4th Civil No. E058293, Consolidated with 4th Civil No. E062777

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

DAVID HITZ, Trustee of the L.L. Nunn Trust,

Petitioner and Respondent,

vs.

KINCH HOEKSTRA, EDWARD KEONJIAN, Trustees of the L.L. Nunn Trust,

Respondents and Appellants.

APPELLANTS' REPLY BRIEF

Appeal from the Superior Court for the County of Inyo,
Case No. SICVPB 12-53232
Hon. Dean T. Stout

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I. INTRODUCTION.

What was L.L. Nunn's purpose in creating the Trust? As the trial court found decisively in 2013, "the only purpose intended by him was to continue a men's college." (02 AA 0300.) Petitioner David Hitz himself agreed with this statement in 2010, signing a report stating: "L.L. Nunn, the founder of Deep Springs College, directly stated the purpose of the college: to prepare young men for lives of service to humanity." (03 AA 0726.) But Petitioner has changed his mind.

Based on the opinions of two "experts" (Dr. Riggio and Mr. Lehecka) who unabashedly believe that any all-male college is a "big mistake," who never visited or studied Deep Springs College, who have no opinions about whether the school is fulfilling its purported mission of training leaders, and who do not know whether the students at the school exhibit negative behavior purportedly associated with single-sex education[1] – in other words, experts who can't say that Deep Springs is suffering from being single-sex – and ignoring the essential relevant opinion of the only expert with actual experience at Deep Springs (Dr. Newell) that Deep

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[1] 3 RT 609:21-24 (Lehecka); 3 RT 617:25-26 (Lehecka); 3 RT 618:9-25 (Lehecka); 3 RT 651:3-8 (Lehecka); 3 RT 653:24-654:4 (Lehecka); 3 RT 640:25-642:1 (Lehecka); 4 RT 687:5-8 (Riggio); 4 RT 687:9-13 (Riggio); 4 RT 748:10-749:5 (Riggio); 4 RT 749:25-750:8 (Riggio); 4 RT 752:24-755:17 (Riggio).

Springs is fulfilling L.L. Nunn's purpose[2], the trial court also changed its mind, and determined that Deep Springs should become coeducational.

Despite its length, the Respondent's Brief ("RB") fails to undermine the following indisputable truths, all established in the Appellants' Opening Brief:

- The trial court had no power to change its determination of the purpose of the Trust during the pendency of Respondents' appeal challenging the trial court's findings that the Trustees had no discretion to admit women students to Deep Springs College and that the Trust's purpose was unambiguously stated in the Trust. It is elementary: while an appeal is pending, the trial court can take no action that interferes with or undermines the appellate court's power to decide the merits of the appeal. (Code Civ. Proc., § 916.) The trial court violated that rule here by changing its ruling, now on

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[2] 3 RT 555:5-556:10 (Newell). Petitioner contends, contrary to Professor Newell's testimony, that Deep Springs is not thriving, but a careful review of his evidence shows that his "facts" are open-ended comparisons (or misstatements of the record altogether). The school is "not as viable as it could be" and in a "comparatively weak position," he argues. (Respondent's Brief at 16 & fn. 10.) But Dr. Newell's conviction was absolute: Deep Springs has accomplished and continues to "accomplish L.L. Nunn's purpose." (3 RT 555:17-21.)

appeal, that the purpose of the Trust is to continue a men's college.

- Not only may a court not change the purpose of a trust through equitable deviation, but a trial court may not modify the terms of a trust "unless the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust." (Prob. Code, § 15409, subd. (a).) Here, there is no tenable argument that continuing to limit education to "promising young men" would defeat or substantially impair the purpose of the Trust. Indeed, precisely the opposite is true: expanding the Trust term "promising young men" to include women would defeat and substantially impair the Trust's specific and restrictive purpose to educate "promising young men."
- Setting aside that Probate Code section 15403 should not apply to charitable trusts at all, the Trust cannot be modified under section 15403 because the consent of all trust beneficiaries was never obtained.

A finding that Deep Springs College should admit women may comport with some people's idea of social justice, but it is not what L.L. Nunn intended for his Trust. Operating a single-sex college may be out of the mainstream, but it is by no means illegal, immoral or improper. It was

Mr. Nunn's plan that his trustees operate a single-sex college, and, as explained in Appellants' Opening Brief,

> The plan of the trustor must be followed. It may not be departed from in particulars wherein it is specific, merely because it may be considered in those particulars to be unwise. The trustee cannot substitute his own plan because he thinks it is a better one, and if he does the court should not approve his action to the prejudice of any beneficiary, even if it has operated to the general advantage of the estate.

