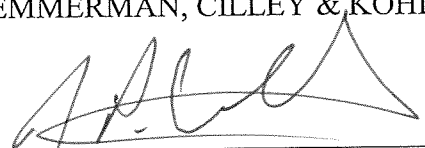
6 9. For judgment reflecting Petitioner as owner of the real property located at 1627 McCollum  
7 Street, Los Angeles, California 90026.

8 10. For judgment reflecting Petitioner as owner of the real property located at 229 Fulton Street,  
9 Redwood City, California 94062.

10 11. For such other and further relief as the Court may deem just and proper.

11  
12 Dated: 2/28/2020

TEMMERMAN, CILLEY & KOHLMANN, LLP

  
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15 JAMES P. CILLEY, ESQ.  
Attorney for Peter Ho

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**VERIFICATION**

I, Peter Ho, declare:

I am the petitioner in the within action; I have read the foregoing **SECOND AMENDED PETITION FOR RETURN OF TRUST PROPERTY (Probate Code § 850), FOR FINANCIAL ELDER ABUSE, AND FOR RELATED RELIEF, INCLUDING CANCELLATION OF DEED AND QUIET TITLE** and know the contents thereof.

I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on this 27<sup>th</sup> day of FEBRUARY, 2020, at Milpitas, California.

  
\_\_\_\_\_  
Peter Ho