

1 dated July 28, 1982, as amended (“Jennifer” or “Objector”), respectfully submits the following
2 Response and Objections to the Petition as *supplemented* “Regarding Internal Affairs Of Trust (1)
3 To Allow Extrinsic Evidence In The Interpretation And Construction Of Trust Documents, (2)
4 Running Of The Statutory Period Of Code Section 16061.7, (3) Order Requiring The Sale Of The
5 Real Property In The Trust, (4) Order Abating The Bequests In Trust A, (5) Order Trust Assets
6 Cannot Be Used To Defend Any Challenge Between Trust Beneficiaries As To The Validity Of
7 Any Trust Document And (6) Order Trust Assets Can Be Used To Determine Ambiguity And
8 Construction Of Trust” filed on behalf of Petitioner “TRUSTEE” RUSTY GRANT (“Rusty” or
9 “Petitioner”) on or about May 17, 2011 and supplemented on or about June 14, 2011 (the
10 “Petition”):

11 I

12 **SUMMARY OF RESPONSE AND OBJECTIONS**

13 1. Through omission and mischaracterization, the Petition presents a decidedly
14 distorted depiction of the subject Trust and its amendments, particularly the penultimate
15 amendment, in an apparent, inexplicable, effort to alter an estate plan deliberately designed by the
16 trustors to take into account substantial financial help provided over many years to certain of their
17 children, as well as devoted personal care and assistance rendered to them by Objector.

18 2. Viewed in context, it seems clear the Petition’s main purpose is to frustrate the
19 surviving trustor’s desire to provide Objector with a life estate in the trustors’ residence. The
20 Petition attempts to achieve this nefarious goal primarily in two ways: First, the Petition artificially
21 and illegally seeks to resurrect the already-expired statutory period for contesting the Trust, thereby
22 enabling a contest or the threat of a contest of the amendment creating the life estate; second, the
23 Petition mischaracterizes the Trust documents as hopelessly ambiguous, thereby creating the
24 perception that other bequests and the expenses of administration including, ominously, litigation
25 expenses purportedly needed to construe the Trust, will necessarily require abatement of the life
26 estate.

27 3. The Petition’s claims should be rejected. As demonstrated herein, contrary to the
28 claims made in the Petition, the 120-day period for contesting the Trust has already expired, and

1 Petitioner's request to resurrect it must be denied. As further demonstrated herein, the purported
2 ambiguities are illusory, and there are sufficient assets to satisfy the various bequests without
3 abatement of the life estate (which, in any event, would have priority over cash bequests if
4 abatement were necessary), provided Petitioner is precluded from depleting the Trust assets by
5 burdening the Trust with excessive and unnecessary attorney's fees and illegitimate trustee's fees.
6 The Petition should be denied in its entirety.

7
8 **II**

9 **FACTUAL BACKGROUND**

10 **A. The Parties**

11 4. Settlers Norman and Mary Schwichtenberg, husband and wife, established the
12 Schwichtenberg Revocable Family Trust on July 28, 1982, naming themselves as co-trustees. The
13 settlers' four children, Jennifer Grant, Melody Underwood, Paul Schwichtenberg, and Bradd
14 Schwichtenberg, are the remainder beneficiaries. Norman Schwichtenberg died on July 28, 1997.
15 The surviving settlor, Mary Schwichtenberg, died on August 28, 2010.

16 5. Petitioner, Rusty Grant, is an attorney, and the named successor trustee of Trust A
17 pursuant to an amendment to the Trust executed by Mary Schwichtenberg after the death of Norman
18 Schwichtenberg. Rusty Grant is not related to Jennifer Grant or to any members of the
19 Schwichtenberg family and, but for the amendment naming her as successor trustee of Trust A,
20 Rusty Grant is a complete stranger to the Trust. Rusty Grant has also assumed to act – without legal
21 authority – as trustee of the entire Trust, not just Trust A.

22 6. Respondent/Objector, Jennifer Grant (aka Merrily Sue Schwichtenberg), one of the
23 settlers' daughters, was named in the May 10, 1993 Third Amendment to the Trust as successor
24 trustee of the Trust upon the death of Mary Schwichtenberg. Notwithstanding the later Trust
25 amendment naming Rusty Grant successor trustee of Trust A, Jennifer remained the duly named
26 successor trustee of both Trust B and Trust C pursuant to the May 10, 1993 Third Amendment,
27 although as set forth below, she did not realize this until April 2011, at which time she immediately
28 informed Petitioner's counsel and Petitioner, who is also an attorney and who should have known
and told Jennifer of this at the beginning.

1 **B. The Schwichtenberg Trust and Its Amendments**

2 7. The original declaration of trust, signed by both trustors, is dated July 28, 1982. A
3 true and correct copy of the original declaration of trust is attached as Exhibit A to the Notice of
4 Lodgment (“N/L”) filed herewith and is incorporated herein by this reference. While both trustors
5 were living, they jointly amended the Trust several times. Those joint amendments are: (1) an
6 August 18, 1989 Amendment, signed by both trustors and entitled “Amendment to the
7 Schwichtenberg Revocable Family Trust dated July 28, 1982”; (2) a February 20, 1990
8 Amendment, signed by both trustors and entitled “Second Amendment to the Schwichtenberg
9 Revocable Family Trust dated July 28, 1982”; (3) a May 10, 1993 Amendment, signed by both
10 trustors and entitled “Third Amendment to Schwichtenberg Revocable Family Trust dated July 28,
11 1982”; (4) a March 28, 1997 Amendment, signed by both trustors and entitled “First Amendment
12 to Schwichtenberg Revocable Family Trust.” True and correct copies of the August 18, 1989
13 Amendment, the February 20, 1990 Amendment, the May 10, 1993 Amendment, and the March 28,
14 1997 Amendment are attached as Exhibits B through E to the N/L and incorporated herein by this
15 reference.

16 8. Following the death of Norman Schwichtenberg, Mary Schwichtenberg executed
17 several more amendments, as follows: (5) an October 14, 1997 Amendment, signed by Mary R.
18 Schwichtenberg and entitled “First Amendment to Trust A of the Schwichtenberg Revocable
19 Family Trust;” (6) a June 17, 1998 Amendment, signed by Mary R. Schwichtenberg and entitled
20 “Second Amendment to Trust A of the Schwichtenberg Revocable Family Trust;” (7) an October
21 15, 2003 Amendment, signed by Mary R. Schwichtenberg and entitled “Addendum to the Second
22 Amendment to Trust A Section 1:2 of the Schwichtenberg Revocable Family Trust Dated July 17,
23 1998 to the Schwichtenberg Revocable Family Trust Dated July 28, 1982;” (8) a July 12, 2010
24 Amendment, signed by Mary R. Schwichtenberg and entitled “Fifth Amendment to the
25 Schwichtenberg Revocable Family Trust Dated July 28, 1982;” and (9) a July 22, 2010
26 Amendment, signed by Mary R. Schwichtenberg and entitled “Sixth Amendment to the
27 Schwichtenberg Revocable Family Trust Dated July 28, 1982.” True and correct copies of the
28 October 14, 1997 Amendment, the June 17, 1998 Amendment, the October 15, 2003 Amendment,

1 the July 12, 2010 Amendment, and the July 22, 2010 Amendment are attached as Exhibits F
2 through J to the N/L and incorporated herein by this reference.

3 9. **Revocation and Amendment:** The original declaration of trust, dated July 28, 1982
4 and signed by both trustors, clearly provides that after the death of the first trustor to die, Trust B
5 may not be amended or revoked:

6 **B. After Death of First Trustor to Die.**

7 *From and after the death of the first Trustor to die, the surviving*
8 *Trustor shall have the power to amend or revoke Trust A (as*
9 *hereinafter described), in whole or in part by an instrument in writing*
10 *delivered to the Trustee; the Trust B (as hereinafter described), may*
11 *not be amended or revoked by any person. Upon the written election*
12 *of both Trustors, this Trust shall become irrevocable and not be*
13 *subject to amendment.*

14 (N/L, Exhibit A, Article I, ¶ B [Emphasis added.]) No amendment modified this provision, so it
15 remained the operative provision governing amendment and revocation of the Trust. Since Norman
16 Schwichtenberg died on July 28, 1997, none of the amendments signed after that date by Mary
17 Schwichtenberg alone could apply to Trust B.