(*Estate of Bothwell* (1944) 65 Cal.App.2d 598, 604.)

If the trial court's erroneous ruling is permitted to stand, no single-sex school governed by a trust will be safe from attack whenever its current trustees come to believe the founder was unwise. For the sake of the remaining single-sex colleges in the United States, for the sake of any charitable purpose that stands outside of the then-current mainstream, and for the sake of reinforcing and incentivizing the pursuit of charitable purposes generally, the trial court's order should be reversed.

II. THE TRIAL COURT SHOULD NOT HAVE REVISED ITS 2013 DETERMINATION OF THE PURPOSE OF THE TRUST.

A fundamental error in the trial court's ruling is its finding – contrary to its 2013 ruling – that the Trust has several purposes, and that the trial court may discard what it once determined was the Trust's sole purpose to improve (to some indefinite extent) the performance of Deep Springs College under the newly-found other purposes. All parties agreed

that L.L. Nunn was a careful draftsman and the language of the Trust could not be clearer: Mr. Nunn set up the Trust "to provide for and carry on educational work . . . similar to and in development of the work already inaugurated by grantor at Deep Springs . . . for the education of promising young men" in a specified manner. (03 AA 0618.) The trial court determined the purpose of the Trust in 2013 as part of its finding that the Trust does not allow Deep Springs to admit women, and should not have revisited that ruling while it was on appeal.

A pending appeal "stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby . . . ." (Code Civ. Proc., § 916, subd. (a) (emphasis added).) "The purpose of the rule depriving the trial court of jurisdiction in a case during a pending appeal is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The rule prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it." (*Betz v. Pankow* (1993) 16 Cal.App.4th 931, 938.)

The trial court violated this rule. The second-phase trial here occurred while the appeal from the first phase was pending. (See 02 AA 0319 [notice of appeal from first phase].) The trial court should have held the second-phase trial using the purpose of the Trust as determined in the first-phase, as was urged by Objectors (appellants herein, Kinch Hoekstra

and Edward Keonjian) in their motion for judgment on the pleadings. (See 02 AA 0338-0346.) Indeed, this was the entire purpose of the bifurcation to which all parties agreed. Had the trial court used the first-phase purpose in the second phase, Petitioner's requests to modify the trust would almost certainly have been decided – either as a matter of law or at trial – in Objectors' favor because the court would not have been free to change Deep Springs from a men's college. Because the second-phase purpose differs materially from the purpose declared in the first phase, the purpose of the Trust declared in the second phase alters the order that is the subject of the appeal in the first phase.

Backing off from its 2013 order that the Deed of Trust is unambiguous, the trial court found in 2014 that the same deed is ambiguous and that the court would therefore admit extrinsic evidence to construe the deed. But the Deed of Trust did not change between 2013 and 2014, nor did the question before the court change in any material way: in the first phase, the court was asked to determine Mr. Nunn's purpose, and in the second phase, it was asked to determine whether modification was necessary and permitted in light of that purpose.

In the first phase, the question was whether the Trust permitted the admission of women at Deep Springs College. In that phase, the trial court found the Deed of Trust to be unambiguous. (02 AA 298:25-27, 301:13-23.) The court held that, while the trustees were given a great deal of

discretion, one red line they could not cross – because the Trust was set up "for the education of promising young men" – is the admission to Deep Springs College of women. (02 AA 297:27-298:2.) The trial court found that the trustees "are limited to taking any necessary actions for *the purpose of the Trust*," which purpose is "only . . . to continue a men's college." (02 AA 0299:1-4 (emphasis in original), 0300:5-8.)

In the second phase, the question was whether the Deed of Trust should be modified to carry out its previously-determined purpose. In that phase, the Deed of Trust suddenly became ambiguous, and its "overarching purpose" became something other than the "only" purpose declared in the first phase, namely "'educational work' similar to and in development of that already inaugurated at Deep Springs College, in a manner emphasizing the need and opportunity for unselfish service in uplifting mankind from materialism to idealism." (02 AA 0503.)

How did it come to be that a Deed of Trust that has not been modified in 90 years changed from unambiguous to ambiguous between 2013 and 2014, and its only purpose in 2013 became at most a subordinate purpose in 2014? The trial court insists that it did not determine the purpose of the Trust in 2013 because "[t]he issue in [the] first part of the bifurcated trial was whether the language of the Trust instrument could be interpreted as giving the Trustees the discretion to institute coeducation at Deep Springs College." (02 AA 464:3-6.)

