

1 HARTOG, BAER & HAND
A Professional Corporation
2 David W. Baer, SBN: 99262
Andrew R. Verriere, SBN: 264674
3 4 Orinda Way, Suite 200-D
Orinda, CA 94563
4 Tel No.: (925) 253-1717
Fax No.: (925) 253-0334
5 Email: dbaer@hbh.law
averriere@hbh.law
6 Attorneys for Respondent Debby Chang

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

10
11 In the matter of:

12 TRUST A UNDER THE JAMES F. HO
AND GRACE C. HO DECLARATION
13 OF TRUST DATED SEPTEMBER 11,
1992, as amended.

14 _____
15 PETER C. HO, TRUSTEE OF TRUST A
OF THE JAMES F. HO AND GRACE C.
16 HO DECLARATION OF TRUST
DATED SEPTEMBER 11, 1992, as
17 amended,

18 Petitioner,

19 v.

20 DEBBY CHANG, and DOES 1 through
21 20, inclusive,

22 Respondents.
23
24

CASE NO. 17PRO00973

RESPONDENT DEBBY CHANG'S
RESPONSE AND OBJECTION TO
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

Date: October 15, 2020

Time: 9:00 a.m.

Dept.: 28

25 Respondent, Debby Chang (*Debby*), files this response and objection to the
26 Second Amended Petition for Return of Property, for Financial Elder Abuse, And for
27 Related Relief, Including Cancellation of Deed and Quiet Title (the *Petition*) filed by
28 Petitioner, Peter Ho (*Peter*), and hereby alleges and asserts as follows:

1 **I. Introduction**

2 1. Peter brings this action in bad faith. He seeks to secure for himself
3 assets that he knows his father, James Ho (*Decedent or James*), intended for his
4 devoted partner of over two decades. Peter primarily attacks a gift of approximately
5 \$1.1 million used as a down payment to purchase a residence in Redwood City that
6 James shared with Debby. Peter attacks the gifts to Debby, made over the course of
7 approximately twenty years, notwithstanding the fact his father provided other
8 assets for him and his sisters, on information and belief, under his Trust. He simply
9 wants more.

10 2. The testimony of the drafting attorney of the Certificate of Independent
11 Review, which confirmed James' gift to Debby of the funds for the down payment,
12 shall be granted "much weight" by the Court. (*Estate of Goetz* (1967) 253 Cal.App.2d
13 107, 114.) Here, the drafting attorney, John Martin, has already provided Peter with
14 ample evidence that their action is unsupportable. Yet he persists, nonetheless. This
15 action is brought in bad faith, and is wholly frivolous. The Petition must be
16 dismissed by the Court, and Peter should be ordered to pay all of Debby's fees and
17 costs incurred in responding to the Petition.

18 **II. Factual Background**

19 **A. Debby and James Lived Like a Married Couple for Over Two**
20 **Decades.**

21 3. Debby and James lived as a married couple for more than twenty years
22 together, sharing all aspects of their lives. Although they met decades before, they
23 began a relationship in 1995, after James' wife passed away. They took many trips
24 together, socialized with friends, and celebrated birthdays and holidays with their
25 respective children.

26 4. Up until around 2001, Debby worked full-time, and James and Debby
27 maintained separate residences. Debby spent weekends at James' home in San
28 Mateo, and shopped for groceries, using her own funds, and cooked meals for him to

1 have during the week. James and Debby spoke on the phone several times a day.

2 5. In 2001, when Debby retired, she and James began living together,
3 primarily at Debby's property in El Cerrito, California. James often expressed to
4 Debby and Peter that he wanted to take care of Debby if anything should happen to
5 him. James and Debby shared their financial resources. However, because they were
6 in a committed relationship, and per traditional Chinese custom, they never thought
7 of putting anything in writing.

8 6. In 2006, James was diagnosed with meningioma. As Peter asserts in
9 his Petition, James' doctors advised that the cancer would be monitored in a "wait
10 and see" mode. During the years that followed, James lived an active life, including
11 traveling with Debby. James remained in control over his finances and investments.
12 However, Peter assisted him with his taxes each year. James and Debby lived
13 together, switching between their respective residences in San Mateo and El Cerrito
14 until 2014. During this year, James needed Debby to remodel his trust property at
15 272 Booth Bay in Foster City. It was at this time that they began living together
16 full-time under one roof. They would continue to live together until James' abduction
17 on August 23, 2017.

18 7. James started receiving radiation treatment in July 2016 for his
19 meningioma. In the fall of 2016, he was diagnosed with blood cancer. After James
20 started chemotherapy, Debby spent virtually all of her time trying to improve his
21 health, and to ensure he was eating a healthy diet, and taking vitamins and his
22 medication, which consisted of 15-20 pills per day. Debby took extra steps to identify
23 a renowned acupuncturist as well as providing Chinese herbs to improve James'
24 appetite. As she devoted enormous time and effort to taking care of James, Debby
25 had little to no time to see her own doctor. It was clear that James' daughters, Diane
26 (also known as *Kato*) and Della, had no interest in assisting Debby with James' care,
27 even after his diagnosis. They were both estranged from James for many years prior
28 to his death. Debby spoke with Della after James' diagnosis, requesting she

1 participate in James' care, and Della responded, "he has his son, Peter. He doesn't
2 need me." Debby organized a birthday party for James in July 2017, and invited
3 their respective children and close friends. The day before the party, Della came to
4 the Redwood City Property and demanded that Debby tell her where James' money
5 was. Peter, who was also present, told Della that the money had been invested in the
6 house. The following day, Della again demanded to know where James' money was
7 and told Debby to place James in a care facility.

8 **B. James was Abducted from the Residence He Shared with**
9 **Debby.**

10 8. On August 23, 2017, Peter took James to a Chinese acupuncture
11 appointment and afterwards kept him at Peter's home under the pretext that he
12 wanted to "monitor his condition." In the Petition, Peter admits that he abducted
13 James as a result of the meeting with the attorney. James would never return to the
14 home he shared with Debby.

15 9. Debby was only able to speak with James on the second day after his
16 abduction. James repeatedly told Debby that he wanted to come home but was
17 unable to tell her where he was. Debby was distraught, knowing James required
18 assistance to eat, bathe, and walk to the restroom. James began crying and told
19 Debby he wanted to return home.

20 10. On August 28, 2017, Debby called James several times, with no
21 response. Debby then contacted all of James' children, Peter, Della and Diane, but
22 did not receive a response. Debby became increasingly concerned. She went to the
23 Redwood City police station to see if they could help her find out where exactly
24 James was, and ensure he was safe. On information and belief, the police called
25 Peter and asked that James be returned to his home with Debby. Peter failed and
26 refused to do so.

27 11. At Debby's urging, her daughter Sophie also reached out to Peter. Peter
28 proposed a meeting with him and his sisters and Debby's daughters, Sophie, Rita,

1 and Judy. At the meeting, Sophie and Rita inquired about James' health and asked
2 when Debby could see James again. Peter stated he was concerned Debby would
3 upset James. Peter, Della and Diane remained focused on discussing James'
4 financial matters.

5 12. On August 31, 2017, Diane and Peter came to Debby and James' home
6 to retrieve James' car. Diane told Sophie and Rita that they had hired a new
7 attorney, and had "changed the will," so that James' gifts to Debby were now
8 considered loans, according to Diana, and not gifts.

9 13. On September 5, 2017, Rita received a text from Diane that James was
10 not doing well, and that she had convinced her siblings, Peter and Della, to allow
11 Debby to visit James for fifteen minutes. Debby, Sophie and Rita went to see James,
12 who was near death and could not speak. James was dehydrated and appeared to be
13 in great pain. Debby tried to comfort him but was distraught over seeing him in this
14 condition. It was unclear whether James had received any medical attention and
15 food since his abduction. James passed away that evening, less than two weeks after
16 he was abducted.

17 **C. James Gifted Debby Funds to Purchase Real Property During**
18 **Their Relationship.**

19 14. Around 2005, Debby and James sold a real property in Albany,
20 California. Debby used profits from the Albany sale to assist with the purchase of a
21 real property located at 1627 McCollum Street in Los Angeles (the *Los Angeles*
22 *Property*). James' name was only briefly on title. In 2006, James transferred title to
23 Debby and made it clear that this was to be her property and was a gift.

24 15. From the time the Los Angeles Property was purchased, Debby received
25 the rent and applied it to the mortgage and other expenses, including a remodel of
26 two of the units, adding square footage to one of them. For several years the rent
27 was generally insufficient to pay these costs. Debby also paid all maintenance
28 expenses and property taxes. James did not contribute to any of these expenses.

1 Over the years, James often told Debby that any funds of his used to purchase the
2 Los Angeles Property was a gift, and that the property was “all yours.” Per his
3 agreement with Debby, James continued to benefit from the Los Angeles Property by
4 claiming it as an expense on his tax returns.

5 16. In 2017, James and Debby visited a real property located 229 Fulton
6 Street, Redwood City (the *Redwood City Property*). James expressed interest in
7 purchasing the property and asked Peter to also check out the property. James made
8 it clear that he wanted to buy the house to live in with Debby and to provide her
9 with the down payment of approximately \$1.1 million. After submitting their offer to
10 purchase the house, James and Debby had three days to back out. Debby was
11 concerned about the cost and said to James, “Are we sure you want to buy the
12 house? The monthly mortgage payment is too much for me.” James replied, “I have
13 the money for the down payment for you. The down payment to you is already
14 yours.” James also told Debby that he liked the house and wanted to live there with
15 her for the rest of his life. Further, James told Debby that he wanted her to have the
16 house after he passed.