18 10. **Distribution under the Original Trust Instrument:** Under the terms of the original
19 1982 Trust instrument, upon the death of the first trustor to die, the trust assets were to be divided
20 into two shares, designated Trust A and Trust B. (N/L, Exhibit A, Art. III) Trust B was to be an
21 irrevocable credit shelter trust, whose income, as well as discretionary amounts of principal subject
22 to an ascertainable standard, and limited amounts of principal upon request annually pursuant to a
23 so-called "5 and 5" power, was to be payable to the surviving trustor during her lifetime. (N/L,
24 Exhibit A, Art. III, ¶ A; Art. V, ¶ A) Trust A was fully revocable and amendable by the surviving
25 trustor, who was to be entitled to the entire net income and such amounts of principal as the
26 surviving trustor may direct from time to time. (N/L, Exhibit A, Art. I, ¶ B; Art. IV, ¶¶ A, B) The
27 surviving trustor also was to have a testamentary general power of appointment over the assets
28 remaining in Trust A upon her death. (N/L, Exhibit A, Art. IV, ¶ D) Upon the death of the
surviving trustor, both Trust A and Trust B were to terminate and their combined remaining assets
were to be distributed to and among any of the trustors' issue or any charity in such proportion as
the surviving trustor may appoint by written instrument delivered to the Trustee or by Will or

1 Codicil. If the surviving trustor failed to effectively exercise such power of appointment, the assets
2 of Trust A and Trust B remaining at her death were to be distributed in equal shares to the trustors'
3 children. (N/L, Exhibit A, Art. VI, ¶ A, 1, 2, 3)

4 11. **Successor Trustee Provision Under Original Trust Instrument:** The original trust
5 instrument named the trustors – Norman and Mary Schwichtenberg – as the original trustees, and
6 provided that if either ceased to serve, the other would continue to serve as sole trustee, but that if
7 both trustors ceased to serve as trustees, then Santa Monica Bank would be the successor. (N/L,
8 Exhibit A, Art. X, ¶ A)

9 12. **Distribution under the August 18, 1989 Amendment:** The August 18, 1989
10 Amendment replaced the provisions creating the irrevocable credit shelter subtrust (Trust B) and the
11 revocable survivor's t subtrust (Trust A) upon the death of the first trustor to die with new
12 provisions creating three subtrusts, including an irrevocable credit shelter subtrust (Trust B), an
13 irrevocable qualified terminable interest subtrust (Trust C) and a revocable survivor's subtrust
14 (Trust A), effectively creating a so-called "ABC" Trust rather than an "AB" Trust. (N/L, Exhibit B,
15 Art. III) The provisions for distribution of principal and income to the surviving trustor from Trust
16 A remained the same as in the original trust instrument: The surviving trustor was to be entitled to
17 the entire net income of Trust A, plus as much of the principal of Trust A as she may direct from
18 time to time. (N/L, Exhibit B, Art. IV, ¶¶ A, B) As in the original trust instrument, the surviving
19 trustor continued to have a testamentary general power of appointment over the assets remaining in
20 Trust A upon her death. (N/L, Exhibit B, Art. IV, ¶ D)

21 13. The surviving trustor was also to receive the entire net income of Trust B during her
22 remaining lifetime following the death of the first trustor to die, and she was entitled to
23 discretionary payments of principal pursuant to an ascertainable standard. (N/L, Exhibit B, Art. V,
24 ¶ A, 1) As trustee, the surviving trustor also had discretion to make distributions to her children
25 from Trust B principal for "their proper support, health, maintenance and education in their
26 accustomed manner of living existing at the time of death of the Trustor first to die," taking into
27 consideration such child's other resources, and provided that any such distributions were to be
28 charged against the ultimate distributive share of the beneficiary to whom or for whom the

1 payments were made. (*Id.*) The surviving trustor was also given the right to rent-free occupancy of
2 any real property held in either Trust B or Trust C that the trustors occupied as their principal place
3 of residence at the death of the first trustor to die. In addition, the trustee was given discretion to
4 pay all expenses associated with the real property occupied by the trustors at the death of the first
5 trustor to die, *regardless of whether such real property was an asset of Trust B or Trust C.* (N/L,
6 Exhibit B, Art. V, ¶ A, 2)

7 14. Under the August 18, 1989 Amendment, the surviving trustor was also to receive the
8 entire net income of Trust C during her remaining lifetime, as well as discretionary payments of
9 principal pursuant to an ascertainable standard, but such principal payments were to be permitted
10 only after exhaustion of Trust A and Trust B. (N/L, Exhibit B, Art. VI, ¶ A, 2, 3)

11 15. Upon the death of the surviving trustor, Trust A was to terminate and its remaining
12 assets were to be distributed to and among any person or persons designated by the surviving trustor
13 pursuant to a testamentary general power of appointment. (N/L, Exhibit B, Art. VII, ¶ A, 1, 2)
14 Only in the absence of an effective exercise of this power of appointment was Trust A to be
15 distributed equally among the trustors' children. (N/L, Exhibit B, Art. VII, ¶ A, 3) Unlike the
16 original trust instrument, the August 18, 1989 Amendment did not give the surviving trustor a
17 power of appointment over Trust B. Instead, the assets remaining in Trust B were to be distributed
18 equally among the trustors' children upon the death of the surviving trustor. (N/L, Exhibit B, Art.
19 VII, ¶ A, 3) The assets remaining in Trust C were to be distributed pursuant to the terms of Article
20 VII. (N/L, Exhibit B, Art. VI, ¶ B)

21 16. ***Successor Trustee Provision Under August 18, 1989 Amendment:*** The August 18,
22 1989 Amendment changed the successor trustee provision (Article X) to provide that if Mary
23 Schwichtenberg ceased to serve as co-trustee, then Norman Schwichtenberg and Jennifer would
24 serve as co-trustees; and that if Norman Schwichtenberg ceased to serve, then Jennifer would serve
25 as sole trustee. In the event Jennifer could no longer serve, then Paul Norman Schwichtenberg
26 would replace her as co-trustee or sole trustee as the case may be. If neither Paul nor Jennifer could
27 serve, then they together (or if one were unable, then the other acting alone) would appoint a
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1 successor trustee, and if no successor were appointed in this manner, then and only then, Santa
2 Monica Bank was named as successor trustee. (N/L, Exhibit B, Art. X, ¶ A)

3 17. **Distributions under the February 20, 1990 Amendment:** The February 20, 1990
4 Amendment added a new subparagraph (a) to paragraph 3 of Section A of Article VII, providing for
5 distribution to the trustors' daughter Melody Underwood of any interest the Trust owned at the time
6 of the surviving trustor's death in certain real property in Thousand Oaks, California, along with
7 forgiveness and cancellation of any debt owed to the trustors by Melody and her husband, Alan
8 Underwood. This distribution of interest in real property and cancellation of debt was to be in part
9 of Melody's share of the Trust and not in addition to it. (N/L, Exhibit C, ¶ A [adding ¶ 3(a) to Art.
10 VII, § A]). The Petition erroneously describes this amendment as providing for a gift to the
11 trustors' son Paul. *See Petition, ¶ 4 at p. 3.* In any event, the Trust no longer held any interest in
12 the Thousand Oaks real property at the time of Mary Schwichtenberg's death.

13 18. **Successor Trustee Provision under the February 20, 1990 Amendment:** This
14 amendment also modified the trustee succession provision such that if Norman Schwichtenberg
15 were to cease to serve as co-trustee, then Mary Schwichtenberg would serve alone as sole trustee,
16 and if Mary Schwichtenberg ceased to serve as co-trustee, then Norman and Jennifer would serve as
17 co-trustees provided Norman were able to serve. If neither Norman nor Mary could serve, then
18 Jennifer would act as co-trustee and she would appoint either Bradd, Melody or Paul to serve with
19 her as co-trustee. (N/L, Exhibit C, ¶ B [replacing Art. X])

20 19. **Distributive Provisions under the May 10, 1993 Amendment:** The properly titled,
21 Third Amendment, dated May 10, 1993, amended and clarified the disposition of Trust C upon the
22 death of the surviving trustor, by replacing Paragraph B of Article VI (which had been inserted by
23 the August 18, 1989 Amendment). As so amended and clarified, upon the death of the surviving
24 trustor, any undistributed income of Trust C is to be distributed in accordance with the provisions
25 for distribution of Trust A (first, pursuant to any exercise of the surviving trustor's testamentary
26 general power of appointment over Trust A, and, in the absence of an effective exercise of this
27 power of appointment, then to the trustors' children in equal shares). In contrast, the remaining
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1 principal of Trust C is to be distributed in accordance with the provisions governing distribution of
2 Trust B as set forth in Article VII. (N/L, Exhibit D, ¶ 1)

3 20. In addition, the May 10, 1993 Amendment added to paragraph 3 of Section A of
4 Article VII, a new subparagraph (b) providing for distribution to the settlors' son Paul of "any
5 interest in" specified real property, along with forgiveness of debt:

6 3-(b) It is specially provided that if any interest in the real property
7 commonly known as 4193 McConnell Boulevard, Culver City,
8 California 90066, is then part of the trust assets, the entire interest in
9 said property shall be distributed to the trustor's son, PAUL N.
10 SCHWICHTENBERG. In addition, any debt owed by PAUL N.
11 SCHWICHTENBERG to the trustors, either individually or as
12 trustees hereof, shall be forgiven and cancelled. The distribution of
13 real property and cancellation of indebtedness directed by this
14 paragraph (b) shall constitute part of the trust share of PAUL N.
15 SCHWICHTENBERG as directed by paragraph 3 of Section A of this
16 Article VII, and shall not be in addition to the trust share of PAUL N.
17 SCHWICHTENBERG.

