

1. MATTER OF SPECIAL NEEDS TRUST OF RIVER SOSTRE PP-20110057

3rd and 4th Account and Report of Interim Trustee.

The trustee filed the 3rd Account on November 27, 2020 and filed the 4th Account on January 25, 2021. On March 3, 2021 the court entered an order on the petition to remove the trustee. The court ordered the trustee suspended; that private fiduciary Mia Ehsani is appointed interim trustee of both Special Needs Trusts; and that the interim trustee was to file and serve 3rd and 4th accountings of the Special Needs Trust.

The court, therefore, is ruling on the interim trustee's account and report, is not ruling on the suspended trustee's account and report, and is not making any finding regarding whether the suspended trustee's conduct in administering the Trust was appropriate.

The proof of service declares that on June 9, 2021 notice of the hearing and the First Report of the Third and Fourth Account of the Special Needs Trust were served by mail to the interested parties.

There are no oppositions or objections to the account in the court's file.

TENTATIVE RULING # 1: INTERIM TRUSTEE EHSANI'S FIRST REPORT OF THIRD AND FOURTH ACCOUNT OF SPECIAL NEEDS TRUST IS ALLOWED, SETTLED, APPROVED, AND INTERIM TRUSTEE EHSANI'S CONDUCT IS CONFIRMED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED IN INTERIM TRUSTEE EHSANI'S FIRST REPORT OF THIRD AND FOURTH ACCOUNT OF SPECIAL NEEDS TRUST. THE COURT IS NOT RULING ON THE SUSPENDED TRUSTEE'S ACCOUNT AND REPORT AND IS NOT MAKING ANY FINDING REGARDING WHETHER THE SUSPENDED TRUSTEE'S CONDUCT IN ADMINISTERING THE TRUST WAS APPROPRIATE. THE COURT SETS A REVIEW HEARING RE: 5TH ACCOUNT AND REPORT OF SPECIAL NEEDS TRUST FOR

8:30 A.M. ON WEDNESDAY, JUNE 1, 2022 IN DEPARTMENT EIGHT. THE 5TH ACCOUNT SHALL BE FOR THE PERIOD OF FEBRUARY 26, 2021 THROUGH FEBRUARY 28, 2022.

2. **MATTER OF SPECIAL NEEDS TRUST OF RAYLEENA SOSTRE PP-20110058**

3rd and 4th Account and Report of Interim Trustee.

The trustee filed the 3rd Account on November 27, 2020 and filed the 4th Account on January 25, 2021. On March 3, 2021 the court entered an order on the petition to remove the trustee. The court ordered the trustee suspended; that private fiduciary Mia Ehsani is appointed interim trustee of both Special Needs Trust; and that the interim trustee was to file and serve 3rd and 4th accountings of the Special Needs Trust.

The court, therefore, is ruling on the interim trustee's account and report, is not ruling on the suspended trustee's account and report, and is not making any finding regarding whether the suspended trustee's conduct in administering the Trust was appropriate.

The proof of service declares that on June 9, 2021 notice of the hearing and the First Report of the Third and Fourth Account of the Special Needs Trust were served by mail to the interested parties.

There are no oppositions or objections to the account in the court's file.

TENTATIVE RULING # 2: INTERIM TRUSTEE EHSANI'S FIRST REPORT OF THIRD AND FOURTH ACCOUNT OF SPECIAL NEEDS TRUST IS ALLOWED, SETTLED, APPROVED, AND INTERIM TRUSTEE EHSANI'S CONDUCT IS CONFIRMED. FEES ARE FIXED AND PAYMENT ALLOWED AS REQUESTED IN INTERIM TRUSTEE EHSANI'S FIRST REPORT OF THIRD AND FOURTH ACCOUNT OF SPECIAL NEEDS TRUST. THE COURT IS NOT RULING ON THE SUSPENDED TRUSTEE'S ACCOUNT AND REPORT AND IS NOT MAKING ANY FINDING REGARDING WHETHER THE SUSPENDED TRUSTEE'S CONDUCT IN ADMINISTERING THE TRUST WAS APPROPRIATE. THE COURT SETS A REVIEW HEARING RE: 5TH ACCOUNT AND REPORT OF SPECIAL NEEDS TRUST FOR

8:30 A.M. ON WEDNESDAY, JUNE 1, 2022 IN DEPARTMENT EIGHT. THE 5TH ACCOUNT SHALL BE FOR THE PERIOD OF FEBRUARY 26, 2021 THROUGH FEBRUARY 28, 2022.