17 17. Peter was present on one occasion with James and Debby as they filled
18 out a document concerning the Redwood City Property. Debby asked James if he
19 wanted his name on the title to the Redwood City Property. James responded that
20 he “didn’t care.” Peter started waving his arms, as he stood behind James, signaling
21 “no,” that he did not want James’ name to be added to the title. On information and
22 belief, Peter and James had agreed that if James’ name was on title that Peter
23 would pay the property tax on the Redwood City Property during James’ lifetime,
24 because Peter was already claiming a lower property tax basis on his own home by
25 using James’ tax basis. On further information and belief, Peter told James not to
26 put himself on title to the Redwood City Property, so Peter could avoid paying the
27 property tax.

28 18. After escrow closed in March 2017, Peter asked Debby how much

1 interest she would pay on the loan his father provided for the down payment. James
2 told Peter then, and on several later occasions, that it was a gift, and Debby should
3 not have to pay interest.

4 19. Debby paid the entire mortgage, property taxes and insurance of
5 approximately \$9,000 every month, and has continued to do so, with only a one-time
6 contribution from James to assist her.

7 20. James told Peter more than once, in Debby's presence, that he did not
8 intend for her to repay the gift. More specifically, James told Peter, "That's Auntie
9 Debby's money." Peter responded to James by asking, "Are you sure? It's your
10 money...You can do whatever you want." James remained adamant it was a gift.

11 21. Since Peter repeatedly pursued this line of questioning and received the
12 same response from his father each time, he suggested hiring attorney to make clear
13 James' intent. On or around August 21, 2017, Debby, James, and Peter discussed
14 hiring an attorney to draft a document to clearly state how James wanted to treat
15 the down payment on the Redwood City Property. They agreed that Peter would be
16 given notice of the appointment and a meeting was arranged with an experienced
17 estate planning specialist, attorney John Martin. Esq. Before the appointment Mr.
18 Martin, Peter again asked James what he wanted to do with the money, and James
19 got angry and told him it was for Auntie Debby. Peter later contacted Mr. Martin
20 and cancelled the meeting, without consulting James. On information and belief,
21 Peter was worried that his father would confirm his gift to Debby, rather than
22 revoke it as Peter hoped. James then spoke with Mr. Martin by phone and requested
23 he reschedule their appointment to take place an hour later. Mr. Martin met with
24 James, and, on information and belief, conducted a private, intensive interview. On
25 further information and belief, based on Mr. Martin's file, Mr. Martin then drafted a
26 certificate of independent review, which confirmed James' gift of the Redwood City
27 Property to Debby.

28

1 **III. Response to Petition**

2 22. Debby admits the allegations in paragraph 1.

3 23. In responding to the factual allegations in paragraph 2, Debby admits
4 that she and James began a relationship shortly after his wife's death that lasted
5 until the time of his death. Debby admits that she and James each owned separate
6 real property assets throughout this time, and that they resided at separate
7 properties at the beginning of their relationship, while Debby was working. Further,
8 Debby asserts they lived together for the vast majority of their twenty-year
9 relationship. Debby denies the remaining allegations in paragraph 2.

10 24. In responding to the factual allegations in paragraph 3, Debby admits
11 that James was diagnosed with a brain tumor in 2006. Debby denies the remaining
12 allegations in paragraph 3.

13 25. In responding to the factual allegations in paragraph 4, Debby admits
14 that she left a voicemail for James' eldest daughter in or around 2014, expressing
15 concern about his lack of hygiene. Debby denies the remaining allegations in
16 paragraph 4.

17 26. In responding to the factual allegations in paragraph 5, Debby lacks
18 sufficient information to enable her to answer the allegation that James used the
19 sale proceeds of 148 CSM San Mateo to purchase 107 Flying Cloud property in
20 Foster City to avoid paying capital gains taxes, and on that basis denies said
21 allegation. Debby denies the remaining allegations in paragraph 5.

22 27. In responding to the factual allegations in paragraph 6, Debby admits
23 that she and James lived together in Foster City for a period prior to his death.
24 However, Debby asserts she lived with James prior to this period, primarily at her
25 property in El Cerrito. Debby admits she slept in the master bedroom. Debby admits
26 that James paid for some housing costs and other living expenses. Debby denies the
27 remaining allegations in paragraph 6.

28 28. In responding to the factual allegations in paragraph 7, Debby admits

1 that James was diagnosed with blood cancer in 2016. Debby further admits that
2 James received chemotherapy and radiation treatments, which appeared to leave
3 him fatigued. Debby admits that she often prepared meals and shopped for
4 groceries, as she had from the beginning of their relationship. Debby also admits she
5 assisted James with personal hygiene, bathing and medication during this time. She
6 admits that she referred to herself as James' friend and girlfriend. Debby denies the
7 remaining allegations in paragraph 7.

8 29. In responding to the factual allegations in paragraph 8, Debby admits
9 that James gifted her with approximately \$1.1 million to purchase the Redwood City
10 residence, with only her name on title. Debby asserts Peter knew and approved that
11 title should be held solely by Debby. Debby asserts she made all payments on the
12 repairs, utilities and mortgage, with the exception of a one-time contribution from
13 James. Debby denies the remaining allegations in paragraph 8.

14 30. In responding to the factual allegations in paragraph 9, Debby admits
15 that James met with an estate planning attorney in August 2017, and that, on
16 information and belief, based on Mr. Martin's file, James advised the attorney that
17 he intended that the approximately \$1.1 million he had given to Debby should be
18 confirmed as a gift to her. Debby denies the remaining allegations in paragraph 9.

19 31. Debby denies the factual allegations in paragraph 10.

20 32. Debby denies the factual allegations in paragraph 11.

21 33. In responding to the factual allegations in paragraph 12, Debby asserts
22 she requested assistance from James' family to care for him, but denies she stated
23 that she would no longer care for him. Debby admits that James died approximately
24 two weeks after he met with the attorney. Debby further admits that she signed a
25 listing agreement to sell the Redwood City Property the day after his death, and she
26 now associated the property only with grief and bad feelings. Debby denies the
27 remaining allegations in paragraph 12.

28 34. In responding to the factual allegations in paragraph 13, Debby admits

1 that she did not attend James' funeral, because she was uncomfortable around
2 James' children, given their recent behavior toward her, and was overcome with
3 grief and sadness. Debby further alleges that years before this, when James was
4 healthy, Peter's wife Jeanny asked Debby why she treated James so well. In
5 response Debby said that she wanted to treat James well and take good care of him
6 while he was alive and that when and if the time came, she would not attend James'
7 funeral.

8 35. Debby admits the factual allegations in paragraph 14.

9 36. Debby admits the factual allegations in paragraph 15.

10 37. Debby admits the factual allegations in paragraph 16.

11 38. In responding to the factual allegations in paragraph 17, Debby denies
12 that she or anyone else is "responsible in some manner for the occurrences and
13 damages" alleged in the Petition, or that Peter has been damaged or is entitled to
14 relief as alleged in the Petition. Debby denies each and every remaining factual
15 allegation or legal assertion in paragraph 17. The remainder of paragraph 17
16 consists of legal argument, which Debby may neither admit nor deny..

17 39. In responding to the factual allegations in paragraph 18, Debby admits
18 that James was domiciled in San Mateo County at the time of his death, alleges that
19 she is a resident of San Mateo County, California and denies each and every
20 remaining factual allegation or legal conclusion in paragraph 18.

21 40. Paragraph 19 consists of legal argument, which Debby need neither
22 admit nor deny.

23 41. Paragraph 20 consists of legal argument, which Debby need neither
24 admit nor deny.

25 42. In responding to the factual allegations in paragraph 21, Debby denies
26 that she was James' "caregiver," to the extent that Peter intends that phrase to
27 mean that she was James' "care custodian as defined by Prob. Code section 21362.
28 Debby admits that Shan-Yuan Ho (also known as Diane, and Kato) and Della N. Lau

1 are James' daughters, and that she and James' daughters are adults. Debby lacks
2 information sufficient to admit or deny the remaining factual allegations of
3 paragraph 21, and on that ground denies said allegations. To the extent that
4 Paragraph 21 consists of legal argument concerning the right to notice, Debby need
5 neither admit nor deny said allegations.

6 43. In responding to the factual allegations in paragraph 22, Debby denies
7 that she misappropriated any funds at any time. Debby admits that James died on
8 September 5, 2017, his wife Grease Ho died in 1995 and that a document purporting
9 to be James' and Grace's Trust Agreement, which speaks for itself, is attached to the
10 Petition. Debby lacks information sufficient to admit or deny the remaining factual
11 allegations of paragraph 22, and on that ground denies said allegations.

12 44. In responding to the factual allegations in paragraph 23, Debby admits
13 that she and James began a relationship after his wife's death that lasted until
14 James' death. Debby admits that she and James each owned separate real property
15 assets throughout this time, including real property she owned in El Cerrito and real
16 property James owned in San. Mateo, and that they sometimes resided in these
17 separate properties, especially while Debby was still working. Debby admits James
18 was often frugal. Debby denies the remaining allegations in paragraph 23.

19 45. Debby admits that documents purporting to be James' trust
20 amendments, which speak for themselves, are attached to the Petition. Debby is
21 informed and believes that the remaining factual allegations in paragraph 24 are
22 true.

23 46. In responding to the factual allegations in paragraph 25, Debby admits
24 that James had health issues, and that he was diagnosed with a brain tumor in
25 2006. Debby further admits that James' doctors recommended a wait and see
26 approach to monitor the tumor's growth, and that James agreed to this approach.
27 Debby lacks sufficient information to admit or deny the remaining factual
28 allegations in paragraph 25, and on that basis denies said allegations.