13 (N/L, Exhibit D, ¶ 2) The Petition erroneously describes this amendment as providing for a gift to
14 the trustors' daughter Melody. *See Petition, ¶ 5 at p. 3.*

15 21. The May 10, 1993 Amendment also added another new subparagraph (c) to
16 paragraph 3 of Section A of Article VII, setting forth a gift to BETTY M. HUFFMAN *from Trust B*,
17 as follows:

18 3. The following new subparagraph (c) shall be added to paragraph 3
19 of Section A of Article VII:

20 3-(c) Notwithstanding the above, and prior to the allocation of the
21 shares of Trust B (as augmented by Trust C and as may be further
22 augmented by Trust A) being divided into equal shares as set forth in
23 paragraph 3 above, the trustee shall distribute the sum of \$100,000 to
24 BETTY M. HUFFMAN, outright and free of trust. If she is not living
25 at the time of the death of the surviving trustor, this gift shall lapse
26 and be disposed of as part of the residue hereinabove.

24 (N/L, Exhibit D, ¶ 3) Petitioner repeatedly and erroneously describes Betty Huffman as the
25 trustors' "friend." *See Petition, ¶¶ 5, 11, 45.* In fact, Betty Huffman is Mary Schwichtenberg's
26 sister!

27 22. ***Successor Trustee Provisions of the May 10, 1993 Amendment:*** The May 10, 1993
28 Amendment replaced Section A of Article X with the following provisions:

1 A. NORMAN H. SCHWICTENBERG and MARY R. SCHWICTENBERG shall serve as
2 cotrustees.

3 1. If NORMAN H. SCHWICTENBERG shall become
4 unwilling or unable for any reason to serve as cotrustee, then MARY
5 R. SCHWICTENBERG shall serve as sole trustee. If MARY R.
6 SCHWICTENBERG shall become unwilling or unable for any
reason to serve as sole trustee, MERRILY SUE
SCHWICTENBERG, also known as JENNIFER GRANT, shall
serve as successor trustee.

7 2. If MARY R. SCHWICTENBERG shall become unable
8 or unwilling to serve as cotrustee with NORMAN H.
9 SCHWICTENBERG, MERRILY SUE SCHWICTENBERG, also
10 known as JENNIFER GRANT, shall serve as cotrustee with him. If
11 NORMAN H. SCHWICTENBERG is unable or unwilling for any
12 reason to serve as cotrustee, then MERRILY SUE
13 SCHWICTENBERG, also known as JENNIFER GRANT, shall
14 serve as successor sole trustee.

15 3. At all times while MERRILY SUE SCHWICTENBERG,
16 also known as JENNIFER GRANT, is serving as trustee or cotrustee,
17 she shall be empowered to nominate an institutional or corporate
18 cotrustee to serve with her or as successor to her. She shall also retain
19 the right to remove and replace that corporate or institutional trustee
20 with another corporate or institutional trustee. At such time as she is
21 unwilling to act as trustee or cotrustee, a majority of the adult income
22 beneficiaries of this trust shall be empowered to nominate a corporate
23 or institutional trustee over this trust and all trusts created hereunder,
24 and to remove and replace any corporate or institutional trustee or
25 cotrustee with another corporate or institutional trustee or cotrustee.

26 (N/L, Exhibit D, ¶ 4)

27 23. ***The March 28, 1997 Amendment:*** In March 1997, Norman and Mary established a
28 separate trust for the benefit of their daughter Melody, with Donald R. Mess named as trustee. The
sole asset of this new, "Melody Underwood Property Trust," was a home for Melody and her
children. Under the terms of this trust, Melody (along with her then minor children) was given
exclusive use, occupancy and possession of the real property, provided Melody pay the property
taxes and insurance and maintain the property in good condition. In general, the trust was to
continue for Melody's lifetime as long as she continued to live in the home, at which time the trust
was to terminate and the property was then to be transferred to the Schwichtenberg Revocable
Family Trust. Notwithstanding the language of the Amendment placing the burden of property
taxes, insurance and maintenance on the beneficiary, in actuality, Mary Schwichtenberg paid much

1 if not all of those expenses. Similarly, Mary Schwichtenberg also paid more than \$18,000 of
2 delinquent property taxes on the real property distributed to son Paul.

3 24. In conjunction with the creation of the Melody Underwood Property Trust, on March
4 28, 1997, the trustors executed the March 28, 1997 Amendment to the Schwichtenberg Revocable
5 Family Trust. This amendment acknowledged the creation of the new trust for Melody, recited that
6 the value of the property transferred to the new trust for Melody was \$215,000, and provided that
7 distributions under the Schwichtenberg Revocable Family Trust “shall be adjusted to equalized
8 amounts for all children.” (N/L, Exhibit E) The trustors’ never increased the amount to be
9 equalized above \$215,000 despite the surviving trustor’s payment of thousands of additional dollars
10 to maintain Melody in this and successive homes.

11 25. The March 28, 1997 Amendment was the last Trust amendment signed by both
12 trustors. Norman Schwichtenberg died on July 28, 1997.

13 26. ***The October 14, 1997 Amendment Changing Trustee Succession as to Trust A:***
14 This amendment, signed by Mary R. Schwichtenberg, recited Norman’s death and deleted Section
15 A of Article X “as the same applies to Trust A,” replacing it with the following:

16 A. MARY R. SCHWICHTENBERG shall serve as trustee of
17 Trust A.

18 1. If MARY R. SCHWICHTENBERG shall become unwilling
19 or unable for any reason to continue to serve as trustee of Trust A,
20 then MERRILY SUE SCHWICHTENBERG, also known as
21 JENNIFER GRANT, shall serve as successor trustee. If MERRILY
22 SUE SCHWICHTENBERG, also known as JENNIFER GRANT,
23 shall become unwilling or unable for any reason to serve or to
24 continue to serve as successor trustee of Trust A, then those of the
25 trustors’ children who are then living, by majority vote, shall appoint
26 an individual or corporation to serve as successor trustee of Trust A.

23 (N/L, Exhibit F)

24 27. The October 14, 1997 Amendment did not purport to change the trustee succession
25 provisions for Trusts B and C, which continued to be governed by the May 10, 1993 Amendment.

26 28. ***The June 17, 1998 Amendment of Trust A (N/L, Exhibit G):*** This amendment
27 modified the default disposition of the *residue* of Trust A (Article IV, Section E) in the event the
28 surviving trustor failed to effectively exercise her testamentary general power of appointment

1 conferred by Article IV, Section D, under the August 18, 1989 Amendment. The modifications
2 included a provision for distribution of personal property to the trustors' children who are then
3 living (new Article IV, § E, ¶ 1), and a provision for distribution of a pre-deceased child's share of
4 the residue to a separate grandchildren's trust established on December 23, 1997 by Mary
5 Schwichtenberg as trustor, naming Mary Schwichtenberg and Donald R. Mess as co-trustees. This
6 provision also reiterated that *only in the event that the surviving trustor fails to exercise her power*
7 *of appointment*, leaving remanent residue, then "it is the intention of the surviving trustor that all of
8 the trustors' children be treated equally," and that "the trustee is therefore directed to take into
9 consideration all distributions to the children under this trust, including distributions from Trust B
10 and Trust C, and all assets held outside of this trust included in the taxable estate of the surviving
11 trustor, including but not limited to the \$215,000 contributed to the Melody Underwood Property
12 Trust" (new Article IV, § E, ¶ 2). It is clear the surviving trustor deliberately retained the flexibility
13 to confer unequal benefits among her children based on various factors, and that the provision for
14 equal treatment applied only in the absence of exercise of her power of appointment and only to the
15 Trust residue.