But how could the trial court have determined what the Deed of Trust does and does not permit – and that it unambiguously prohibits use of the trust estate to educate women – without also determining the Trust's purpose? Indeed, had the trial court determined in the first phase that the purpose of the Trust is to continue the educational work started by Mr. Nunn, and that he used the word "men" as merely "a description of the *type* of student that could be most effective in carrying out the overarching purpose" (02 AA 504 (emphasis in original)), the result in the first phase would have been different.

The trial court's determination that the purpose of the Trust is to continue a men's college should not have been relitigated in the second phase. Both parties urged the trial court to determine the purpose of the Trust in the first phase and on appeal from the first-phase ruling. (See Appellant's Reply Brief in Case No. E058293, dated Dec. 30, 2013, at 4 ("The question [in the first phase] is if, as a matter of law, the terms of the Trust foreclose the Trustees from determining that the admission of women furthers the Trust purpose.").) The trial court determined the Trust's purpose, and Petitioner appealed the ruling. The trial court proffered no coherent reason to allow Petitioner to have a "second bite at the apple," especially considering it was divested of jurisdiction to re-determine the purpose of the Trust. (*Sacks v. Superior Court* (1948) 31 Cal.2d 537, 540.)

Petitioner contends he was free to relitigate the Trust's purpose for a host of reasons, but none of them is correct. Petitioner distinguishes *Sacks* because he contends that the parties agreed to defer litigation of the Trust's purpose to the second phase, but that is untrue: the bifurcation was as to interpretation and modification, to foster "[t]he economy and efficiency of handling the litigation" (02 AA 0290:12-13), and the trial court clearly found purpose to be at issue in 2013. Economy and efficiency was intended to flow from adjudicating the purpose in the first phase and using that adjudication to guide the second phase. Petitioner contends that the Probate Code permits a trial court to make inconsistent rulings while appeals are pending, but cites to no authority permitting that result. Petitioner contends that litigating the Trust's purpose is collateral to the determination in the first phase, and that the trial court was free to revise its reasoning if not its ruling. But the finding that the Trust's only purpose was to continue a men's college is central to the ruling that the trustees may not admit women, not collateral. Finally, petitioner contends that this Court may make a determination of the Trust's purpose. While that is correct, this Court should affirm the holding from the first phase (for the reasons given by the trial court in 2013 and those set forth by Objectors in the first appeal); once it is determined that the trial court was correct in the first phase, its ruling in the second phase will necessarily be infirm.

III. THE TRIAL COURT ERRED BY MODIFYING THE TRUST UNDER EQUITABLE DEVIATION.

The trial court changed the purpose of the Trust – even by the trial court's second-phase definition assigning multiple purposes to the Trust – under Probate Code section 15409 ("Section 15409," or statutory equitable deviation) and common law equitable deviation. It erred in both respects.

A. The Trial Court Erred by Changing the Trust Under Section 15409.

A court may change "administrative or dispositive provisions" of a trust but only "if necessary to carry out the purposes of the trust . . . ." (Prob. Code, § 15409, subd. (a).) For reasons explained in the opening brief, the trial court erred by changing the Trust under the authority of this statute.

Petitioner seeks to bring this action within the scope of Section 15409 by arguing that the Trust's Purpose Paragraph is actually a dispositive provision. He defines "dispositive" by reference to a statute not at issue here, Probate Code section 18100.5, subdivision (d), which states that if a trustee elects to prove the existence of a trust to third persons by providing a certificate instead of the trust itself, the certificate "shall not be required to contain the dispositive provisions of the trust which set forth the distribution of the trust estate." This is not a definition of "dispositive" but

a description of which dispositive provisions may be omitted from the certificate. Petitioner's reliance on section 18100.5 must fail.