1 47. In responding to the factual allegations in paragraph 26, Debby admits
2 that James transferred title in the Los Angeles Property into her trust in 2006.
3 Debby denies that James continued to receive fifty percent of the rental income,
4 denies that any funds of James were used to pay the mortgage and expenses after
5 said transfer, and denies that it was ever her intention or James' intention that he
6 would retain an equitable interest in the property after said transfer. Debby alleges
7 that she was solely responsible for the mortgage, property taxes, and expenses
8 concerning the Los Angeles Property following the 2006 transfer. Debby admits that
9 the property is subject to a mortgage of approximately \$600,000 and that James
10 remained a borrower on the loan encumbering the property following the 2006
11 transfer. Debby lacks sufficient information or belief to answer the remaining
12 factual allegations in paragraph 26, and on that basis denies said allegations.

13 48. In responding to the factual allegations in paragraph 27, Debby asserts
14 that James' medical records speak for themselves as they pertain to what James'
15 physicians may or may not have noted. Debby denies the remaining factual
16 allegations in paragraph 27.

17 49. In responding to the factual allegations in paragraph 28, Debby admits
18 that James turned 81 in 2014, that James sold his San Mateo residence in January
19 2014, and Debby lacks information to admit or deny that James' federal income tax
20 return reported a capital gain on the sale. James used the proceeds from the sale to
21 purchase a home located at 107 Flying Cloud Isle in Foster City. Debby lacks
22 sufficient information or belief to answer the allegation that James wrote her checks
23 for \$30,000 and \$25,000 in 2014, and on that basis denies said allegation. Debby
24 admits to filing joint tax returns with her husband James Chang during some years
25 before his death. Debby denies, on information and belief, the remaining factual
26 allegations in paragraph 28.

27 50. In responding to the factual allegations in paragraph 29, Debby admits
28 that as of the time James sold his residence in 2014 she retained her real property in

1 El Cerrito and was renting part of it out. Debby denies the remaining factual
2 allegations in paragraph 29.

3 51. In responding to the factual allegations in paragraph 30, Debby admits
4 that she and James moved into a property in Foster City. She admits that James
5 paid some of the expenses, including utilities. Debby asserts she was primarily
6 responsible for food expenses. Debby denies the remaining factual allegations in
7 paragraph 30.

8 52. In responding to the factual allegations in paragraph 31, Debby admits
9 that James purchased real property in Foster City. Debby admits that she did not
10 pay rent while living with James, and that James paid some of the expenses,
11 including the utilities, from May 2014 through March 2016. Debby admits that
12 during this period, she received rental income from her El Cerrito property and from
13 the Los Angeles Property. However, Debby asserts, that during this period, little to
14 no profit was received because the rental income did not cover the mortgage and
15 related expenses. Debby denies the remaining factual allegations in paragraph 31.

16 53. In responding to the factual allegations in paragraph 32, Debby admits
17 that in March 2016, she and James moved into a condominium in Foster City. Debby
18 admits that James paid rent and some expenses on the property. Debby also admits
19 she slept in the master bedroom. Debby denies the remaining factual allegations in
20 paragraph 32.

21 54. In responding to the factual allegations in paragraph 33, Debby admits
22 that she took care of James. She denies that she did so grudgingly, or that she
23 demanded compensation. Debby asserts that Peter did little to assist with James'
24 care, and James' daughters, Della and Diane, did not participate at all in James'
25 care, and that this was upsetting to her and James. Debby lacks sufficient
26 information and belief to admit or deny the remaining factual allegations in
27 paragraph 33, and on that basis denies said allegations.

28 55. In responding to the factual allegations in paragraph 34, Debby denies

1 that in the spring of 2016, she “convinced” James to allow her to claim all of the
2 income on the Los Angeles Property. Debby admits that James’ name remained on
3 the loan for the Los Angeles Property, but denies he was the “principal borrower.”
4 Debby further asserts that James did not request that his name be removed from
5 the loan. Debby denies the remaining factual allegations in paragraph 34.

6 56. In responding to the factual allegations in paragraph 35, Debby admits
7 that in July 2016 James began radiation therapy. She admits that she accompanied
8 James to two treatments, and admits, on information and belief, that Peter may
9 have taken him to approximately 25 treatments. Debby asserts that other than
10 transportation to medical appointments, James’ children contributed little or
11 nothing towards his care. Debby lacks sufficient information and belief to admit or
12 deny the remaining factual allegations in paragraph 35, and on that basis denies
13 said allegations.

14 57. In responding to the factual allegations in paragraph 36, Debby lacks
15 sufficient information to admit or deny that in November 2016 James designated her
16 as the beneficiary on one of his investment accounts worth more than \$300,000, and
17 on that basis denies said allegation. Debby denies that she had James designate her
18 as a beneficiary on one of his investment accounts, and on that basis denies said
19 allegation.

20 58. In responding to the factual allegations in paragraph 37, Debby admits
21 that in December 2016 she assisted James in dressing himself and getting to the
22 bathroom, and that at times he used a wheelchair. Debby denies the remaining
23 factual allegations in paragraph 37.

24 59. In responding to the factual allegations in paragraph 38, Debby admits
25 that in December 2016 James was diagnosed with multiple myeloma Debby admits
26 that James began chemotherapy, and that the chemotherapy at times left him
27 fatigued. Debby admits, on information and belief, that as of December 2016 James
28 was unable to walk long distances, and that at times he used a three-pronged cane

1 or a walker; Debby admits that James' left leg was weak, and that he fell twice
2 during his final year of life. Debby admits that James took steroids for his leg. Debby
3 lacks sufficient information to admit or deny the remaining factual allegations in
4 paragraph 39, and on that basis denies said allegations .

5 60. In responding to the factual allegations in paragraph 39, Debby asserts,
6 on information and belief, that James' medical records speak for themselves as they
7 pertain to what James' physicians may or may not have reported. Debby lacks
8 sufficient information to admit or deny what James' physicians may have told their
9 staff and others, and on that basis denies said allegations. Debby lacks sufficient
10 information to admit or deny the remaining factual allegations in paragraph 40, and
11 on that basis denies said allegations .

12 61. In responding to the factual allegations in paragraph 40, Debby admits
13 that she prepared meals and shopped for James, as she had since the beginning of
14 their relationship, and that she helped him with basic hygiene, that she helped him
15 take various medications and vitamins, and that she assisted with his mobility. She
16 denies that she did so while constantly complaining, or that she demanded
17 compensation. Debby asserts that James' children did little to assist with James'
18 care, and that this was upsetting to her and James. Debby denies the remaining
19 factual allegations in paragraph 40.

20 62. In responding to the factual allegations in paragraph 41, Debby admits
21 that she often answered the phone at the home she shared with James, and that she
22 would answer the door. Debby further alleges that during the final two years of his
23 life James often told her he did not want to visit with others and asked her to tell
24 people that he did not wish to do so. Debby denies the remaining factual allegations
25 in paragraph 41.

26 63. In responding to the factual allegations in paragraph 42, Debby lacks
27 information to admit or deny that James' daughters "tried to speak" with him about
28 him moving in with them or how he responded, and on that basis denies said

1 allegations. However, Debby alleges that Peter once asked his father about moving
2 into Peter's house, but James stated that he wanted to live with Debby, and that, on
3 information and belief, Peter's wife was concerned that it would be an inconvenience
4 for James to live with them. Debby is unaware of any further conversations about
5 James moving in with his children, or attempted conversations, occurring at any
6 time except in the few weeks before James' death, when James' children became
7 concerned about James' assets. Debby admits that James believed she would take
8 care of him, and that she did so until he was abducted from their home. Debby
9 denies the remaining factual allegations of paragraph 42.

10 64. Debby admits she received some checks from James in 2016 and lacks
11 sufficient information to answer the remaining factual allegations in paragraph 43,
12 and on that basis denies said allegations .

13 65. In responding to the factual allegations in paragraph 44, Debby admits
14 that she, James, and their real estate broker discussed purchasing the Redwood City
15 Property. Debby further admits that James signed along with Debby on the seller
16 disclosure documents. Debby asserts that James later removed his name and that
17 Peter and James did not want James' name on the title to the property.

18 66. In responding to the factual allegations in paragraph 45, Debby admits,
19 on information and belief, that on February 16, 2017, an MRI revealed that James
20 had swelling on his brain. Debby further admits that James signed the sellers'
21 counteroffer attached as Exhibit D to the Petition, which is dated the next day.
22 Debby denies the remaining factual allegations in paragraph 45.

23 67. In responding to the factual allegations in paragraph 46, Debby admits
24 that on February 19, 2017, James wrote a check for \$67,050 to Old Republic Title Co.
25 as the deposit for the Redwood City Property. Debby further admits that James
26 issued a cashier's check to her for approximately \$1.1 million, however Debby denies
27 she "caused him to issue the check." Debby further admits that she used \$1,053,000
28 of the \$1,100,000 directly for the purchase of the Redwood City Property. Debby

1 lacks information to admit or deny whether \$1.1 million represented most of the
2 Trust's or Estate's assets. Debby admits using the \$47,000 for supplemental
3 property taxes, insurance, and repairs and denies the remaining factual allegations
4 in paragraph 46.

5 68. In responding to the factual allegations in paragraph 47, Debby asserts
6 that James intended to gift her funds to purchase the Redwood City Property, for
7 them to live in together. Further, Debby alleges that Peter questioned James, on at
8 least three occasions, about whether the Redwood City down payment was a gift or a
9 loan, and James always responded that "it was a gift." Debby alleges that Peter told
10 her and James that the funds should be in the form of a loan. Peter said that the
11 money was James' to do with as he pleased, and suggested that they should hire an
12 attorney to document James' intent, an idea that James and Debby endorsed. Debby
13 alleges, on information and belief, that Peter was aware of all of the disputed
14 transfers while James was alive, as Peter admits in paragraph 48, and that Peter
15 was aware that the house was held only in Debby's name, contrary to Peter's false
16 assertions in the Petition. Debby denies the remaining factual allegations in
17 paragraph 47.