16 29. ***The October 15, 2003 Amendment of Trust A (N/L, Exhibit H):*** This Amendment
17 further modified the default disposition of the residue of Trust A (Article IV, Section E) in the event
18 the surviving trustor failed to effectively exercise her testamentary general power of appointment,
19 by adding language to Article IV, Section E, paragraph 2, referencing a \$125,000 loan to Jennifer
20 that the surviving settlor deemed "officially forgiven both for tax purposes and subsequently
21 considered personally *repaid* through the tax considerations accorded Mary R. Schwichtenberg in
22 conformity with such action," and directing the trustee "to also apply this personal forgiveness of
23 the debt amount of \$125,000 to all distributions from the trust estate including Trust B and Trust C
24 and all assets held outside of this trust included in the estate of the surviving trustee (*sic*)."
25 (Emphasis added.) Objector is informed and believes and thereupon alleges that the intent of this
26 provision is that the repaid amount is not to be included in calculating Objector's share of the Trust
27 residue.

28

1 30. ***The July 12, 2010 Amendment of Trust A (N/L, Exhibit I):*** The July 12, 2010
2 Amendment expressly recites that it is made pursuant to the surviving trustor’s power to amend the
3 Trust under the provision governing “Revocation and Amendment: After Death of First Trustor to
4 Die,” set forth in Article 1, paragraph B, of the original Trust instrument. As set forth above, this
5 provision reserved to the surviving trustor the power to amend or revoke Trust A, but not Trust B,
6 which was made irrevocable (and therefore unchangeable [*see Prob. Code § 15402*]) upon the death
7 of Norman Schwichtenberg, the first trustor to die.

8 31. Notwithstanding the surviving trustor’s inability to modify the provisions of Trust B,
9 the July 12, 2010 Amendment purported to amend “in its entirety” the gift to Betty Huffman (Mary
10 Schwichtenberg’s *sister*, not “friend” as erroneously described in the Petition) added by paragraph 3
11 of the May 10, 1993 Amendment. The July 12, 2010 amendment provided, in pertinent part:

12 Paragraph 3 of the Amendment dated May 10, 1993 adding
13 subparagraph (c) to Paragraph 3 of Section A of Article VII, shall be
 amended in its entirety to read as follows:

14 3-(c) Notwithstanding the above, and prior to the allocation of the
15 shares of Trust B (as augmented by Trust C and as may be further
16 augmented by Trust A) being divided into equal shares as set forth in
17 paragraph 3 above, the trustee shall hold in trust for BETTY M.
18 HUFFMAN, the sum of \$100,000.00, for the health care and comfort
19 of BETTY M. HUFFMAN, as determined by the trustee, in his or her
20 sole and absolute discretion. Upon the death of BETTY M.
 HUFFMAN the trustee shall distribute the balance then remaining in
21 said trust, if any, as part of the residue hereinabove. If BETTY M.
22 HUFFMAN is not then living at the time of the death of the surviving
23 trustor, this gift shall lapse and be disposed of as part of the residue
24 hereinabove.

21 (N/L, Exhibit I, p. 1)

22 32. ***The July 12, 2010 Amendment Restated a Provision for Paul and Added a New***
23 ***Provision Requiring Deduction from Paul’s Share of All Taxes Attributable to Distribution of an***
24 ***Interest in Specified Real Property to Him:*** The July 12, 2010 Amendment also included the
25 following “new” provision added to Article VII, Section A, paragraph 3:

26 3-(b) It is specially provided that if any interest in the real property
27 commonly known as 4193 McConnell Boulevard, Culver City,
28 California 90066, is then part of the trust assets, the entire interest in
 said property shall be distributed to PAUL N. SCHWICHTENBERG.
 In addition, any debt owed by PAUL N. SCHWICHTENBERG to the

1 trustors, either individually or as trustees hereof, shall be forgiven and
2 cancelled. The distribution of real property and cancellation of
3 indebtedness directed by this paragraph (b) shall constitute part of the
4 trust share of PAUL N. SCHWICHTENBERG as directed by
5 paragraph 3 of Section A of this Article VII, and shall not be in
6 addition to the trust share of PAUL N. SCHWICHTENBERG.
7 Furthermore, any estate, inheritance taxes, and/or capital gains taxes,
8 including interest and penalties, imposed on or by reason of the
9 inclusion of this gift or distribution shall be deducted from any trust
10 share of PAUL N. SCHWICHTENBERG.

11 (N/L, Exhibit I, p. 2, ¶ 3-(b)) Although characterized in the Amendment as a “new” provision, this
12 actually restates Article VII, Section A, paragraph 3-(b), which was previously added to the Trust
13 by the May 10, 1993 Amendment, except that it adds language directing deduction of taxes from
14 Paul’s share; otherwise the provision is identical to that contained in the May 10, 1993 Amendment.
15 The additional language regarding deduction of taxes has no impact because the surviving trustor
16 died in 2010 with an estate well below the federal estate tax exemption amount.

17 33. *The July 12, 2010 Amendment Added a Provision Requiring Deduction from*
18 *Melody’s Share of All Taxes Attributable to Distribution of an Interest in Any Real Property to*
19 *Her:* The July 12, 2010 Amendment also added a provision to Article VII, Section A, paragraph 3,
20 requiring deduction of taxes from Melody’s share, as follows:

21 3-(b)(i) Any estate, inheritance taxes, and/or capital gains taxes,
22 including interest and penalties, imposed on or by reason of the
23 inclusion of any gift or distribution of real or other property that has
24 been distributed or is currently held in trust for MELODY C.
25 UNDERWOOD outside of the assets she is to receive from this trust
26 and that is are [sic] included as part of trustor’s taxable estate, shall be
27 deducted from any trust share of MELODY C. UNDERWOOD.

28 (N/L, Exhibit I, p. 2, ¶ 3-(b)(i)) As with the added language regarding deduction of taxes from
Paul’s share, this provision has no impact because the surviving trustor died in 2010 with an estate
well below the federal estate tax exemption amount.

34. *The July 12, 2010 Amendment Added a Provision Granting a Life Estate in the*
Trustor’s Home to Jennifer Grant: The new provision, paragraph 3-(d), states:

3-(d) MERRILY SUE SCHWICHTENBERG, better known as
JENNIFER GRANT, shall be given a life estate in the real property
located at 1521 Via Entrada Del Lago, Lake San Marcos, California
 (“Trustor’s Home”) including all contents not designated to other
beneficiaries. The trustee shall hold sufficient funds in trust any

1 amounts necessary to maintain Trustor's Home, and any property
2 taxes, homeowner's dues, insurance, and maintenance expenses
3 thereon for the benefit of JENNIFER GRANT. Upon the death of
4 JENNIFER GRANT, or upon her refusal or surrender of the property,
5 the Trustor's Home shall be sold by VIRGINIA BOYER, if
6 VIRGINIA BOYER is willing and able, and the balance then
7 remaining, if any shall be distributed as part of the residue
8 hereinabove with no penalty to the equal share of JENNIFER
9 GRANT should she still be living.

6 (N/L, Exhibit I, p. 2, ¶ 3-(d)) Among the numerous inaccuracies contained in the Petition is the
7 assertion that the July 12, 2010 Amendment "was originally prepared by an attorney obtained by
8 Jennifer, the child who received the life estate in Mary's residence." *See Petition, ¶ 11, p. 5, lines*
9 *20-21.* The truth is that Mary Schwichtenberg, in her capacity as Trustee, first retained attorney
10 Sonja Panajotovic on November 8, 2009 – more than 8 months prior to execution of the July 12,
11 2010 Amendment – and Mary's engagement of attorney Panajotovic was in connection with an
12 issue regarding her daughter Melody. Attorney Panajotovic was Petitioner's original attorney, so
13 Petitioner could easily have obtained this information. Her implication that Jennifer is responsible
14 for the July 12, 2010 Amendment is without foundation and is yet another display of Petitioner's
15 hostility towards and bias against Jennifer.