3. ESTATE OF MOORE PP-20200030

Review Hearing Re: Status of Administration.

Letters Testamentary were issued on August 12, 2020. There is no Final Account and Request for Order of Final Distribution in the court's file.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

4. ESTATE OF O’SULLIVAN PP-20200146

Review Hearing Re: Inventory and Appraisal.

Letters of Administration were issued on December 18, 2020. The Final Inventory and Appraisal filed on August 6, 2021 is defective in that it does not include a property tax certificate for the real property appraised and the statement of the bond portion of the mandatory for Inventory and Appraisal is blank and not executed by counsel or the personal representative.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

5. ESTATE OF DIXON PP-20200185

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 5: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON JUNE 24, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

6. ESTATE OF MATTHEWS PP-20200194**Review Hearing Re: Inventory and Appraisal.**

The personal representative has not posted the bond ordered in amount of \$172,470 and, therefore, Letters of Administration have not been issued. This must be addressed and the bond posted.

The purported final inventory and appraisal filed on May 20, 2021 is defective. The personal representative improperly appraised Attachment 2 property, such as the real property and other personal property, including vehicles and miscellaneous household furnishings. The appointed probate referee, Linda Molinari, must appraise Attachment 2 property.

Except as otherwise provided by statute the probate referee shall appraise all property other than that appraised by the personal representative. (Probate Code, § 8902(b).)

"The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value of the property: ¶ (a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued on or before the date of the decedent's death that can be immediately converted to cash. ¶ (b) The following checks issued after the date of the decedent's death: ¶ (1) Checks for wages earned before death. ¶ (2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments. ¶ (c) Accounts (as defined in Section 21) in financial institutions. ¶ (d) Cash deposits and money market mutual funds, as defined in subdivision (b) of Section 9730, whether in a financial institution or otherwise, including a brokerage cash account. All other mutual funds, stocks, bonds, and other securities shall be appraised pursuant to Sections 8902 to 8909, inclusive. ¶ (e) Proceeds of life and accident

insurance policies and retirement plans and annuities payable on death in lump sum amounts.”

(Probate Code, § 8901.)

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

7. ESTATE OF SIMMONS PP-20200218

(1) Petition for Final Distribution on Waiver of Account.

(2) Review Hearing Re: Inventory and Appraisal.

The personal representatives report that this is an insolvent estate as the proceeds from the sale of the sole real property asset of the estate, less administration costs and costs of sale, are insufficient to fully compensate the secured creditors and other creditor claimant. The personal representatives request the court to approve the report on waiver of account, confirm the personal representatives' acts, authorize the payment of \$10,200 to counsel for statutory attorney fees, allow reimbursement of \$586 for costs advanced by counsel, authorize payments of 50% of the \$10,200 statutory personal representative fee to each of the two personal representatives, authorize payments of property taxes, transfer taxes, agent commission and other costs and expenses for sale of the real property, and order prorated the payment of secured debt for the 1st and 2nd mortgages from the remaining proceeds of the property sale in the rate of 97% for the 1st mortgage and 3% for the 2nd mortgage; and reject payment of any other unsecured creditor claims.

TENTATIVE RULING # 7: THE PETITION IS GRANTED. THE INVENTORY AND APPRAISAL HAVING BEEN FILED ON JUNE 22, 2021, THE REVIEW HEARING RE: INVENTORY AND APPRAISAL IS DROPPED FROM THE CALENDAR.

8. ESTATE OF KAMINE PP-20200228

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 8: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON JULY 30, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

9. ESTATE OF FRANKEL PP-20200229

Review Hearing Re: Inventory and Appraisal.

Letters Testamentary were issued on February 10, 2021. There is no Final Inventory and Appraisal and no Final Account and Report in the court's file.

TENTATIVE RULING # 9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

10. ESTATE OF WINTERS PP-20210003

Review Hearing Re: Inventory and Appraisal.

TENTATIVE RULING # 10: THE FINAL INVENTORY AND APPRAISAL HAVING BEEN FILED ON JULY 27, 2021, THIS MATTER IS DROPPED FROM THE CALENDAR.