18 69. In responding to the factual allegations in paragraph 48, Debby admits
19 that \$1,167,050 was used to purchase the Redwood City Property, and that only her
20 name appears on the title. Debby alleges, on information and belief, that Peter
21 promised James that if James' name was on title, he would pay the property tax on
22 the Redwood City Property during James' lifetime, because Peter was already
23 claiming a lower property tax basis on his own home by using James' tax basis.
24 Debby denies the remaining factual allegations in paragraph 48.

25 70. In responding to the factual allegations in paragraph 49, Debby alleges
26 that James' medical records speak for themselves as they pertain to what James'
27 physicians may or may not have reported, and Debby lacks sufficient information to
28 admit or deny what James' physicians may have told their staff and others, and on

1 that basis denies the allegation as to what James' neuro-oncologist reported. Debby
2 admits that she received a cashier's check in the amount of approximately \$1.1
3 million from James. Debby denies the remaining factual allegations in paragraph
4 49.

5 71. In responding to the factual allegations in paragraph 50, Debby lacks
6 sufficient information sufficient to admit or deny what Ted Cotton may have told
7 Peter, and on that basis denies such allegations. Debby admits, on information and
8 belief, that Ted Cotton was James' financial advisor, and that Peter was James'
9 attorney-in-fact under a durable power of attorney at all relevant times. Debby
10 denies the remaining factual allegations in paragraph 50.

11 72. In responding to the factual allegations in paragraph 51, Debby admits
12 that James had health problems, and that James fell in his bedroom at some time
13 around June 2017. Debby asserts, on information and belief, that James' medical
14 records speak for themselves as they pertain to what James' physicians may or may
15 not have reported, and Debby lacks sufficient information to admit or deny what
16 James' physicians may have told their staff and others, and on that basis denies
17 such allegations. Debby denies the remaining factual allegations in paragraph 51.

18 73. In responding to the factual allegations in paragraph 52, Debby admits
19 that in mid-June 2017, she and James moved into the Redwood City Property, which
20 she and James had selected together. Debby admits that the bedrooms are located
21 on the second floor. However, Debby alleges that she and James slept downstairs
22 together due to his mobility issues. Debby denies that James slept on a cot, and
23 alleges that he slept on a bed in the same room as Debby. Debby admits that she
24 would sometimes help James climb the stairs, and further admits that she stated
25 that she would "push on James' butt" to help him up the stairs, but alleges that she
26 made this comment because James did not like to admit that he needed assistance.
27 Debby denies the remaining factual allegations in paragraph 52.

28 74. In responding to the factual allegations in paragraph 53, Debby admits

1 that James gave her approximately \$1.1 million to purchase the Redwood City
2 Property, and that title was in her name. Debby alleges that the lender presented
3 the option of removing James' name from title, which James and Peter together
4 deliberated. Debby further admits that James made one payment to Debby to help
5 her pay the mortgage after Peter asked Debby to pay \$3500 monthly interest on the
6 down payment. Debby further admits that she and James shopped for furnishings
7 together for the Redwood City Property, but that alleges that she purchased most of
8 the items. Debby admits that James paid for the internet and PG&E bills, while
9 Debby paid for the gardening services plus all the numerous repairs. Debby denies
10 the remaining factual allegations in paragraph 53.

11 75. In responding to the factual allegations in paragraph 54, Debby admits
12 that around June 2017, Peter asked her when she intended to repay the "loan."
13 Debby alleges that Peter also mentioned putting a lien on her El Cerrito property.
14 Debby further alleges, on information and belief, that James had already informed
15 Peter that the transfer was a gift, that Peter was trying to persuade her to return it
16 anyway because of Peter's own objections, and that Peter was tired of James telling
17 him that the funds were a gift, not a loan. Debby further alleges that Peter
18 suggested that they needed a writing documenting James' intent, with which James
19 and Debby both agreed. Debby denies the remaining factual allegations in
20 paragraph 54.

21 76. In responding to the factual allegations in paragraph 55, Debby admits
22 that around August 2017, James met with an attorney, John Martin, Esq., to
23 confirm James' intent. Debby alleges that the discovery responses and deposition
24 transcripts speak for themselves as to the facts that discovery reveals and otherwise
25 denies the remaining factual allegations in paragraph 55.

26 77. In responding to the factual allegations in paragraph 56, Debby admits
27 that Peter, by his own admission, learned of and unilaterally cancelled James'
28 appointment with Mr. Martin. Debby further admits that she and James

1 subsequently called Mr. Martin and that James asked him to reinstate and keep the
2 appointment. Debby lacks sufficient information to admit or deny what James may
3 have told Peter outside of her presence or his reasons for doing so, , and on that
4 basis denies said allegations. Debby alleges that on that day she overheard James
5 tell Peter that the money was for “Auntie Debby.” Debby denies the remaining
6 factual allegations in paragraph 56.

7 78. In responding to the factual allegations in paragraph 57, Debby lacks
8 information sufficient to admit or deny what James may have told Mr. Martin
9 outside of her presence. Debby admits that Mr. Martin came to the house, and that
10 he spoke with James outside of her presence. Debby further admits that she entered
11 the room after James and Mr. Martin completed their private discussion and alleges
12 that Mr. Martin’s notes speak for themselves. Debby alleges that Mr. Martin asked
13 her whether if James ever needed money, she would she give it to him. Debby
14 answered that yes, of course she would. Debby admits, on information and belief,
15 based on Mr. Martin’s file, that Mr. Martin signed a Certificate of Independent
16 Review stating his conclusion that the \$1.1 million transfer from James to Debby
17 was not the product of fraud or undue influence.

18 79. In responding to the factual allegations in paragraph 58, Debby alleges
19 that after she, James and Peter agreed that something needed to be in writing
20 concerning the gift, Rita and her partner Reinhard Oesterle assisted them in
21 locating an attorney. Debby further alleges, on information and belief, that Reinhard
22 Oesterle, Rita’s partner, communicated with Mr. Martin prior to and following
23 James’ meeting with Mr. Martin and alleges that Mr. Oesterle’s email speaks for
24 itself. Debby denies the remaining factual allegations in paragraph 58.

25 80. In responding to the factual allegations in paragraph 59, Debby lacks
26 sufficient information sufficient to admit or deny what James may have told Peter,
27 or his reasons for doing so, and alleges, on information and belief, that Peter
28 repeatedly questioned James about his gift to her. Debby further lacks sufficient

1 information to admit or deny what Peter may have told anyone in Mr. Martin's
2 office, or how Mr. Martin or anyone in his office may have responded, and on that
3 basis denies said allegations. Debby further alleges that that Mr. Martin's email in
4 subpoenaed records speak for themselves. Debby alleges, on information and belief,
5 that Peter insisted that James write a handwritten note to Mr. Martin. Debby lacks
6 sufficient information or belief to admit or deny the remaining factual allegations in
7 paragraph 59, and on that basis denies said allegations.

8 81. In responding to the factual allegations in paragraph 60, Debby admits
9 that Peter failed and refused to return James to the home he shared with her in
10 August 2017, even after James said he wanted to return home, and thus abducted
11 James. Debby further alleges that, By his own admission, Peter refused to return
12 James to his own home based on the incident with Mr. Martin and, On information
13 and belief, that Peter refused to do so because he wanted to prevent any further
14 action by James to affirm his gift to Debby, and to prevent James from having
15 further contact with Debby. Debby lacks sufficient information or belief to admit or
16 deny the remaining factual allegations in paragraph 60, and on that basis denies
17 said allegations.

18 82. In responding to the factual allegations in paragraph 61, Debby admits
19 that she left a voicemail message for Peter and sent his wife a text following Peter's
20 abduction of James. However, Debby did so after Peter called her and requested she
21 convince James to stay with him for two nights. Debby further alleges that at this
22 point she believed James would be returning home shortly, and that she appreciated
23 the brief respite from caring for James full-time, with little or no assistance from
24 James' children even though she was eighty years old herself. Debby denies the
25 remaining factual allegations in paragraph 61.

26 83. In responding to the factual allegations in paragraph 62, Debby admits,
27 on information and belief, that around August 24, 2017 Debby spoke with James,
28 who James started crying and told her he wanted to come home. Debby alleges that

1 she left a message for Peter three hours after her call with James, hoping she could
2 convince Peter to allow James to return home immediately. Debby denies the
3 remaining factual allegations in paragraph 62.

4 84. In responding to the factual allegations in paragraph 63, Debby alleges
5 that around August 25, 2017, she requested that Rita's partner, Reinhard Oesterle,
6 contact Peter to express that she was sad and confused, and to ask that James call
7 her. Debby alleges On information and belief that Mr. Oesterle sent Peter a text
8 message, but Peter did not respond to it. Debby further alleges that around August
9 24, 2017, she spoke with James, who cried and stated that he wanted to come home.
10 Debby admits that she called James on August 28, 2017, that he did not answer, and
11 that she did not leave a message. Debby further alleges that she became very
12 concerned, and then sent a text message to James' children, Peter, Della and Diane,
13 but received no response. From August 28, 2017 until his passing, Debby did not
14 have contact with James due to the sustained lack of response from his children.
15 Debby further admits that she deposited a check on August 28, 2017 that James had
16 previously written to her, that she added "Jun Rent & food" to the memo line on the
17 check, and that she used the funds, in part, to assist with expenses. Debby denies
18 the remaining factual allegations in paragraph 63.