16 35. Even more egregious and misleading is the whole underlying assertion that Jennifer
17 was "favored" over her siblings by the conferring of the life estate. In truth, Melody and Paul
18 received full ownership of homes, not merely life estates. Jennifer is informed and believes, and
19 thereupon alleges, that Mary also offered to buy a home for Bradd, but that he balked at agreeing to
20 her conditions. The forgiveness of debt provisions for Melody and Paul, beyond the amounts to be
21 deducted from their shares, are worth hundreds of thousands of dollars. Petitioner's assertion that
22 the life estate "favored" Jennifer to the exclusion of the other beneficiaries is simply false.
23 Nevertheless, as demonstrated in part C of this Section II, Mary had good and sufficient reason to
24 favor Jennifer.

25 36. ***Gifts to Minda McConnell and Irma Arroyo:*** The July 12, 2010 Amendment added
26 two other new gifts, each in the amount of \$20,000.00, to Minda McConnell and Irma Arroyo,
27 described therein as "dear and faithful friends of the surviving trustor." This provision was also
28 inserted in Article VII, Section A, paragraph 3. (N/L, Exhibit I, p. 2, ¶ 3-(e))

1 37. ***The July 12, 2010 Amendment's Modification of the Successor Trustee Provision***
2 ***for Trust A:*** The July 12, 2010 Amendment also contained an amendment to the trustee succession
3 provision found in Article X, Section A, of the Trust, as follows:

4 If MARY R. SCHWICHTENBERG shall become unwilling or unable
5 to serve as Trustee, RUSTY GRANT is hereby appointed as trustee.
6 At all times, MERRILY SUE SCHWICHTENBERG, better known as
7 JENNIFER GRANT, shall be empowered to nominate an individual,
8 institutional, or corporate cotrustee to serve as successor trustee
9 should RUSTY GRANT be unable or unwilling to serve as trustee.
10 She shall also retain the right to remove and replace that trustee or any
11 other successor trustees throughout the life of the trust. Should
12 JENNIFER GRANT become unable or unwilling to act, a majority of
13 the adult beneficiaries of the trust shall act.

14 (N/L, Exhibit I, pp. 1-2) Notwithstanding the seemingly unrestricted scope of this provision, the
15 surviving trustor had no power to change the trustee succession provision as to Trust B and Trust C,
16 so this provision could only modify the trustee succession provision as to Trust A.

17 38. ***The July 12, 2010 Amendment Also Added a No-Contest Clause to the Trust:*** See
18 N/L, Exhibit I, pp. 3-4.

19 39. ***The July 22, 2010 Amendment Further Modified the Successor Trustee Provision***
20 ***for Trust A:*** The final Trust amendment, signed by the surviving trustor on July 22, 2010, amended
21 the successor trustee provision contained in the July 12, 2010 Amendment, as follows:

22 If MARY R. SCHWICHTENBERG shall become unwilling or unable
23 to serve as Trustee, RUSTY GRANT is hereby appointed as trustee.
24 At all times, MERRILY SUE SCHWICHTENBERG, better known as
25 JENNIFER GRANT, shall be empowered to nominate an individual,
26 institutional, or corporate trustee to serve as successor trustee should
27 RUSTY GRANT be unable or unwilling to serve as trustee. She shall
28 also retain the right to remove and/or replace that trustee or any other
successor trustees throughout the life of the trust. Should JENNIFER
GRANT become unable or unwilling to replace a trustee who has
become unable or unwilling (sic) to serve, a majority of the adult
beneficiaries of the trust shall replace the trustee.

(N/L, Exhibit I, pp. 1-2)

C. Jennifer's Close Relationship with Her Parents

40. Since childhood, Jennifer has enjoyed a close and special relationship with her
parents. Jennifer's early years were complicated by birth-related medical issues, and Jennifer is
convinced she owes her survival to her parents, particularly her mother. Responding to these

1 complications forged a special bond between Jennifer and Mary, and Jennifer maintained a very
2 close relationship with both parents throughout her life.

3 41. Prior to Norman's death, when Mary needed help in locating resources and caring
4 for him, it was only natural that Jennifer respond by providing assistance and support to her mother
5 and father. Jennifer accompanied her father -- a stroke victim -- to his physical rehabilitation
6 sessions, and encouraged him to join a therapeutic horsebackriding program for persons with
7 disabilities, as well as an organization, "Joni and Friends," whose mission is to improve quality of
8 life for the disabled. After Norman's death in 1997, Jennifer became Mary's confidante and
9 personal assistant, and assisted with many of her business affairs, including helping to settle
10 Norman's estate. Jennifer spent so much time with her mother that she became friends with many
11 of her mother's friends and she and her mother enjoyed many activities together.

12 42. In 2005, Mary was diagnosed with cancer. Characteristically, Jennifer committed to
13 be there for and with her, come what may. Jennifer accompanied Mary to every single doctor's
14 appointment in which Mary saw the doctor and all hospitalizations related to her cancer, and
15 Jennifer coordinated Mary's care, spending at least 10 days a month at Mary's home, willingly
16 sacrificing professional and personal relationships in the process.

17 43. After a period of remission, Mary's cancer resurfaced in 2009, this time in stage 4.
18 Again, Jennifer rose to the challenge, spending enormous amounts of time with her mother and
19 eventually moving in with her during her final eight months (while maintaining her own apartment
20 in the Los Angeles area). During this period, Jennifer's relationships with her new friends in Lake
21 San Marcos deepened and she came to feel more at home there than in her own home. Jennifer
22 willingly gave herself over to her mission to sustain her mother as she coped with her illness and
23 impending death. Jennifer's efforts to assist and provide companionship to Mary in her time of
24 need were motivated by love and devotion and her desire to repay her mother for contributing to her
25 own survival.

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III

LEGAL CONTENTIONS

A. The 120-Day Statutory Period to Contest the Trust Has Expired.

44. Petitioner's request for an order that the 120-day statutory notice period starts running from the date of filing her petition is based on two erroneous and unsupported assumptions. First, Petitioner incorrectly asserts there was an agreement among the beneficiaries to toll the statutory period. Objector denies she ever agreed to toll the 120-day period.

45. Second, Petitioner's argument fails to recognize that any actual tolling agreement – even if it had existed – would not have resulted in commencement of a brand new 120-day period but, instead, would merely have suspended the running of the period during the time the tolling period was in effect. Whatever portion of the 120-day period that had already elapsed prior to the alleged tolling would be gone forever. The California Supreme Court has analogized the tolling of a statutory limitations period “to a clock that is stopped and then restarted. Whatever period of time that remained when the clock is stopped is available when the clock is restarted, that is, when the tolling period has ended.” *Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 674 (quoting *Woods v. Young* (1991) 53 Cal.3d 315, 326, n.3).

46. Here, Petitioner's Probate Code § 16061.7 notice was served on September 13, 2010. Absent tolling, the period for filing a trust contest would have expired 120 days later, on January 11, 2011. *See* Prob. Code § 16061.8.

47. The Petition alleges “on information and belief” that “during the period the Trust beneficiaries engaged in settlement discussions, there was an agreement tolling the statutory notice provisions of Probate Code § 16061.7.” *See Petition*, ¶37 at p. 13. The Petition is curiously vague concerning the details of this alleged tolling agreement. No written tolling agreement is referred to. No date is provided, nor any other details given, as to any purported oral tolling agreement. Instead, the Petition attempts to obscure the necessary details. First, the Petition inexplicably omits the date of service of the statutory trustee's notice, simply leaving unfinished the sentence alleging such service. *See Petition*, ¶37 at p. 6. Next, despite alleging that the tolling agreement supposedly was in effect during the settlement negotiations, the Petition fails to provide a date on which Petitioner's

1 own counsel “entered into negotiations with all Trust beneficiaries.” *See Petition*, ¶35 at p. 13.
2 Notwithstanding the vagueness of these allegations, the Petition clearly attempts to create the
3 impression that the alleged tolling agreement began shortly after service of the statutory trustee’s
4 notice. However, the Petition points to no evidence that this is true. Objector submits it is not true,
5 and further, that Petitioner’s lack of preciseness is intentional and demonstrates her unfitness to
6 remain trustee.

7 48. Objector never agreed – not in writing, not orally – to a suspension of the statutory
8 notice period during negotiations or any other time. Instead, Objector merely was informed by
9 Petitioner and/or Petitioner’s then counsel that the statutory period was being extended. Therefore,
10 if tolling required Objector’s consent, then there was no tolling agreement.