Petitioner next relies on *Estate of Traung* (1962) 207 Cal.App.2d 818, 830, which predates Section 15409 (originally enacted in 1986), for the proposition that "dispositive provisions of a trust" in many cases state the purpose of the trustor. (RB at 40.) *Traung* does not define "dispositive provisions," and even if Petitioner were correct that it does, that some trusts' dispositive provisions state the purpose does not mean that the Deed of Trust states its purpose in its dispositive provisions. In any event, *Traung* does not stand for the proposition that the purpose of the Trust may be modified under Section 15409. This Court is fully capable of discerning Mr. Nunn's purpose – the intersection of the axes described in the Purpose Paragraph, which provides conjunctive rather than parallel or prioritized requirements – and distinguishing it from any merely dispositive or administrative provisions. Moreover, because *Traung* predated Section 15409, its broad common-law authority to deviate from any term of a trust based on circumstances not anticipated by the settlor must give way, pursuant to Probate Code section 15002 (preserving common law "[e]xcept to the extent that the common law rules governing trusts are modified by statute"), to Section 15409's more limited authority to modify only

administrative and dispositive provisions and only if the modification is necessary to carry out a trust's purpose.[3]

B. The Trial Court Erred by Applying Common Law Equitable Deviation.

The trial court also erred by modifying the Trust pursuant to common law equitable deviation. Since the enactment of Section 15409, the common law is no longer available to change a trust on account of circumstances not known to the settlor, but the trial court applied common law equitable deviation nevertheless.

Petitioner relies on *Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, but that case holds that common law equitable deviation is available to fix drafting errors. Indeed, the very next sentence from *Bilafer* after the paragraph quoted by Petitioner on page 45 of the Respondent's Brief states: "No provision of the Probate Code specifically authorizes the reformation of an irrevocable trust where a mistake in drafting nullifies the trustor's intent." (*Id.* at pp. 368-369.) Hence in *Bilafer*, which involved a drafting error, it was proper to look to common law equitable deviation.

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[3] Petitioner's reliance on other common-law cases that predate Section 15409 is misplaced for the same reasons. (See RB at 42 (quoting *Adams v. Cook* (1940) 15 Cal.2d 352 and *Stanton v. Wells Fargo Bank & Union Trust Co.* (1957) 150 Cal.App.2d 763).)

Nobody here contends that the use of the phrase "promising young men" is a drafting error. As stated above, Mr. Nunn carefully drafted his trust instrument, and meant what he said. The trial court should have properly applied Section 15409 – which, as discussed above, would have resulted in no change to the Trust – and should have denied common law equitable deviation as a matter of law.[4]

Even had common law equitable deviation been available to the trial court, it should not have been used to change the Trust here. Under that

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[4] Petitioner contends that he can rely upon the "'peculiar' or 'exceptional' circumstances" test for common law equitable deviation discussed in *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 82. Although the trial court used the words "peculiar or exceptional" in its order, the court acknowledged that it was describing unanticipated circumstances. (02 AA 0524 ("None of these changes was or could have been anticipated by L.L. Nunn . . . when the Deed of Trust was signed.").) The circumstances described by the court as "peculiar or exceptional" (to support its application of the common law) are identical to the circumstances described by the court as "unanticipated" (to support its application of Section 15409). (Compare 02 AA 0524 (describing as "peculiar or exceptional circumstances" that "[w]omen today have vastly more opportunities and play vastly different roles -- including especially leadership roles in all aspects of society, whether that be in education, business, politics, government, or elsewhere -- as compared to what L.L. Nunn experienced during his lifetime") with 02 AA 0520-0521 (describing as "unanticipated" circumstances that "[t]he court finds that these overall societal changes, including the increasing numbers of women in positions of power and influence formerly reserved to men, was [sic] unanticipated and unknown by the Trustor at the time he executed the instrument").)

The trial court should not be permitted to escape the strictures of Section 15409 by merely re-labeling unanticipated circumstances as "peculiar or exceptional." For this reason, too, the application of common law equitable deviation was error.

doctrine, courts have "the equity power to modify the terms of a trust where such modification is necessary to preserve the trust or to serve the original intentions of the trustor." (*Stewart v. Towse* (1988) 203 Cal.App.3d 425, 428.) Under the purpose of the Trust as established in the first phase, it is illogical to conclude that it would be necessary in order to carry out Mr. Nunn's purpose of operating a men's college to cease to operate a men's college. To the contrary, the purpose would be defeated.

IV. THE TRIAL COURT ERRED BY MODIFYING THE TRUST UNDER SECTION 15403.

The trial court's use of Probate Code section 15403 ("Section 15403") to modify the Trust by consent is infirm for three reasons, none of which is defeated by Petitioner's argument: (1) Section 15403 should not be used – and has never been used, to any party's knowledge – when a trust has unascertainable beneficiaries, (2) known beneficiaries at the time of trial (the Class of 2014) did not consent to modification, and (3) the Attorney General did not consent on behalf of the unascertainable beneficiaries.