19 85. In responding to the factual allegations in paragraph 64, Debby admits
20 that she called the Redwood City Police Department on or about August 30, 2017,
21 after she was unable to get a hold of James by phone and received no response from
22 James' children. Further, Debby alleges that she called the Redwood City police
23 station because James had been abducted, he had told her he wanted to return
24 home, she was not sure where James was, and she did not know how to protect him.
25 Debby denies the remaining factual allegations in paragraph 64.

26 86. In responding to the factual allegations in paragraph 65, Debby admits
27 that James died on September 5, 2017, and admits that she signed an agreement to
28 sell the Redwood City Property the next day, because she now associated the

1 property only with grief and bad feelings.

2 87. In responding to the factual allegations in paragraph 66, Debby admits
3 that James' funeral was on September 10, 2017. Debby admits that she was invited
4 to the funeral but did not attend and alleges she did not attend because, although
5 she was overcome with grief and sadness, she was uncomfortable around James'
6 children given their recent behavior towards her. In addition, years before the
7 funeral when James was healthy, Peter's wife Jeanny asked Debby why she treated
8 James so well. In response Debby said that she wanted to treat James well and take
9 good care of him while he was alive and that when and if the time came, she would
10 not attend James' funeral. Debby admits that she listed the Redwood City Property
11 for sale the next day, because she now associated the property only with grief and
12 bad feelings.

13 88. In responding to the factual allegations in subheading at Part VI,
14 section A, Debby denies that any payments to her were the result of undue
15 influence.

16 89. In responding to the factual allegations in paragraph 67, Debby
17 reasserts and incorporates by reference each and every response asserted in the
18 foregoing paragraphs of this Response.

19 90. In responding to the factual allegations in paragraph 68, Debby admits
20 that James gave her \$1,167,050 in February 2017, and alleges that while she
21 originally intended this would be a loan, when James later decided to gift the money
22 to her neither she nor James intended it would be paid back. Debby denies that any
23 of the funds referenced in the Petition are "Stolen Funds," as Peter refers to them,
24 and that Peter should recall that on at least three separate occasions his father told
25 him that the down payment was a gift to Debby. Debby denies the remaining factual
26 allegations in paragraph 68.

27 91. In responding to the factual allegations in paragraph 69, Debby admits
28 that James loved and trusted her throughout their relationship of more than two

1 decades. She further admits that James' health worsened over time and that he
2 underwent chemotherapy and radiation treatments. To help alleviate James'
3 discomfort from chemotherapy and radiation, Debby arranged Chinese medicine and
4 acupuncture treatments for James, to which Peter agreed and took his father. Debby
5 denies the remaining factual allegations in paragraph 69.

6 92. In responding to the factual allegations in paragraph 70, Debby admits
7 that she and James had a loving and close relationship for more than two decades.
8 She further admits that James had health problems. Debby denies the remaining
9 factual allegations in paragraph 70.

10 93. The allegations in paragraph 71 consists of legal argument, which she
11 need not admit nor deny.

12 94. In responding to the factual allegations in paragraph 72, Debby admits
13 that James was diagnosed with a brain tumor and blood cancer, that he underwent
14 chemotherapy and radiation treatments, and that he suffered at times from fatigue.
15 Debby further admits that she cooked and shopped for herself and James, as she had
16 from the beginning of their relationship. Debby also admits she administered
17 medications for James, performed housekeeping, and at times assisted with his
18 hygiene. Debby alleges that neither Peter nor his siblings ever offered look for
19 someone to assist Debby in caring for James even though she was providing care to
20 James 24/7. She denies that she was James' compensated care custodian, either
21 factually or as defined Probate Code section 21362. Rather, she was James' longtime
22 intimate companion and partner. Peter admitted this in his initial petition,
23 admitting that James began "dating" Debby after his wife's death. Peter further
24 admitted, in his initial Trust Petition in Case No, 17 PR 000973, now consolidated
25 with this action, that Debby was James' "girlfriend." Peter's revised testimony
26 makes clear that he has no intention of being honest or forthright with the Court. As
27 a result, none of his testimony should be afforded credibility. Debby further denies
28 that James was a "dependent adult" as defined by Probate Code section 21366.

1 Debby further alleges that the remainder of this paragraph consists primarily of
2 legal argument, which she need not admit nor deny. Debby denies the remaining
3 factual allegations, if any, asserted in paragraph 72.

4 95. Paragraph 73 consists of legal conclusions, which she need not admit
5 nor deny. Nevertheless, Debby denies that any presumption of undue influence or
6 fraud arises based on any conduct by her, or from the facts alleged by Peter, and
7 denies that any funds were “Stolen,” as falsely asserted by Peter and as Peter admits
8 is not true. Debby further denies that Probate Code section 21380 has any
9 application to this case, given that, as Peter admits, Debby was James’ longtime
10 girlfriend and his cohabitant at all relevant times, and was never his care custodian.
11 Debby denies the remaining factual allegations, if any, alleged in paragraph 73.

12 96. In responding to the factual allegations in paragraph 74, if any, Debby
13 denies that any presumption of undue influence or fraud arises based on any
14 conduct by her, or from the facts alleged by Peter. Debby further denies that Probate
15 Code section 21384 has any application to this case, given that, as Peter admits,
16 Debby was James’ longtime girlfriend and his cohabitant at all relevant times, and
17 was never his care custodian. Debby denies the remaining factual allegations, if any,
18 asserted in paragraph 74. The last sentence of paragraph 74 is a legal conclusion,
19 which Debby need not admit nor deny.

20 97. Paragraph 75 consists of legal conclusions, which she need not admit
21 nor deny. Debby denies the factual allegations, if any, asserted in paragraph 75.

22 98. Paragraph 76 consists of legal conclusions, which she need not admit
23 nor deny. To the extent that paragraph 76 may include any factual allegation, Debby
24 denies it and specifically denies that any presumption of undue influence arises
25 based on any conduct by her, or from the facts alleged by Peter. Debby further
26 denies that Probate Code section 21392 or the cases cited by Peter have any
27 application to this case. Debby denies the factual allegations, if any, asserted in
28 paragraph 76.

1 99. Paragraph 77 consists of legal conclusions, which she need not admit
2 nor deny. Nevertheless, Debby asserts that she has overwhelming evidence to
3 establish that James intended to make a gift to her, including Peter's own actions in
4 affirming the gift, Peter's own admissions, and James' statements to his
5 independent attorney and others. Debby further denies that the cases cited by Peter
6 have any application to this case. Debby denies the factual allegations, if any,
7 asserted in paragraph 77.

8 100. Debby denies each and every factual allegation in paragraph 78.

9 101. Debby denies each and every factual allegation in paragraph 79, and
10 denies that there are any grounds to modify title to the Redwood City Property.

11 102. In responding to the factual allegations in subheading at Part VI,
12 section B, Debby denies that any funds were stolen or procured by fraud.

13 103. In responding to the factual allegations in paragraph 80, Debby
14 reasserts and incorporates by reference each and every response asserted in the
15 foregoing paragraphs of this Response.

16 104. Debby denies each and every factual allegation in paragraph 81.

17 105. Debby denies each and every factual allegation in paragraph 82, and
18 denies that Civil Code section 3294 has any application to this case, except as it
19 pertains to the misconduct of Peter and his sisters.

20 106. In responding to the factual allegations in subheading at Part VI,
21 section C, Debby denies that any funds were stolen or procured by conversion.

22 107. In responding to the factual allegations in paragraph 83, Debby
23 reasserts and incorporates by reference each and every response asserted in the
24 foregoing paragraphs of this Response.

25 108. Debby denies each and every factual allegation in paragraph 84, and
26 denies that James was damaged by her or that she is liable for conversion.

27 109. Debby denies each and every factual allegation in paragraph 85, and
28 denies that Civil Code section 3294 has any application to this case, except as it

1 pertains to the misconduct of Peter and his sisters.

2 110. In responding to the factual allegations in subheading at Part VI,
3 section D, Debby denies that any funds were stolen or procured by mistake.

4 111. In responding to the factual allegations in paragraph 86, Debby
5 reasserts and incorporates by reference each and every response asserted in the
6 foregoing paragraphs of this Response.

7 112. Debby denies each and every factual allegation in paragraph 87.

8 113. Debby denies each and every factual allegation in paragraph 88.

9 114. Debby denies each and every factual allegation in paragraph 89.

10 115. Debby denies each and every factual allegation in paragraph 90.

11 116. In responding to the factual allegations in subheading at Part VI,
12 section E, Debby denies that she is liable for financial elder abuse.

13 117. In responding to the factual allegations in paragraph 91, Debby
14 reasserts and incorporates by reference each and every response asserted in the
15 foregoing paragraphs of this Response.

16 118. Paragraph 92 consists of legal argument, which Debby need not admit
17 nor deny.

18 119. Paragraph 93 consists primarily of legal argument, which Debby need
19 not admit nor deny.

20 120. Debby denies each and every factual allegation in paragraph 94.

21 121. Debby denies each and every factual allegation in paragraph 95.

22 122. Debby denies each and every factual allegation in paragraph 96.

23 123. Debby denies each and every factual allegation in paragraph 97.

24 124. In responding to the factual allegations in subheading at Part VI,
25 section F, Debby denies that any property was misappropriated from the trust or
26 must be returned.

27 125. In responding to the factual allegations in paragraph 98, Debby
28 reasserts and incorporates by reference each and every response asserted in the

1 foregoing paragraphs of this Response.

2 126. Paragraph 99 consists of legal conclusions, which she need not admit
3 nor deny. Debby denies the factual allegations, if any, asserted in paragraph 99.