11 49. Most important, even *if* the court were to determine a tolling agreement came into
12 being without Objector’s express consent, the evidence demonstrates that the 120-day statutory
13 period has now expired.

14 50. As shown above, the Trustee’s Probate Code § 16061.7 notice was served on all
15 beneficiaries on September 13, 2010. An e-mail, dated October 20, 2010, from Bradd to Petitioner
16 asks Petitioner for certain information and refers to the “need” “to have the information at least a
17 month before the 120-day period lapses on January 12 [*sic*]¹, 2011.” *See N/L*, Exhibit K. Clearly,
18 Bradd was not aware of any tolling agreement as of October 20, 2011. At that point, 37 of the 120
19 days had elapsed.

20 51. Subsequently, in another e-mail, dated November 21, 2010, to Petitioner’s then
21 counsel, Bradd raised issues regarding the July 12, 2010 Trust amendment, and expressed a
22 willingness to “mediate this mess.” *See N/L*, Exhibit L. Bradd’s November 21, 2010 e-mail
23 contains no reference to any tolling agreement and no request to toll the 120-day period. As of
24 November 21, 2010, 69 of the 120 days had elapsed.

25 52. In apparent response, Petitioner’s then counsel sent Bradd an e-mail, dated
26 November 22, 2010, stating: “As we discussed, I believe we should attempt to negotiate a resolution

27 _____
28 ¹ The correct date is January 11, 2011.

1 to the issues involving the Trust.” *See* N/L, Exhibit M. Counsel made no reference in this e-mail to
2 any tolling of the statutory period.

3 53. Almost two weeks later, on December 4, 2010, Bradd sent a lengthy e-mail to
4 Petitioner’s then counsel, setting forth various issues and concerns, and stating: “Should mediation
5 fail to come to a legal and amicable solution to acceptance of the four major beneficiaries, the
6 trustee notify the four major beneficiaries in writing *before the 120 day period terminates*, that she
7 will petition the court” *See* N/L, Exhibit N (emphasis added). Again, Bradd’s December 4,
8 2010 e-mail does not refer to any purported tolling agreement. Eighty-one of the 120 days had
9 elapsed by then.

10 54. The very first mention of any purported extension of the statutory period appears to
11 be in an e-mail dated January 4, 2011, from Objector to Petitioner, in which Objector complains that
12 “[I]t is not my fault Bradd is being allowed to contest the Trust and the 120 days are being
13 extended.” *See* N/L, Exhibit P. Objector wrote this after being informed by Petitioner’s counsel
14 and/or Petitioner that the 120-day period was being extended.

15 55. Objector submits that *if* there was a valid tolling agreement, there is no evidence of
16 its existence prior to January 4, 2011. By that time, fully 113 of the 120 days had already elapsed,
17 leaving only 7 days remaining to contest the Trust or any of its amendments.

18 56. Those 7 days have also now elapsed. The Petition – which was served on all
19 beneficiaries on May 23, 2011 (*See* N/L, Exhibit P) – gave notice that Petitioner terminated any
20 alleged tolling agreement by filing the Petition requesting an order that the tolling period was over.
21 *See Petition*, ¶ 37 at p. 13. Accordingly, service of the Petition restarted the statutory period, which
22 at most had only 7 days remaining to run, and which therefore expired on or about May 30, 2011.

23 57. In summary, it is Objector’s considered position that the 120-day statutory period to
24 contest the Trust commenced running on September 13, 2010 and either was never tolled and
25 expired on January 11, 2011 or, if it were tolled, such tolling commenced no earlier than January 4,
26 2011 and lasted only until May 23, 2011, at which time the statutory period restarted, only to expire
27 7 days later, on May 30, 2011. In either event, the statutory period has now elapsed and any contest
28 of the Trust, including any of its amendments, is time-barred.

1 **B. No Abatement of Objector's Life Estate Is Necessary or Permitted and There Is No**
2 **Need to Sell the Trustors' Residence.**

3 58. Petitioner's related assertions that the bequest to Jennifer of a life estate in the
4 trustors' residence is subject to abatement and that, therefore, it is necessary to sell the residence,
5 are both without basis and must be rejected.

6 59. The bequest of a life estate to Jennifer is a *specific* bequest to the transferor's relative
7 because it is a transfer of specifically identifiable property to the trustor's daughter. *See* Prob. Code
8 § 21117(a); *In re DeSanti's Estate* (1942) 53 Cal.App.2d 716, 719. Under California's abatement
9 statute, specific gifts to the transferor's relatives are the very last category of beneficial interests to
10 abate should abatement be required. *See* Prob. Code § 21402(a). Therefore, *if* abatement were
11 necessary, beneficial interests in the Trust residue, and general gifts such as cash bequests would
12 abate first, prior to any abatement of the life estate.

13 60. Furthermore, there does not appear to be any actual need for abatement here.
14 Contrary to Petitioner's assertion, the \$100,000 gift to Betty Huffman is made from Trust B, not
15 Trust A. The gift to Betty Huffman is contained in an amendment to Article VII of the Trust, which
16 governs disposition of Trust B, not Trust A:

17 3-(c) Notwithstanding the above, and prior to the allocation of the
18 shares of Trust B (as augmented by Trust C and as may be further
19 augmented by Trust A) being divided into equal shares as set forth in
20 paragraph 3 above, the trustee shall distribute the sum of \$100,000 to
BETTY M. HUFFMAN, outright and free of trust. If she is not living
at the time of the death of the surviving trustor, this gift shall lapse
and be disposed of as part of the residue hereinabove.

21 (N/L, Exhibit D, ¶ 3) According to the Petition, there is sufficient cash in Trust B to fund Betty's
22 gift, and it is not necessary to sell the residence – which is an asset of Trust A – to fund the gift to
23 Betty.² Further, upon information and belief, Trust A includes not only the assets disclosed in the
24 Petition, but also a percentage interest in Melody's home, contrary to Petitioner's erroneous
25 allegation that Melody's home is held entirely in Trust C (*see Petition, ¶ 17 at p. 7*).

26
27 ² Indeed, as set forth above, if there indeed were insufficient assets, the cash gift to Betty
28 would abate prior to the life estate to Jennifer.

1 61. Nor does the need to maintain the life estate require sale of the trustors' residence.
2 To the extent there actually are insufficient funds in the Trust to maintain the residence over the
3 remaining years of Jennifer's life, Jennifer is willing to assume the burden of doing so herself,
4 except to the extent repairs have become necessary as the result of Petitioner's failure to properly
5 maintain the residence and penalties and interest have been incurred as a result of Petitioner's
6 negligence. Jennifer has also offered to maintain the life estate herself, rather than have Melody
7 lose her home, so that Melody's home would only come under question should abatement occur for
8 reasons other than the need to maintain the life estate. Based on the allegations of the Petition and
9 in view of Jennifer's generous willingness to maintain the residence herself with her own personal
10 funds should it become necessary, there appear to be sufficient assets in Trust A to fund the gifts to
11 Minda and Irma and still honor the life estate in the residence. Finally, Petitioner's reference to the
12 residence being "vacant" (*see Petition, ¶ 33 at p. 12*) fails to acknowledge that the purported
13 "vacancy" is the result of Petitioner's failure to follow the terms of the Trust and distribute the life
14 estate to Jennifer, as well as her failure to properly maintain the property.

15 **C. Extrinsic Evidence Is Admissible Only If the Trust Language Is Ambiguous, and then**
16 **Only to Establish a Construction to Which the Trust Instrument is Reasonably**
Susceptible.

17 62. The Petition asserts that the Trust documents "create substantial ambiguity and
18 uncertainty of Settlor's intentions," such that resort should be had to extrinsic evidence to construe
19 and interpret them. *See Petition, ¶21 at p. 9*. Objector does not deny that extrinsic evidence is
20 admissible to assist in the interpretation of ambiguous language in a trust document. Indeed,
21 extrinsic evidence may even be introduced to establish that seemingly clear trust language is, in
22 reality, ambiguous when viewed in the light of the proffered evidence. *Estate of Russell* (1968) 69
23 Cal.2d 200, 212. But in *Russell*, the California Supreme Court made it very clear that extrinsic
24 evidence may not be used to imbue trust language with a meaning to which it is not reasonably
25 susceptible: "If . . . in the light of such extrinsic evidence, the provisions of the will are not
26 reasonably susceptible of two or more meanings, there is no uncertainty arising upon the face of the
27 will [citations omitted] and any proffered evidence attempting to show an intention different from
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1 that expressed by the words therein, giving them the only meaning to which they are reasonably
2 susceptible, is inadmissible.” *Id.*

3 63. Unfortunately, the Petition does not adequately explain why Petitioner believes
4 certain provisions of the Trust to be ambiguous, or how extrinsic evidence would render those
5 provisions reasonably susceptible to a meaning different from that expressed by the language itself.