First, Section 15403 does not apply to charities with unascertainable beneficiaries. No court has so held; Petitioner cites to no contrary authority. *Boys and Girls Club of Petaluma v. Walsh* (2008) 169 Cal.App.4th 1049 ("*Walsh*") is of no help, contrary to Petitioner's argument, because although *Walsh* concerned a charitable trust, that trust

involved a set of five or twenty named beneficiary charities. Thus, the trust in *Walsh* was more akin to a private trust with a named set of beneficiaries, than to a charitable trust with a continuous (and hence unascertainable) stream of beneficiaries; the trust in *Walsh* was only considered charitable because its beneficiaries were charities. Moreover, once the *res* was distributed from the *Walsh* trust, the trust would terminate. The Trust here, on the other hand, is one of the founding documents of Deep Springs College and its principles, as laid out meticulously by Mr. Nunn, govern the trustees' use of the *res* going forward. The Trust will continue to serve beneficiaries long after this case is decided, and it is impossible to name all such beneficiaries, as was done in *Walsh*.[5]

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[5] *Walsh* is distinguishable and inapplicable for many other reasons. The twenty *Walsh* beneficiaries, who entered into an agreement to distribute the *res* between themselves, each had an actual stake in the outcome of the dispute whereas the consenting students here did not. Indeed, not one of the Deep Springs students who consented to modification attends Deep Springs currently nor would their interests have been affected by the modification to the Trust as they were already in attendance and would not have lost their place at the school if the college's admissions included women in future classes.

Moreover, the very language that Petitioner cites from paragraph 5 of the Deed of Trust to support his assertion that the "sole beneficiaries" of the trust are the "students in attendance" (RB at 25, citing 03 AA 0621-0622) shows that Mr. Nunn was determined to avoid the kind of changes that modification under Section 15403 might bring about: Mr. Nunn insisted that the students currently in attendance not hold "title and authority" over the Trust's property in order "to maintain and perpetuate the work of this trust free from the changes that would inevitably result from the ever

Petitioner contends that Section 15403 applies to charitable trusts, citing Probate Code section 15004, but that argument cannot succeed: because Section 15403 requires the consent of all beneficiaries, it can never apply when beneficiaries are unascertainable, whether the trust is charitable or private.[6]

Second, even if Section 15403 were applicable to this Trust, the application of Section 15403 was improper because the Class of 2014 should have, but did not, consent. Their names were ascertained, they all had been offered admission, and as of the time of trial "some of them" had signed a contract accepting the offer of admission (6 RT 1085:8-1087:15

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changing membership of the Student Body." (03 AA 0621-0622 [Deed of Trust] (emphasis added).)

[6] Petitioner contends that there are no unascertainable beneficiaries because the Deed of Trust itself identifies the "sole beneficiaries" as the current students. But even the trial court did not consider the requirement for consent of all beneficiaries under Section 15403 to be so limited, holding that the Attorney General's consent was also required although the Attorney General is not a student currently in attendance at Deep Springs College. (02 AA 0508.) Mr. Nunn's statement that the students are the beneficiaries was a single factor the trial court considered among many. (02 AA 0509-0511.) Moreover, by enacting Probate Code section 24 in 1983 (and reenacting it in 1990; see *Patton v. Sherwood* (2007) 152 Cal.App.4th 339, 347), the Legislature changed the definition of "beneficiary" as a matter of law from what Mr. Nunn stated in the Trust in 1923, especially with respect to other legislative enactments from the 1980s dealing with trusts that use the word "beneficiary," such as Section 15403. (See *People v. Hill* (1980) 103 Cal.App.3d 525, 533 ("It is a generally accepted tenet of statutory construction that the same words used in different statutes that are in pari materia are to be given the same meaning.").)

(Neidorf)) – Petitioner contradicts his president when he asserts that they were "mere applicants" (RB at 27, fn. 15) – and no reason is offered why they were not asked whether the school that already accepted them for admission, and to which some had already committed themselves to attend, should be radically changed. As a matter of law, a beneficiary of a trust is a person who "has any present or future interest, vested or contingent." (Prob. Code, § 24, subd. (c).) The Class of 2014, especially those who had accepted the offer of admission as of the time of trial, plainly fits within that definition. Section 15403 could not be applied here because the Class of 2014 did not consent to modification.