11. ESTATE OF DORMISHEV PP-20210107

Petition to Admit Will to Probate.

There is no proof of service on the interested persons in the court's file.

"At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons: (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument." (Probate Code, § 8110.)

The notice of hearing of a petition for administration of a decedent's estate that is served on the interested persons shall substantially state the language set forth in Section 8100. (Probate Code, § 8100.) (Mandatory Judicial Council Form DE-121 – Notice of Petition to Administer Estate.)

Petitioner requests that she be appointed executor of the estate with bond set in the amount of \$270,000.

The purported will attached to the petition is hand printed and apparently executed by the decedent and one witness.

"Except as provided in this part, a will shall be in writing and satisfy the requirements of this section." (Probate Code, § 6110(a).) "The will shall be signed by one of the following: ¶(1) By the testator. ¶ (2) In the testator's name by some other person in the testator's presence and by the testator's direction. ¶ (3) By a conservator pursuant to a court order to make a will under Section 2580." (Probate Code, § 6110(b).) "(c)(1) Except as provided in paragraph (2), the will shall be witnessed by being signed, during the testator's lifetime, by at least two persons each

of whom (A) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (B) understand that the instrument they sign is the testator's will. ¶ (2) If a will was not executed in compliance with paragraph (1), the will shall be treated as if it was executed in compliance with that paragraph if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator's will." (Probate Code, § 6110(c).)

The appellate court in In re Estate of Stoker (2011) 193 Cal.App.4th 236 held that Section 6110(c)2) was not limited to typed wills and also applied to cases involving handwritten documents. "Here the statutory language is clear and broad, and there is no language to support the limitation appellants propose. This statute applies to wills that are "in writing" and signed by the testator. (§ 6110, subd. (a); *id.*, subd. (b)(1).) The 2005 document is a written will signed by decedent. The statute contains no language to indicate that the wills covered by this section are limited to typewritten wills. Consequently, handwritten non-holographic wills are not excluded from the scope of this statute." (In re Estate of Stoker (2011) 193 Cal.App.4th 236, 242.) Therefore, if Section 6110(c)2) has been satisfied, there is no need to prove up a holographic will.

The appellate court in In re Estate of Stoker (2011) 193 Cal.App.4th 236 also affirmed the trial court's admission of a will to probate that was executed by the testator, but that was not executed by two witnesses. The appellate court stated the following with regards to the construction of Probate Code, § 6110(c)2): "The broad and remedial goal of this provision is to give preference to the testator's intent instead of invalidating wills because of procedural deficiencies or mistakes. Including the 2005 will within the purview of this statute is consistent with that purpose." (In re Estate of Stoker (2011) 193 Cal.App.4th 236, 242.) The appellate court later stated with respect to substantial evidence supporting the trial court's finding that

there was clear and convincing evidence that at the time the testator signed the will, the testator intended the will to constitute the testator's will: "Appellants contend there is no evidence to show that the 2005 document was intended to be decedent's will. They claim it does not contain "testamentary language," does not use the word will or make reference to death. [Footnote omitted.] ¶ The document is certainly not a model will. But "[n]o particular words are necessary to show a testamentary intent" as long as the record demonstrates that the decedent intended the document to be his or her last will and testament. (*In re Wunderle's Estate* (1947) 30 Cal.2d 274, 280, 181 P.2d 874.) ¶ Here decedent's testamentary intent is evident. The document provides that all of decedent's property will go to his children—the respondents, that the 1997 trust is revoked, that Gularte will receive "nothing," and that his children will have power of attorney "over everything." ¶ Moreover, even if the document is ambiguous, the trial court properly admitted extrinsic evidence. (*In re Torregano's Estate* (1960) 54 Cal.2d 234, 246, 5 Cal.Rptr. 137, 352 P.2d 505.) That evidence confirmed decedent's testamentary intent. Meier testified that decedent told her the document was "my last will and testament," and "[t]hese are my wishes." Johns testified that decedent told him that the will represented "his final wishes."" (*In re Estate of Stoker* (2011) 193 Cal.App.4th 236, 244.)

Fatima Miller objects to the petition on the following grounds: the attached will does not meet the requirements of a holographic will; there are questions as to whether the signature on the will is decedent's, because the signature was witnessed by the father of an interested party; and the beneficiary who receives nearly all of the estate is a daughter, her husband, and their children who provided care to decedent, which leads to concern regarding undue influence. Fatima Miller contends that decedent died intestate.