4 127. Paragraph 100 consists of legal conclusions, which she need not admit
5 nor deny. Debby denies the factual allegations, if any, asserted in paragraph 100.

6 128. In responding to the factual allegations in subheading at Part VI,
7 section G, Debby denies that the trust holds equitable title in the Los Angeles
8 Property or the Redwood City Property.

9 129. In responding to the factual allegations in paragraph 101, Debby
10 reasserts and incorporates by reference each and every response asserted in the
11 foregoing paragraphs of this Response.

12 130. In responding to the factual allegations in paragraph 102, Debby
13 admits that to the extent that she did not fully reimburse James for his contribution
14 to the purchase of the property that they sold from which the down payment on the
15 Los Angeles Property was primarily derived, James gifted those funds to her. Debby
16 admits that James' name remains on the mortgage documents, but denies that
17 James made the mortgage payments or paid maintenance expenses and alleges that
18 James remained on the loan so he could reap tax benefits. Debby asserts that after
19 James transferred the Los Angeles Property to her trust in 2006 she was solely
20 responsible for making the mortgage payments, and paying for all repairs, including
21 an extensive remodel, and paying the property taxes from 2006 to the present.
22 Debby admits, on information and belief, that for some period of years James
23 included entries on his income tax returns reporting part of the rental income and
24 expenses on the property. Debby admits that James transferred the property to her
25 in 2006, but denies that he remained an equitable owner as to a 50% interest.
26 Debby denies that Peter or any other successor in interest to James holds equitable
27 title to the property. Debby denies that the Court should order that legal title should
28 be modified. Debby denies each and every remaining factual allegation in paragraph

1 102.

2 131. Paragraph 103 consists of a request of Petitioner for a legal remedy,
3 which she need not admit nor deny. Debby denies the factual allegations, if any,
4 asserted in paragraph 103.

5 132. In responding to the factual allegations in subheading at Part VI,
6 section H, Debby denies that the deed from James to her for the Los Angeles
7 Property should be cancelled.

8 133. In responding to the factual allegations in paragraph 104, Debby
9 reasserts and incorporates by reference each and every response asserted in the
10 foregoing paragraphs of this Response.

11 134. Debby admits the factual allegations in paragraph 105.

12 135. In responding to the factual allegations in paragraph 106, Debby
13 alleges that the Deed gives her the right to sell the Los Angeles Property and that
14 Petitioner has no legal or equitable interest in the Property entitling him to any
15 payment upon such a sale. Debby denies each and every remaining factual
16 allegation in paragraph 106.

17 136. Debby admits the factual allegations of paragraph 107.

18 137. In response to the allegations of paragraph 108, Debby admits that
19 following delivery of the Deed she took possession of the Los Angeles Property's
20 income and profits (to the extent profits existed), as was her right. Debby denies
21 each and every remaining factual allegation in paragraph 108.

22 138. Debby denies the factual allegations of paragraph 109.

23 139. In response to the allegations of paragraph 110, Debby admits that she
24 provided care to James but denies that she was ever his "care custodian" as defined
25 by Probate Code section 21362, subdivision (a). Debby denies each and every
26 remaining factual allegation in paragraph 110.

27 140. Debby denies the factual allegations of paragraph 111.

28 141. In responding to the factual allegations in the subheading at Part VI,

1 section I, Debby denies that the Court should quiet title to the Los Angeles Property.

2 142. In responding to the factual allegations in paragraph 112, Debby
3 reasserts and incorporates by reference each and every response asserted in the
4 foregoing paragraphs of this Response.

5 143. Debby denies the factual allegations of paragraph 113.

6 144. In responding to the factual allegations of paragraph 114, Debby
7 admits that a copy of the referenced deed is attached to the Petition, which deed
8 speaks for itself, and denies that James still has any right, title, or interest in the
9 Los Angeles Property pursuant to said deed. Debby denies each and every remaining
10 factual allegation in paragraph 114.

11 145. In response to the allegations of paragraph 115, Debby admits that she
12 and James executed a valid deed transferring the Los Angeles Property to her
13 revocable living trust and alleges that she has been the Property's sole owner ever
14 since delivery of that deed. Debby denies each and every remaining factual
15 allegation in paragraph 115.

16 146. In response to the allegations of paragraph 116, Debby alleges that
17 since delivery of the referenced deed transferring the Los Angeles Property to her
18 revocable living trust she has been the Property's sole owner. Debby denies each and
19 every remaining factual allegation in paragraph 116.

20 147. Paragraph 117 consists of a request of Petitioner for a legal remedy,
21 which she need not admit nor deny. Debby denies the factual allegations, if any,
22 asserted in paragraph 117.

23 **IV. Affirmative Defenses**

24 **First Affirmative Defense**

25 **(Failure to State a Cause of Action)**

26 128. Debby alleges that the Petition, and each and every claim and/or cause
27 of action stated therein, fails to state a claim for which relief may be granted.

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Second Affirmative Defense
(Statute of Limitations)

129. Debby alleges that the Petition and each claim or cause of action it states is barred by the applicable statute of limitations, including but not limited to Code of Civil Procedure sections 318, 319, 337, 338, 339, 340, 340.6, 343 and 366.2 and Probate Code section 9100.

Third Affirmative Defense
(Laches)

130. Debby alleges that the Petition and each claim or cause of action it states is barred by the doctrine of laches.

Fourth Affirmative Defense
(Estoppel)

131. Debby alleges that the Petition and each claim or cause of action it states is barred by the doctrine of estoppel.

Fifth Affirmative Defense
(Unclean Hands)

132. Debby alleges that the Petition and each claim or cause of action it states is barred by the doctrine of unclean hands.

Sixth Affirmative Defense
(Consent/Ratification)

133. Debby alleges that the Petition and each claim or cause of action it states is barred by the doctrine of consent and/or ratification.

Seventh Affirmative Defense
(Waiver and Release)

134. Debby alleges that the Petition and each claim or cause of action it states is barred by the doctrines of waiver and release.

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1 **Eighth Affirmative Defense**

2 **(Uncertainty)**

3 135. Debby alleges that the claims and/or causes of action in the Petition are
4 each vague, ambiguous and uncertain.

5 **Ninth Affirmative Defense**

6 **(Acts of Third Persons)**

7 136. Debby alleges, on information and belief, that the harm alleged in the
8 Petition, if any, was the result of acts and/or omissions by third persons over whom
9 she had no control.

10 **Tenth Affirmative Defense**

11 **(Good Faith)**

12 137. Debby alleges that the claims or causes of action in the Petition are
13 each barred, in whole or in part, because actions taken by her were made in good
14 faith, and that she had reasonable grounds for believing that the alleged acts or
15 omissions did not violate the rights of any third party, or any state or federal law or
16 public policy.

17 **Eleventh Affirmative Defense**

18 **(Justification)**

19 138. Debby alleges, on information and belief, that the claims or causes of
20 action in the Petition are each barred, in whole or in part, because she was justified
21 in doing all acts or omissions alleged in the Petition.

22 **Twelfth Affirmative Defense**

23 **(Exculpation)**

24 139. Debby alleges, on information and belief, that the Petition and each
25 claim or cause of action in the Petition are barred because she is exculpated from
26 liability.

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1 **Thirteenth Affirmative Defense**

2 **(Undue Hardship)**

3 140. Debby alleges that the Petition and each claim or cause of action in the
4 Petition are barred to the extent they call for equitable relief because such relief
5 would impose undue hardship on her.

6 **Fourteenth Affirmative Defense**

7 **(Right to Setoff)**

8 **A. Under Marvin v. Marvin, an Enforceable Express or Implied**
9 **Agreement between James and Debby Entitles Her to the Assets**
10 **James Gifted to Her.**

11 **1. James expressly or impliedly agreed to provide financial**
12 **support to Debby after he passed away in exchange for**
13 **the care that she provided to him during his lifetime.**

14 141. James often told Debby that in the event of his passing, Debby would
15 be taken care of, because she took care of him, and because his assets were his to do
16 with as he pleased. Debby relied on James' assurances, and continued to provide
17 care and support for James for many years, out of her love for him and based on
18 their agreement to care for one another, sacrificing her own resources and often her
19 own health.

20 142. As he grew older, James came to appreciate more and more the help
21 and support of Debby. As James' companion, Debby was actively involved in every
22 aspect of James' well-being, and she helped handle day-to-day tasks such as cooking,
23 shopping and running errands, as well as arranging for James' medical care, without
24 receiving any compensation during James lifetime.

25 143. James relied on the support that Debby and her family provided to him.
26 His own daughters were estranged from him, and provided him with no support.
27 James' son Peter assisted him, taking him to medical appointments and preparing
28 or assisting in the preparation of James' tax returns. But, as Peter admits, Debby, as
James' companion and girlfriend, was actively involved in almost every aspect of
James' well-being, and she helped handle day-to-day tasks such as cooking, shopping

1 and running errands, as well as arranging for James' medical care.

2 144. In the last few months of his life James reaffirmed his promise to
3 Debby to take care of her. He was clear in his intent that the down payment on the
4 Redwood City Property was a gift, and so he met with Mr. Martin, even after Peter
5 tried to cancel the meeting despite the fact it was initially Peter's idea that James
6 meet with a lawyer.

7 **2. Debby Was Entitled to Rely on James' promises.**

8 145. The case of *Marvin v. Marvin* (1976) 18 Cal.3d 660,684 (*Marvin*), is on
9 point. In *Marvin*, the plaintiff, Michelle Marvin, alleged that she and Lee Marvin
10 entered into an oral agreement providing that while "the parties lived together they
11 would combine their efforts and earnings and would share equally any and all
12 property accumulated as a result of their efforts whether individual or combined."
13 (*Marvin*, supra, 18 Cal.3d at 666.) The parties further agreed that Michelle would
14 "render her services as a companion, homemaker, housekeeper and cook." (*Id.*)
15 Michelle sought a judicial declaration of her contract and property rights, and
16 sought to impose a constructive trust upon half of the property acquired during the
17 relationship.