Petitioner contends that the Class of 2014's consent should not be considered because they "would not have experienced the unique Deep Springs program" (RB at 26), but neither Section 15403 nor Probate Code section 24 demands that a beneficiary have any such experience before consenting. Petitioner also contends that it would be logistically difficult to change the Trust by consent if he were required to obtain the consent of the incoming class, but that is a benefit, not a defect, of Section 15403. If the Legislature had wanted modification by consent to be easy, it would not have required unanimous consent of the beneficiaries (plus a determination by the court that the modification "outweighs the interest in accomplishing a material purpose of the trust").

Third, the Attorney General did not consent on behalf of the unnamed beneficiaries. The Attorney General did not purport to do so in her filing with the trial court, stating only that she consented to the modification (but not stating that she consented on behalf of the unnamed beneficiaries). (03 AA 0790-0791; RA 141.)[7] And how could the Attorney General, representing the State of California, stand in for beneficiaries from other jurisdictions? As explained in the opening brief, the Attorney General represents the State in her capacity as "oversee[r] as the representative of the public . . . ." (*Holt v. College of Osteopathic Physicians and Surgeons* (1964) 61 Cal.2d 740, 754.) Her job, normally in the context of *cy près* proceedings, is to represent the State and not to stand in for the unnamed beneficiaries. She is "the ultimate beneficiary of the charitable trust" (*Estate of Horton* (1970) 11 Cal.App.3d 680, 685), and she may consent as one beneficiary in that regard, but no case holds that she has the power of attorney for unnamed beneficiaries such that she can consent on their behalf where the law requires consent of all beneficiaries.

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[7] The fact that the attorney representing the Attorney General stated that the Attorney General "represent[s] the unnamed parties" (06 RT 1119:16) should be given no weight because (1) it is inconsistent with the Attorney General's pleading, (2) the attorney's statement was unsworn argument, not evidence, and (3) it is unclear whether the "unnamed parties" mentioned by the attorney are the unnamed beneficiaries.

Section 15403 is a drastic measure that allows persons other than the trustor to override the trustor's own purpose for his assets. It should not be easily invoked. Consent of all beneficiaries was not – and could not be – obtained to the modification desired by Petitioner. The trial court erred in finding that it was, and therefore erred in modifying the Trust under Section 15403.

V. CONCLUSION.

For the foregoing reasons, Objectors Kinch Hoekstra and Edward Keonjian respectfully request that the Court vacate the trial court's January 5, 2015 order modifying the Trust.

DATED: May 9, 2016

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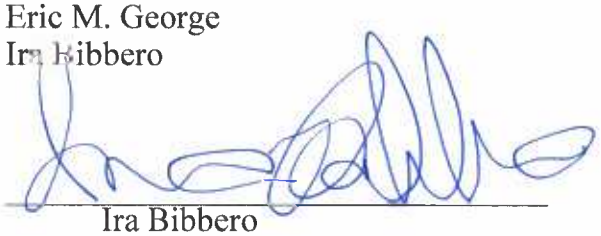
By 
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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rules 8.204(c)(1))

The text of this brief is proportionately spaced, has a typeface of 13 points or more and contains 4,714 words, including footnotes but excluding the Certificate of Interested Parties, the Table of Contents and Authorities, this Certificate and the attached Proof of Service, as counted by the Microsoft Office Word 2010 word-processing program used to generate the brief.

DATED: May 9, 2016

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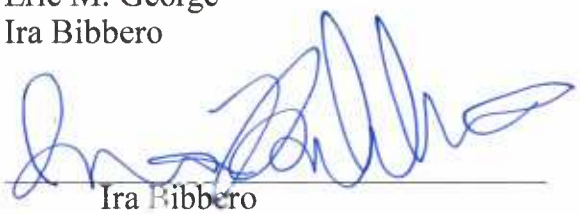
By 
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2400, Los Angeles, CA 90067.

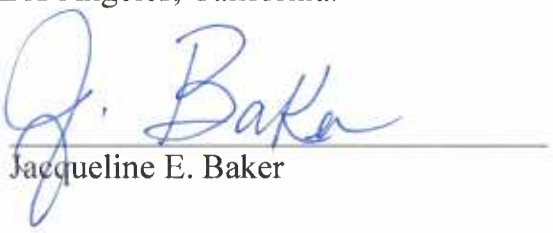
On May 9, 2016, I served true copies of the following document(s) described as **APPELLANTS' REPLY BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Browne George Ross LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on May 9, 2016, at Los Angeles, California.



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