TENTATIVE RULING # 11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

12. ESTATE OF DULLER PP-20210111**Petition to Administer Estate.**

Petitioner attached a copy of an executed last will and testament of decedent that was lodged with the court on February 3, 2020. Petitioner Josef Duller petitions for the court to enter an order finding the entire will is void and invalid as one witness to the will is the spouse of the primarily named beneficiary of the will; and requests that he be appointed personal representative of the estate as an intestate estate.

Petitioner essentially seeks to contest the will by seeking appointment as an intestate estate personal representative.

The proof of service declares that on June 18, 2021 the interested persons were served notice of the hearing and a copy of the petition by mail.

The will does not name petitioner as executor and instead names decedent's daughter Gabriele McInnis as the sole nominated executor of the will. (Verified Petition, Attachment 3f(2) – Last Will and Testament of Josef G. Duller, Article IV.)

The lack of any witnesses to the will does not mandate the court to determine the will is ineffective, void, or invalid. Evidence of the intent of the testator controls, even if that intent is shown only by the content of the will executed by the testator.

"Except as provided in this part, a will shall be in writing and satisfy the requirements of this section." (Probate Code, § 6110(a).) "The will shall be signed by one of the following: ¶(1) By the testator. ¶ (2) In the testator's name by some other person in the testator's presence and by the testator's direction. ¶ (3) By a conservator pursuant to a court order to make a will under Section 2580." (Probate Code, § 6110(b).) "(c)(1) Except as provided in paragraph (2), the will shall be witnessed by being signed, during the testator's lifetime, by at least two persons each

of whom (A) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (B) understand that the instrument they sign is the testator's will. ¶ (2) If a will was not executed in compliance with paragraph (1), the will shall be treated as if it was executed in compliance with that paragraph if the proponent of the will establishes by clear and convincing evidence that, at the time the testator signed the will, the testator intended the will to constitute the testator's will. (Emphasis added.) (Probate Code, § 6110(c).)

The appellate court in In re Estate of Stoker (2011) 193 Cal.App.4th 236 affirmed the trial court's admission of a will to probate that was executed by the testator, but that was not executed by two witnesses. The appellate court stated the following with regards to the construction of Probate Code, § 6110(c)(2): "The broad and remedial goal of this provision is to give preference to the testator's intent instead of invalidating wills because of procedural deficiencies or mistakes. Including the 2005 will within the purview of this statute is consistent with that purpose." (In re Estate of Stoker (2011) 193 Cal.App.4th 236, 242.) The appellate court later stated with respect to substantial evidence supporting the trial court's finding that there was clear and convincing evidence that at the time the testator signed the will, the testator intended the will to constitute the testator's will: "Appellants contend there is no evidence to show that the 2005 document was intended to be decedent's will. They claim it does not contain "testamentary language," does not use the word will or make reference to death. [Footnote omitted.] ¶ The document is certainly not a model will. But "[n]o particular words are necessary to show a testamentary intent" as long as the record demonstrates that the decedent intended the document to be his or her last will and testament. (In re Wunderle's Estate (1947) 30 Cal.2d 274, 280, 181 P.2d 874.) ¶ Here decedent's testamentary intent is evident. The document provides that all of decedent's property will go to his children—the

respondents, that the 1997 trust is revoked, that Gularte will receive “nothing,” and that his children will have power of attorney “over everything.” ¶ Moreover, even if the document is ambiguous, the trial court properly admitted extrinsic evidence. (*In re Torregano's Estate* (1960) 54 Cal.2d 234, 246, 5 Cal.Rptr. 137, 352 P.2d 505.) That evidence confirmed decedent's testamentary intent. Meier testified that decedent told her the document was “my last will and testament,” and “[i]hese are my wishes.” Johns testified that decedent told him that the will represented “his final wishes.” (Emphasis added.) (*In re Estate of Stoker* (2011) 193 Cal.App.4th 236, 244.)

Although there are no oppositions or objections in the court's file, an objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.) Therefore, appearances are required.

TENTATIVE RULING # 12: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

13. ESTATE OF JUDSON PP-20210116

Petition to Administer Estate.