18 146. The trial court granted a judgment on the pleadings in favor of the
19 defendant, holding that the alleged agreement was unenforceable. The California
20 Supreme Court reversed, stating that "a contract between nonmarital partners is
21 unenforceable only to the extent that it explicitly rests upon the immoral and illicit
22 consideration of meretricious sexual services." (*Id.* at 668-669 (emphasis in
23 original.)) Further, although the plaintiff's complaint alleged only an express
24 contract, the Supreme Court went on to address the issue of "the property rights of a
25 nonmarital partner in the absence of an express contract." (*Id.* at 674.) The Supreme
26 Court thus made new law, holding that even in the absence of an express agreement,
27 the plaintiff could establish an implied contract or implied partnership and therefore
28 invoke such remedies as constructive trust, resulting trust, and quantum meruit.

1 (Id. at 665.) Moreover, courts may also look to a “variety of other remedies” to protect
2 the parties’ lawful expectations. (*Id.* at 684.)

3 147. Here, James promised Debby on many occasions that she would be
4 taken care of after his death. James further affirmed his intention to benefit Debby
5 by gifting her the funds to assist with the purchase the Redwood City Property, a
6 home they shared. Debby had expressed concern to James that she could not
7 purchase the property without James’ assistance. pay the mortgage without his
8 assistance. As a result, James agreed that he would help her pay the mortgage.

9 148. James’ intent to gift Debby the down payment on the Redwood City
10 Property is also evident in the fact he was not concerned with his name being on
11 title. Peter was aware James was not on title to the Redwood City Property, and did
12 not object and even encouraged it, because it meant Peter could continue to avoid
13 paying the property tax on his residence based on its actual fair market value when
14 Peter and his wife purchased it or reimbursing James for the additional property
15 taxes he would have had to pay as a result of transferring the base year value of his
16 San Mateo residence to Peter’s residence.

17 149. Peter later demanded that Debby must pay the funds back for the
18 purchase of the Redwood City Property- which she could not do without selling the
19 property. James told Debby that he wanted to be sure that his children did not force
20 her out of the property. Debby is informed and believes that James then met with an
21 attorney who, at James’s request in fulfillment of his promise to Debby, prepared a
22 document confirming James gifted \$1.1 million to Debby free of fraud or undue
23 influence.

24 148. After James passed away Peter demanded repayment from Debby for
25 the gifts James made to her. In doing so, Peter – who succeeded to James’
26 obligations under James’ enforceable agreement with Debby to provide substantial
27 support for her upon his death – breached said agreement. In return for James’
28 promises, Debby provided substantial services to the community, as described

1 herein. (*Marvin v. Marvin, supra*, 18 Cal.3d at 674-675; *Cochran v. Cochran* (1997)
2 56 Cal.App.4th 1115, 1118 (agreement to share property acquisitions equally and ‘ to
3 provide “lifetime support”); see also *Friedman v. Friedman* (1993) 20 Cal.App.4th
4 876, 887 888 (implied agreement for support upon termination of relationship).)

5 150. in his initial Trust Petition in Case No, 17 PR 000973, Peter admits
6 that James began dating Debby after his wife’s death, and that she became his
7 longtime girlfriend and companion. Peter further admits, throughout the Petition
8 herein, that Debby, as part of their committed relationship, was actively involved in
9 James’ well-being, and she helped handle day-to-day tasks such as cooking, shopping
10 and running errands, as well as helping him remodel three properties and prepare
11 and stage two of those properties for sale. This care she provided was natural,
12 because for more than twenty years she was a wife to him in every respect but the
13 legal formality of obtaining a marriage license. And it was natural that James
14 wanted to ensure that Debby was taken care of in return.

15 151. Peter seeks to turn the relationship on its head, and asserts that
16 everything James and Debby ever did for one another was the product of a
17 “scheme,” and of elder abuse. This is nonsense. James promised on many occasions
18 that Debby would always be taken care of after his death. Debby made substantial
19 changes in reliance on these promises, including leaving her residence in El Cerrito,
20 helping James find a suitable house for both of them, and providing years of care
21 and support. Under *Marvin v. Marvin*, Debby's actions entitle her to compensation,
22 just as a wife is entitled to compensation for services she provides to the
23 community.

24 152. Courts have several remedies available to them to make sure a party in
25 a committed, non-marital relationship is fairly compensated for the breach of oral
26 and implied contract, and to provide reasonable compensation for the services of the
27 party provided during the relationship. These include an action to impose a
28 constructive trust, resulting trust or equitable lien. (*Marvin v. Marvin, supra*, 18

1 Cal.3d at 665.) Where existing remedies prove “inadequate,” trial courts may fashion
2 additional equitable remedies to protect the parties’ “reasonable expectations.” (Id.
3 at 684.) “[T]he suitability of such remedies may be determined in later cases in light
4 of the factual setting in which they arise.” (Id. at 684, n. 25.) Here, this Court’s work
5 is simplified, because James already made substantial gifts to Debby to protect her,
6 and hired an attorney to affirm those gifts.

7 153. The agreement between James and Debby should be enforced under
8 principles of equity, because Debby detrimentally relied on the agreement, and she
9 will suffer an unconscionable injury if the agreement is not enforced. Further, Peter
10 will be unjustly enriched if he retains the benefits from his breach of the agreement.
11 (See *Estate of Housley* (1997) 56 Cal. App. 4th 342, 359; see also *Juran v. Epstein*
12 (1994) 23 Cal.App.4th 882, 892.)

13 154. In *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175
14 Cal. App. 4th 64, 78, the court summed up the concepts of unjust enrichment and
15 restitution as follows: If an entity obtains a benefit that it is not entitled to retain,
16 the entity is unjustly enriched. The aggrieved party is entitled to restitution, which
17 is synonymous with quasi-contractual recovery. (1 Witkin, Summary of Cal. Law
18 (10th ed. 2005) Contracts, § 1013, p. 1102.) “As a general rule, equitable concepts of
19 unjust enrichment dictate that when a payment is made based upon a mistake of
20 fact, the payor is entitled to restitution unless the payee has, in reliance on the
21 payment materially changed its position.” (*City of Hope Nat. Medical Center v.*
22 *Superior Court* (1992) 8 Cal.App.4th 633, 636-637 [10 Cal. Rptr. 2d 465.]) Debby
23 alleges On information and belief that at the time he died, James believed, in good
24 faith and on the advice of counsel, that he made a valid gift to Debby of the funds
25 necessary to purchase the Redwood City Property, that he could dispose of his assets
26 as he saw fit, and his gift would ensure that Debby was cared for after James’
27 death.

28 155. Peter argues that James may have believed he owned an interest in the

1 Redwood City Property, and that therefore his affirmation of the gift to Debby is
2 invalid. The opposite is true. Debby is informed and believes that Mr. Martin
3 executed the Certificate of Independent Review affirming that James had made a
4 gift to Debby free of fraud or undue influence, at a time when Peter was desperately
5 trying to persuade his father that he had not made and should not make a gift to
6 Debby. Debby is further informed and believes that Peter knew exactly what he was
7 doing when he attempted to cancel James' meeting with Mr. Martin, just as he knew
8 what he was doing when he tried to obtain his father's confidential file, and just as
9 he knew what he was doing when he abducted his father. For years, Peter was
10 aware that Debby was taking care of James, and that James was taking care of
11 Debby. But when Peter learned that, as his father had promised, James was trying
12 to take care of Debby financially after he died, Peter took action to interfere with
13 his father's wishes, for the financial gain of Peter and his sisters.

14 **B. Debby has an offsetting claim against Peter for intentionally**
15 **and negligently inflicting emotional distress on her.**

16 156. through fraud, misrepresentations and deceit, and solely for his own
17 financial gain, Peter intentionally engaged in wrongful acts to alienate James from
18 Debby -- his companion of two decades -- as well as from her children. Peter's acts
19 constitute extreme and outrageous conduct. Peter performed the aforementioned
20 acts with the intention of severing James' relationship with Debby and her children,
21 and in reckless disregard of the probability of causing emotional distress to Debby.

22 157. Debby did suffer severe and extreme emotional distress caused by her
23 inability to maintain a relationship with James in the last days of his life. Debby
24 and her children had enjoyed a close, familial, relationship with James for more
25 than twenty years preceding his death. The inability to spend time with James in
26 his dying days caused Debby great angst, sadness, grief, distress and mortification.

27 158. The feelings of angst, sadness grief, distress and mortification were a
28 direct and proximate result of the extreme and outrageous conduct of Peter in

1 successfully sabotaging the relationship that James enjoyed with Debby and her
2 children. Peter's conduct is such that Debby is entitled to punitive and exemplary
3 damages.

4 **C. Debby has an offsetting claim against Peter for invading her**
5 **privacy by secretly recording her conversations with James in**
6 **violation of Penal Code section 637.2.**

7 149. From on or about August 19, 2017 through August 22, 2017, Peter
8 intentionally and without Debby's consent or, on information and belief, James'
9 consent, made at least 79 video recordings and 1 audio recording of confidential
10 communications between Debby and James. Peter made the recordings when Debby
11 and James were in the presence of one another, but no one else.

12 150. To make the video recordings, Peter secretly installed a hidden video
13 recorder, without informing Debby or, on information and belief, James. In doing so,
14 Peter exploited Debby's age and lack of sophisticated knowledge concerning
15 computer information technology. Knowing that he alone was aware of the secretly
16 installed video recorder, Peter manipulated conversations and, to avoid being
17 recorded, whispered in James ear.