6 64. First, Petitioner asserts that extrinsic evidence is necessary to determine whether
7 certain amendments executed by Mary after Norman’s death may be interpreted as invalid attempts
8 to modify the terms of Trust B or as new bequests from Trust A. Objector submits the Trust
9 language is absolutely clear and unambiguous in this regard.

10 65. As set forth above, the original Trust instrument clearly provided that following the
11 death of the first trustor to die, the surviving trustor could amend Trust A, but could not amend
12 Trust B and Trust C:

13 B. After Death of First Trustor to Die.

14 *From and after the death of the first Trustor to die, the surviving*
15 *Trustor shall have the power to amend or revoke Trust A (as*
16 *hereinafter described), in whole or in part by an instrument in writing*
17 *delivered to the Trustee; the Trust B (as hereinafter described), may*
not be amended or revoked by any person. Upon the written election
of both Trustors, this Trust shall become irrevocable and not be
subject to amendment.

18 (N/L, Exhibit A, Article I, ¶ B [Emphasis added.]

19 66. The May 10, 1993 Amendment, signed by both trustors, added a bequest of \$100,000
20 to Betty Huffman, as follows:

21 3. The following new subparagraph (c) shall be added to paragraph 3
22 of Section A of Article VII:

23 3-(c) Notwithstanding the above, and prior to the allocation of the
24 shares of Trust B (as augmented by Trust C and as may be further
25 augmented by Trust A) being divided into equal shares as set forth in
26 paragraph 3 above, the trustee shall distribute the sum of \$100,000 to
BETTY M. HUFFMAN, outright and free of trust. If she is not living
at the time of the death of the surviving trustor, this gift shall lapse
and be disposed of as part of the residue hereinabove.

27 (N/L, Exhibit D, ¶ 3)

28

1 67. Notwithstanding the surviving trustor's inability to modify the provisions of Trust B
2 following Norman Schwichtenberg's death, the July 12, 2010 Amendment purported to amend "in
3 its entirety" the gift from Trust B to Betty Huffman, which had been added to the Trust by
4 paragraph 3 of the May 10, 1993 Amendment.

5 Paragraph 3 of the Amendment dated May 10, 1993 adding
6 subparagraph (c) to Paragraph 3 of Section A of Article VII, shall be
amended in its entirety to read as follows:

7 3-(c) Notwithstanding the above, and prior to the allocation of the
8 shares of Trust B (as augmented by Trust C and as may be further
augmented by Trust A) being divided into equal shares as set forth in
9 paragraph 3 above, the trustee shall hold in trust for BETTY M.
HUFFMAN, the sum of \$100,000.00, for the health care and comfort
10 of BETTY M. HUFFMAN, as determined by the trustee, in his or her
sole and absolute discretion. Upon the death of BETTY M.
11 HUFFMAN the trustee shall distribute the balance then remaining in
said trust, if any, as part of the residue hereinabove. If BETTY M.
12 HUFFMAN is not then living at the time of the death of the surviving
trustor, this gift shall lapse and be disposed of as part of the residue
hereinabove.

13
14 (N/L, Exhibit I, p. 1)

15 68. Since the July 12, 2010 Amendment purported to replace the very same provision for
16 Betty that was originally added to the Trust in the May 10, 1993 Amendment, the July 12, 2010
17 Amendment cannot reasonably be construed as adding an additional bequest to Betty, this time from
18 Trust A. The language simply is not reasonably susceptible to such an interpretation, and extrinsic
19 evidence is inadmissible to construe it in such manner.

20 69. Petitioner also offers the extrinsic evidence that certain real property is not a Trust
21 asset to assert that, therefore, the language of paragraph 3.b of Article [] is ambiguous.
22 Petitioner's assertion is based on an erroneous reading of paragraph 3.b. The Petition
23 mischaracterizes paragraph 3.b as stating that "the McConnell Blvd, Culver City property was to be
24 distributed to Paul . . ." See *Petition*, ¶23 at p. 9. The Petition is simply wrong. Paragraph 3.b of
25 Article VII actually states:

26 3-(b) It is specially provided that *if any interest in* the real property
27 commonly known as 4193 McConnell Boulevard, Culver City,
California 90066, *is then part of the trust assets, the entire interest in*
28 *said property* shall be distributed to the trustor's son, PAUL N.
SCHWICHTENBERG. In addition, any debt owed by PAUL N.

1 SCHWICHTENBERG to the trustors, either individually or as
2 trustees hereof, shall be forgiven and cancelled. The distribution of
3 real property and cancellation of indebtedness directed by this
4 paragraph (b) shall constitute part of the trust share of PAUL N.
SCHWICHTENBERG as directed by paragraph 3 of Section A of this
Article VII, and shall not be in addition to the trust share of PAUL N.
SCHWICHTENBERG.

5 (N/L, Exhibit D, ¶ 2 [Emphasis added.]

6 70. Thus, contrary to Petitioner's assertion, paragraph 3.b. does not state that the
7 McConnell Blvd. property is to be distributed to Paul. What Paul actually is given is "any interest"
8 the Trust owns in the property. The Petition itself confirms the Trust holds a deed of Trust securing
9 the loan made to Paul to purchase the property. *See Petition, ¶ 23 at p. 9.* It is that deed of trust
10 that is to be distributed to Paul, and Paul's debt is to be forgiven under paragraph 3.b. There is no
11 ambiguity here, and Petitioner has either misread the Trust language or deliberately misconstrued it
12 to allege ambiguity where none exists.

13 71. Nor is there any ambiguity created by the provisions for forgiveness and cancellation
14 of debt. It is immaterial that the debtors' beneficial interests in the Trust may be smaller than the
15 amounts of debt being forgiven. That circumstance may be resolved through application of the
16 abatement statute.

17 72. Finally, the Petition does not suggest how the inconsistent numbering of Trust
18 amendments raises any ambiguity. Indeed, it is uncertain from the Petition precisely in what
19 particulars the settlors' intent cannot be ascertained from the language and dates of the amendments
20 regardless of the numbering applied to them.

21 **D. Petitioner Should Not Be Confirmed as Trustee of Trust B.**

22 73. The Supplement to the Petition requests an order confirming Petitioner as trustee of
23 both Trust A and Trust B. However, the assertions upon which this request is based are either
24 untrue or immaterial.

25 74. First, Petitioner incorrectly asserts that there was an agreement among *all*
26 beneficiaries that Petitioner would serve as trustee of Trust B. This is false. Objector never *agreed*
27 that Petitioner should be trustee of Trust B. As with the purported tolling agreement, Petitioner
28

1 does not refer to any written agreement and does not describe the circumstances that she claims
2 gave rise to any purported oral agreement.

3 75. What actually transpired is that Petitioner – who is an attorney – merely assumed to
4 act as trustee of the entire Trust, not just Trust A, and she simply took over the whole Trust, without
5 ever informing Objector that Objector was still the legitimate, duly-named successor trustee of
6 Trust B and Trust C. Objector – who, unlike Petitioner, is not an attorney – did not understand she
7 still had a role as successor trustee of Trust B and Trust C following Mary’s death, and she accepted
8 Petitioner’s representation that Petitioner was now trustee of the entire trust.

9 76. Objector did not discover that she was the rightful trustee of Trust B and Trust C
10 until April 2011, and immediately upon learning this, Objector e-mailed Petitioner’s current counsel
11 informing her she had just received notice that Rusty is not the trustee of Trust B and Trust C and
12 demanding Petitioner transition administration of Trust B and Trust C to her. Objector copied
13 Petitioner on this e-mail. A true and correct copy of Objector’s April 20, 2011 e-mail to Petitioner’s
14 counsel and Petitioner is attached to the Notice of Lodgment as Exhibit Q. Both Petitioner and her
15 counsel ignored Objector’s April 20, 2011 demand. In late May, Objector retained her current
16 counsel, who proceeded to demand that Petitioner resign, in a letter dated June 9, 2011, to
17 Petitioner’s counsel. *See* N/L, Exhibit R. In a response dated June 14, 2011 to Objector’s counsel’s
18 demand, Petitioner’s counsel continued to ignore Objector’s April 20 e-mail, feigning surprise that
19 “Jennifer is just now raising an objection [to Rusty being trustee of Trust B and Trust C].” *See* N/L,
20 Exhibit R. Petitioner’s Supplement also neglects to inform the court of Objector’s April 20
21 demand, mentioning only counsel’s June 9 demand, in an obvious attempt to mislead the court into
22 believing Objector was tardy in waiting until June to raise the issue.