The petitioner has not filed an executed statement of duties and liabilities. (Judicial Council Form DE-147.) Prior to issuing letters of administration, the personal representative, other than a trust company or public administrator, shall file an acknowledgement of receipt of a statement of duties and liabilities of the office of personal representative. The statement is a mandated Judicial Council form. (Probate Code, § 8404(a).)

The court notes that the Final Inventory and Appraisal was filed on May 19, 2021.

TENTATIVE RULING # 13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

14. MATTER OF THE DEVOU FAMILY TRUST PP-20210119**Petition to Determine Title to Real Property.**

The successor trustee of the Trust petitions for a court order determining that a grant deed recorded on October 30, 2013, which was executed by the surviving trustor/trustee as a single woman and not as trustee of the Trust, was effective to convey the real property to the surviving trustor Janet Devou and successor trustee Jayni Jensen as joint tenants despite record title being held in the Trust. The petition also contends that later Trust amendments changing the distribution of the subject El Dorado County property did not affect the prior conveyance of the property out of the Trust estate and to Janet Devou and Jayni Jensen as joint tenants.

James Devou, the son of William Devou, the trustor who predeceased trustor Janet Devou, declares: he lived with his father in the Lake County home from 2012 until his death in August 2013; at that time William and Janet Devou were living separately, but remained legally married; his father was in declining health and based on conversations he had with his father and Janet Devou, he understood they both wanted to make things simpler between them and wanted the two properties in the Trust to be deeded out for the benefit of their respective children; they agreed the Lake County property would be distributed by deed to William's children, James and Dan Devou, and the EL Dorado County property would be deeded out of the Trust the way that Janet Devou wanted it to be transferred; on January 4, 2013 he accompanied William and Janet Devou to a notary for the purpose of signing a deed conveying the Lake County property to William's children as joint tenants; and due to his father's declining health, Janet signed the deed on William's behalf using her power of attorney.

The trustee or any interested person may file a petition to determine ownership of real or personal property and to obtain an order directing the conveyance or transfer of real or personal property in any of the following cases: “(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust.” (Probate Code, § 850(a)(3).)

Where the petition to determine ownership of property involves a Trust, notice of the hearing and a copy of the petition must be served at least 30 days prior to the hearing on the trustee and each person claiming an interest in, or having title to or possession of, the subject property in the same manner as service of a summons and complaint and by mail to all beneficiaries and the Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General. (Probate Code, §§ 851(a)(2), 851(b)(3) and 17203(a).)

There is no proof of service of notice of the hearing and a copy of the petition on the interested persons listed in paragraph 22 of the petition. The court can not consider or rule on the merits of the petition unless adequate proof of service on the interested persons is filed.

“A trust is simply a fiduciary relationship with respect to property. Legal title to property owned by a trust is held by the *trustee*, since the trust itself is simply a collection of assets and liabilities. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473, 136 Cal.Rptr.3d 151.) A revocable inter vivos trust, like the Trust at issue here, is “a probate avoidance device” that “does not prevent creditors of the settlors—who are often also the trustees and sole beneficiaries during their lifetimes—from reaching trust property.” (*Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1349, 7 Cal.Rptr.3d 178 (*Galdjie*)). ¶ It follows that a signature by the sole trustee and beneficiary of an inter vivos revocable trust is sufficient to

convey good title to trust property. (*Galdjie, supra*, 113 Cal.App.4th at pp. 1349–1350, 7 Cal.Rptr.3d 178.) “[W]here a trustee signs a contract of sale or deed without reference to his or her representative capacity, the contract or deed is enforceable against the trust.” (*Id.* at p. 1349, 7 Cal.Rptr.3d 178; see *Carne v. Worthington* (2016) 246 Cal.App.4th 548, 551, 200 Cal.Rptr.3d 920 [because decedent as sole trustee of 1985 revocable inter vivos trust had power during his lifetime to convey good title to real property held by the trust, his signature sufficed to convey title from that trust to a 2009 trust]; *Christy v. Fisher* (1881) 58 Cal. 256, 258 [land conveyed to “James Smith, as administrator of Robert Smith, deceased,” vested title in Smith, and Smith’s later conveyance transferred legal title even though it was not explicitly made in his capacity as administrator].) Accordingly, even though Walter did not indicate his signing capacity, the DOT conveyed good title to the property. [FN 4] ¶ FN 4. This conclusion comports with our facts. Walter represented that he had the right to grant and convey the property, and the notary public certified having satisfactory evidence that Walter executed the instrument in his “authorized capacity.” ¶ David responds that the result should be different where “a party specifically pleads that a conveyance did not occur in a representative capacity.” But as we later explain, Chase may amend its pleading to omit that allegation. [FN 5] We disagree that estate planning would be thrown “into wholesale disarray” if Walter’s signature on the DOT were sufficient to convey good title. California law sufficiently protects the interests of trustees and third parties. (See *Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1133–1134, 69 Cal.Rptr.2d 317, 947 P.2d 279; Prob. Code, §§ 16002, subd. (a), 16400, 18100.) Walter’s status as the sole trustee and lifetime beneficiary further minimizes any prejudice. ¶ FN 5. *Malerbi & Associates v. Seivert* (1961) 191 Cal.App.2d 760, 12 Cal.Rptr. 852, cited by David, is not on point. A purported contract for the sale of real property was invalid because it completely omitted the name of a purchaser. The seller tried to enforce a