18 151. Peter's made each of his recordings in violation of Penal Code section
19 632. Pursuant to Penal Code section 637.2, Debby is entitled to the greater of \$5,000
20 per violation – a total of \$400,000 for Peter's 80 violations – or any actual damages
21 she sustained.

22 **D. Debby has an offsetting claim against Peter for attorney's fees**
23 **and costs.**

24 159. Debby's attorney's fees and costs should be paid by Peter. Probate
25 Courts hold broad equitable powers to order a party who acts in bad faith and
26 interferes with the orderly administration of a trust or estate to pay his or her
27 adversary's attorney's fees and costs. (*Estate of Ivey* (1994) 22 Cal.App.4th 873, 883-
28 885; *Rudnick v. Rudnick* (2009) 179 Cal.App.4th 1328, 1334-1335.) According to
California Probate Code Section 1002, the Court may also order costs to be paid by

1 any party to the proceedings or out of the Trust or estate as justice may require.

2 **1. The Court should exercise its equitable authority to**
3 **award Debby her costs and fees.**

4 160. As stated above, Debby is entitled to an award of attorney's fees and
5 costs under the Probate Court's broad equitable powers over estates and trusts
6 within its jurisdiction. (*Hollaway v. Edwards* (1998) 68 Cal.App.4th 94, 99 (citing
7 *Estate of Ivey, supra*, 22 Cal.App.4th at 883–885 [court exercises equitable powers to
8 exempt prevailing beneficiaries from provisions of Code of Civil Procedure which
9 would undermine their recovery of attorney fees].) “[T]he probate court retains
10 discretion to decide not only *whether* costs should be paid, but also, if they are
11 awarded, who will pay and who recover them.” (*Hollaway v. Edwards, supra*, 68
12 Cal.App.4th at 99 (emphasis in original), citing Prob. Code § 1002.) As described
13 herein, there is ample authority for this Court to award Debby her attorney's fees
14 and costs incurred in responding to the frivolous Petition.

15 **2. Debby is Entitled to Fees and Costs Pursuant to Code of**
16 **Civil Procedure Section 128.5.**

17 161. The Code of Civil Procedure likewise gives the Court broad authority
18 to order a party to pay the adversary's reasonable attorney's fees and costs, where
19 the petitioning party engages in “bad-faith actions or tactics.” Code of Civil
20 Procedure section 128.5 provides as follows, in relevant part:

21 (a) A trial court may order a party, the party's attorney, or both to pay the
22 reasonable expenses, including attorney's fees, incurred by another party as a
23 result of bad-faith actions or tactics that are frivolous or solely intended to
cause unnecessary delay. ...

24 (b) For purposes of this section: ...

25 (2) “Frivolous” means totally and completely without merit or for the sole
26 purpose of harassing an opposing party.

27 (See *Estate of Ivey, supra*, 22 Cal.App.4th at 883–885 (holding that section 128.5
28 sanctions may be awarded in probate proceedings).) Code of Civil Procedure section

1 128.5(c) further provides, in relevant part, that such an order for expenses may not
2 be imposed “except on notice contained in a party's moving or responding papers or,
3 on the court's own motion, after notice and opportunity to be heard...” Debby
4 hereby provides such notice by these responding papers.

5 162. The Petition was filed completely without merit, and without any legal
6 or factual basis. Debby is therefore entitled, under Code of Civil Procedure section
7 128.5, to payment of her reasonable expenses, including attorney’s fees, for
8 responding to Peter’s bad faith action in filing the Petition.

9 **Fifteenth Affirmative Defense**
10 **(Additional Defenses)**

11 163. Debby cannot anticipate all affirmative defenses that may be applicable
12 in this action and, as such reserves the right to add additional affirmative defenses.

13 **V. Debby Reserves the Right to An Evidentiary Hearing.**

14 164. To the extent the Court does not dismiss the Petition at the initial
15 hearing or a subsequent status hearing, Debby reserves her right to an evidentiary
16 hearing on the disputed Petition. (*Estate of Lensch* (2009) 177 Cal.App.4th 667, 668
17 (holding that the Probate Court must permit an evidentiary hearing when a petition
18 under the Probate Code contested); *Estate of Bennett* (2008) 163 Cal.App.4th 1303,
19 1310 (holding that a Probate Court committed reversible error in denying a request
20 for an evidentiary hearing on a motion); *Evangelho v. Presoto* (1998) 67 Cal.App.4th
21 615, 620 (holding that when a petition is contested, each allegation must be
22 established by competent evidence).)

23 **VI. PRAYER**

24 WHEREFORE, Debby prays for an Order from this Court granting her relief
25 as follows:

- 26 1. That the Court deny in full the Petition and each and every claim
- 27 and/or cause of action asserted therein;
- 28 2. That the Court find that the Petition and the allegations therein are


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completely without merit;

3. That to the extent the Court may award damages to Peter, that it offset said damages by the amount of Debby's compensatory damages and recoverable statutory penalties, according to proof, and punitive and exemplary damages as provided by law;
4. That the Court order Peter to reimburse Debby for her attorney's fees and costs incurred as a result of having to respond to and defend the Petition;
5. For any other such orders as the Court may deem proper.

DATED: October 14, 2020

HARTOG, BAER & HAND
A Professional Corporation

By: 

DAVID W. BAER
ANDREW R. VERRIERE
Attorneys for Respondent Debby Chang

VERIFICATION

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I, Debby Chang, am the Respondent in the above-entitled matter. I have read the foregoing *Respondent Debby Chang's Response And Objection To* ^{*Second Amended*} *Petition For Return Of Property (Probate Code § 850), For Financial Elder Abuse, And For Related Relief, Including Cancellation Of Deed And Quiet Title* and know the contents thereof. The contents are true of my own knowledge, except as to those matters stated on information and belief, which I believe to be true.

Executed on Oct. 14, 2020, at Fremont, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DEBBY CHANG

4 **PROOF OF SERVICE**

5 I, the undersigned, declare as follows:

- 6 1. At the time of service, I was over 18 years of age and not party to this action.
7 2. My business address is 4 Orinda Way, Suite 200-D, Orinda, CA 94563.
8 3. The fax number from which I served the documents is *(complete if service was*
9 *by fax)*: ____-____-____.
10 4. My electronic service address is *(complete if service was by e-mail)*: _____.
11 5. On October 14, 2020, I served the following documents:

12 **RESPONDENT DEBBY CHANG'S RESPONSE AND OBJECTION TO**
13 **PETITION FOR RETURN OF PROPERTY (Probate Code § 850), FOR**
14 **FINANCIAL ELDER ABUSE, AND FOR RELATED RELIEF,**
15 **INCLUDING CANCELLATION OF DEED AND QUIET TITLE**

- 16 6. I served the documents on the person or persons below, as follows:

17 ***Attorneys for Petitioner and Trustee***
18 ***Peter C. Ho***

19 James P. Cilley
20 Hengameh Kishani
21 Temmerman, Cilley & Kohlmann, LLP
22 140 Town & Country Drive, Suite A
23 Danville, CA 94526
24 Email: Jcilley@tcklawfirm.com
25 Hkishani@tcklawfirm.com

- 26 7. The documents were served by the following means:
27 a. **By personal service.** I personally delivered the documents to the
28 persons at the addresses listed in item 6. (1) For a party represented by
an attorney, delivery was made (a) to the attorney personally; or (b) by
leaving the documents at the attorney's office, in an envelope or package
clearly labeled to identify the attorney being served, with a receptionist
or an individual in charge of the office; or (c) if there was no person in the
office with whom the notice or papers could be left, by leaving them in a

1 conspicuous place in the office between the hours of nine in the morning
2 and five in the evening. (2) For a party, delivery was made to the party
3 or by leaving the documents at the party's residence with some person
4 not younger than 18 years of age between the hours of eight in the
5 morning and six in the evening.

6 b. **By United States mail.** I enclosed the documents in a sealed
7 envelope or package addressed to the persons at the addresses in item 6
8 and (*specify one*):

9 (1) deposited the sealed envelope with the United States Postal
10 Service, with the postage fully prepaid.

11 (2) placed the envelope for collection and mailing, following our
12 ordinary business practices. I am readily familiar with this
13 business's practice for collecting and processing correspondence
14 for mailing. On the same day that correspondence is placed for
15 collection and mailing, it is deposited in the ordinary course of
16 business with the United States Postal Service, in a sealed
17 envelope with postage fully prepaid.

18 I am a resident or employed in the county where the mailing occurred.
19 The envelope or package was placed in the mail at Orinda, California.

20 c. **By overnight delivery.** I enclosed the documents in an envelope
21 or package provided by an overnight delivery carrier and addressed to
22 the persons at the addresses in item 6. I placed the envelope or package
23 for collection and overnight delivery at an office or a regularly utilized
24 drop box of the overnight delivery carrier.

25 d. **By electronic service:**

- 26 i. Courtesy copy(ies) only.
27 ii. Based on an agreement of the parties to accept electronic
28 service, I served the documents electronically on the persons
listed in item 6. No undeliverable message was received.
iii. Pursuant to C.R.C. Emergency Rule No. 12, I served the
documents electronically on the persons listed in item 6. No
undeliverable message was received.

iv. **By fax transmission.** Based on an agreement of the parties to
accept service by fax transmission, I faxed the documents to the persons
at the fax numbers listed in item 6. No error was reported by the fax
machine that I used. A copy of the record of the fax transmission, which
I printed out, is attached.

24 I declare under penalty of perjury under the laws of the State of California that
25 the foregoing is true and correct.

26 Dated: October 14, 2020

27 
Cynthia M. Tallent