23 77. Petitioner seeks to support her request for confirmation as trustee of Trust B by
24 asserting that other beneficiaries have expressed hostility to Objector serving as trustee. *See*
25 *Supplement*, ¶4, at p. 2. Opposition by the other beneficiaries is not a statutory ground for removal
26 of a trustee (*see* Prob. Code § 15642). The settlors named Objector as trustee. Mary’s amendment
27 of Trust A could not and did not alter the successor trustee provision as to Trust B and Trust C.
28 Petitioner’s implication that the alleged hostility of the other beneficiaries justifies re-writing the

1 Trust language demonstrates Petitioner's own hostility to Objector, as well as Petitioner's
2 determined refusal and failure to follow the terms of the Trust. Such refusal to follow the terms of
3 the Trust is evidenced by Petitioner's determined effort to overthrow the life estate and her
4 usurpation of authority over Trust B and Trust C, including purporting to file her Petition as trustee
5 of Trust B and Trust C a month after Objector discovered and informed Petitioner's counsel and
6 Petitioner that Objector was the duly named and *de jure* trustee of Trust B and Trust C.

7 **E. Petitioner's Request for Orders Governing the Use of Trust Assets to Fund Litigation**
8 **Is Perverse.**

9 78. The Petition makes two requests regarding the appropriate use of Trust funds to pay
10 litigation expenses: Petitioner's first request is for an order confirming that Trust assets cannot be
11 used to pay for litigation involving the validity of any Trust amendment. Although the request is
12 phrased in terms of "any" Trust amendment, it is clear from the Petition that Petitioner included this
13 request with only one Trust amendment in mind, the July 12, 2010 instrument entitled "Fifth
14 Amendment." *See Petition*, ¶34 at pp. 12-13.

15 79. Probate Code § 16000 imposes upon a trustee "a duty to administer the trust
16 according to the trust instrument." It follows that at a minimum, Petitioner has a duty to defend the
17 trust instrument against spurious claims of invalidity. In light of such duty, Petitioner's position
18 that trust funds should not be used to defend the Fifth Amendment is tantamount to saying that a
19 challenge to the Fifth Amendment would not be spurious. But the Fifth Amendment is the very
20 amendment that names Petitioner – who otherwise is a stranger to this Trust – as trustee. If
21 Petitioner truly harbors doubts as to the validity of the Fifth Amendment, and does not believe trust
22 assets should be used to defend the settlor's intent as expressed in the Fifth Amendment, she should
23 resign as trustee forthwith. Petitioner's refusal to defend the Fifth Amendment, coupled with her
24 apparent attempt to obfuscate the running of the statutory period in which to bring a contest, is
25 further evidence of Petitioner's bias and hostility towards Objector.

26 80. In contrast to her position on the use of trust funds to defend the settlor's intent as
27 expressed in the Fifth Amendment, Petitioner also seeks an order that trust assets can be used to
28 determine issues of ambiguity and construction, as well as ordinary costs of trust administration.

1 Jennifer has no objection to the request as to the *legitimate* ordinary costs of administration
2 (provided, of course, such costs are properly allocated among Trust A, Trust B and Trust C), and
3 she has no objection as to the costs incurred to construe actual ambiguity if it exists. However,
4 Jennifer strongly objects to spending Trust funds to determine bogus assertions of ambiguity raised
5 by Petitioner simply to further her apparent objective of selling Mary's residence and negating
6 Jennifer's life estate. The bogus claims of ambiguity are detailed above and include the following:
7 (a) the assertion the Trust is ambiguous as to the distribution set forth in paragraph 3.b; (b) the
8 assertion the Trust is ambiguous regarding the provisions for cancellation and forgiveness of debt;
9 (c) the assertion the Trust is ambiguous due to inconsistent numbering of amendments; (d) the
10 assertion the Trust is ambiguous regarding whether later amendments establish new bequests or
11 invalidly modify earlier, irrevocable ones; the assertion the Trust is ambiguous as to the identity of
12 the successor trustee of Trust B. Litigation expenses occasioned by Petitioner's requests to construe
13 these purported ambiguities should not be borne by the Trust, but by Petitioner personally.

14 **IV**
15 **OBJECTIONS**

16 81. Based on the foregoing, Jennifer objects to the following requests for orders in the
17 Petition and the Supplement to the Petition: (a) the Petition's request for a blanket order allowing
18 extrinsic evidence in interpretation and construction of the various documents comprising Trust A
19 and Trust B, to the extent such extrinsic evidence seeks to establish a construction to which the
20 language is not reasonably susceptible; (b) the Petition's request for an order that a new 120-day
21 Probate Code § 16061.7 period commenced to run on the date the Petition was filed; (c) the
22 Petition's request for an order instructing the Trustee to sell the Trustors' residence; (d) the
23 Petition's request for an order and priority of abatement of the specific cash bequests and life estate;
24 (e) the Petition's request for an order determining trust funds cannot be used to defend against
25 challenges to the Fifth Amendment; (f) the Petition's request for an order determining trust funds
26 can be used to pay the expenses of determining issues of ambiguity, to the extent any such issues
27 are determined to be artificial; (g) the request in the Supplement for an order confirming Petitioner
28 as trustee of Trust B; (h) the alternative request in the Supplement for an order appointing a private

1 fiduciary for Trust B; (i) the request in the Supplement for a bond for Trust A, particularly to the
2 extent the amount requested is based on an out-of-date, and possibly inflated, valuation; (j) the
3 request in the Supplement for a bond for Trust B since Petitioner has no legitimate interest in Trust
4 B and no legal authority to make requests concerning Trust B; (k) the requests in the Supplement
5 for orders giving Petitioner authority to pay herself trustee fees and to pay her attorney's fees, in
6 each instance relating to her Petition, which does not promote the best interests of the Trust.

7 WHEREFORE, Respondent/Objector JENNIFER GRANT prays for an order as follows:

- 8 1. Denying each and every request for relief contained in the Petition as supplemented;
- 9 2. Granting judgment in favor of Respondent/Objector JENNIFER GRANT and against
10 Petitioner on each and every prayer for relief asserted in the Petition as supplemented;
- 11 3. Dismissing the Petition as supplemented with prejudice;
- 12 4. Precluding Petitioner from charging the Trust with expenses, trustee's fees or
13 attorney's fees for her unnecessary Petition – a petition that seeks to undermine the Trust Petitioner
14 purports to serve;
- 15 5. Precluding Petitioner from charging Trust A with any expenses, trustee's fees or
16 attorney's fees in connection with her illegal administration of Trust B and Trust C;
- 17 6. Precluding Petitioner from charging Trust B and Trust C with any expenses, trustee's
18 fees or attorney's fees since she acted improperly in usurping authority as to those subtrusts;
- 19 7. Granting Respondent/Objector JENNIFER GRANT her costs of suit incurred herein,
20 including reasonable attorney's fees to the extent permitted; and
- 21 8. Granting such other and further relief as this Court deems just and proper.

22
23 DATED: July 19, 2011

HICKSON KIPNIS & BARNES, LLP

24
25 By: 

26 STEVEN J. BARNES
27 Attorneys for JENNIFER GRANT,
28 individually and as successor trustee

VERIFICATION

1
2 I, JENNIFER GRANT, individually and as successor trustee of Trust B of the
3 Schwichtenberg Revocable Family Trust dated July 28, 1982, declare that I have read the foregoing
4 RESPONSE AND OBJECTION to "TRUSTEE" RUSTY GRANT'S PETITION AS
5 SUPPLEMENTED REGARDING INTERNAL AFFAIRS OF TRUST, ETC. The matters stated in
6 it are true of my own knowledge, except as to those matters which are stated on information and
7 belief, and as to those matters I believe them to be true.

8 I declare under penalty of perjury, under the laws of the State of California, that the above is
9 true and correct and that this verification was executed this 19 day of July, 2011, at Pacific
10 Palisades, California.

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14 JENNIFER GRANT

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