document that read, "Received from ____ the purchaser, the sum of ____ Dollars, ... as a deposit on account of the purchase price of (\$122,500.00)." (*Id.* at p. 761, 12 Cal.Rptr. 852.) There is no dispute here that the DOT was signed by Walter; the question is whether it matters that he did not indicate he was signing "as trustee." (JPMorgan Chase Bank, N.A. v. Ward (2019) 33 Cal.App.5th 678, 684–685.)

The Trust instrument provides: that the Trust estate shall be held in a community trust estate, quasi-community trust estate, and two separate trust estates – one for each of the trustors; upon death of the deceased spouse, the Trust assets are to be divided into three Trusts – the Surviving Spouse's Trust consisting of the surviving spouse's separate trust estate, and his or her ½ of the community and quasi-community trust estates with the entire net value of the residences of the trustors being capable of being allocated to the surviving spouse's estate should the net value of such residences for tax purposes not exceed ½ of the net value of the community and quasi-community property held in trust; otherwise, the deceased spouse's separate trust estate and ½ of the community and quasi-community trust estates are to be allocated to the Exemption Trust and Marital Appointment Trust, with the value of the property equal to the federal estate tax exemption to be allocated to the Exemption Trust and remainder to the Marital Appointment Trust; and after the death of the deceased spouse and allocation to the three trusts, the Survivor's Trust and Marital Appointment Trust are revocable and the Exemption Trust is irrevocable. (Petition, Exhibit A – Trust Instrument, Sections 1.4, 3.5, 3.6, and 3.8.)

There is evidence that on January 4, 2013 Janet Devou as trustee and in her purported capacity under a power of attorney for trustee William Devou executed an amendment to the Trust wherein it expressly provided that the Lake County property was released from the trust to William Devou's sons and that the exemption trust distribution was to be distributed equally

to Janet Devou's children; a grant deed executed by Janet Devou as trustee and in her purported capacity under a power of attorney for trustee William Devou was recorded, which conveyed the Lake County property from the trustees of the Trust to William Devou's sons; after William Devou's August 7, 2013 death, the surviving spouse/trustee executed a grant deed as a single woman and recorded it on October 30, 2013; the recorded grant deed purportedly conveyed the El Dorado County real estate held by the Trust to her daughter Janyni Jensen and herself as joint tenants; the surviving spouse/trustee later executed a Trust amendment in 2014 leaving her grandchild Shyla Guarkee a life estate in the subject El Dorado County property and then executed another amendment in 2017 changing the distribution to a 100% interest in the subject real property to Shyla Guarkee, if the property was in the Trust estate. (Petition, Exhibit E – Grant Deed; Exhibit F – January 4, 2013 Trust Amendment; Exhibit J – December 16, 2014 Trust Amendment; and Exhibit K – October 3, 2017 Trust Amendment.)

The court can not consider or rule on the merits of the petition unless adequate proof of service on the interested persons is filed.

An objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.)

TENTATIVE RULING # 14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

15. MATTER OF THE ALOHA JUNE SAUNDERS TRUST PP-20210122**Petition to Determine Validity of Trust Amendment.**

The petition contends that the January 30, 2020 Fourth Amended and Restated Trust, which provided that nearly all Trust assets were to be distributed to one daughter, Leilani Sarmiento, is invalid as it was obtained by the undue influence of Leilani Sarmiento; and Leilani Sarmiento is guilty of financial elder abuse justifying treating her as predeceasing the trustor pursuant to the provisions of Probate Code, § 259.

“Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.” (Probate Code, § 17200(a).)

“Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: ¶ * * * (3) Determining the validity of a trust provision.” (Probate Code, § 17200(b)(3).)

“Any person shall be deemed to have predeceased a decedent to the extent provided in subdivision (c) where all of the following apply: ¶ (1) It has been proven by clear and convincing evidence that the person is liable for physical abuse, neglect, or fiduciary abuse of the decedent, who was an elder or dependent adult. ¶ (2) The person is found to have acted in bad faith. ¶ (3) The person has been found to have been reckless, oppressive, fraudulent, or malicious in the commission of any of these acts upon the decedent. ¶ (4) The decedent, at the time those acts occurred and thereafter until the time of his or her death, has been found to have been substantially unable to manage his or her financial resources or to resist fraud or undue influence.” (Probate Code, § 259(a).)

“At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons: ¶ (1) All trustees. ¶ (2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3. ¶ (3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General.” (Probate Code, § 17203(a).)

Petitioners need to explain why interested persons Larry Johnson and Richard Sarmiento were not served notice to their addresses as stated in paragraph 35 of the verified petition and instead served by mail to the same address in Danville. Absent proof of adequate notice on these two interested persons, the court can not rule on the petition.

Trustee Michael Thomas objects to the petition.

TENTATIVE RULING # 15: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

16. MATTER OF THE 1983 VAN STRAATEN TRUST PP-20210114**Petition for Instructions Regarding Funding of Trust Asset.**

The petition alleges that the settlors owned a 1/3 interest in certain real property in Mi Wuk Village, CA. The petition argues that Section 2.5 of the October 3, 2012 Second Amendment and Restatement of the Trust sufficiently declared that the trustors/settlors held all property they owned at the time of their death in the Trust regardless of the form of title to the property, which resulted in their 1/3 interest in the subject real property being an asset of the Trust.

“All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2.” (Probate Code, § 17200.1.)

The trustee or any interested person may file a petition to determine ownership of real or personal property and to obtain an order directing the conveyance or transfer of real or personal property in any of the following cases: “(A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust.” (Probate Code, § 850(a)(3).)

Settlors who are also the trustees of a trust may create a trust by written declaration in the Trust instrument that certain real and personal property that they own is held as trustees of the Trust without having to formally transfer or convey the property to the Trust in a separate instrument such as a deed. (Estate of Heggstad (1993) 16 Cal.App.4th 943, 947-948.)

In addition, where the Trust Instrument or another writing states that all of the settlor's right, title and interest to all of his or her real property is included in the Trust's assets, and it is

possible by resorting to extrinsic evidence to determine that the settlor held title to the real property that is sought to be confirmed as a Trust asset, the statute of frauds creates no bar to a petition for an order confirming that the real property is part of the Trust's assets. (See Ukkestad v. RBS Asset Finance, Inc. (2015) 235 Cal.App.4th 156, 164.)

Where the petition to determine ownership of property involves a Trust, notice of the hearing and a copy of the petition must be served at least 30 days prior to the hearing on the trustee and each person claiming an interest in, or having title to or possession of, the subject property in the same manner as service of a summons and complaint and by mail to all beneficiaries and the Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General. (Probate Code, §§ 851(a)(2), 851(b)(3) and 17203(a).)

“A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter. The petition shall also state the grounds of the petition and the names and addresses of each person entitled to notice of the petition.” (Probate Code, § 17201.)

The petition does not state the names and addresses of the persons entitled to notice of this proceeding. Therefore, the court can not determine whether all interested persons were served notice of the hearing and a copy of the petition and can not reach the merits of the petition.

An objection can be made at any time and even orally at the hearing. (Probate Code, § 1043.)

TENTATIVE RULING # 16: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.

17. ESTATE OF HOFFMAN PP-20210136

Spousal Property Petition.

The verified petition states that a certain IRA account held by Charles Schwab and Co., Inc. is the community property of decedent and petitioner.

Decedent's pour-over will expressly provides that decedent confirms his spouse's 50% share of the community property and that he intends to dispose of his 50% share of the community property by the will, which leaves the rest and residue of his estate to the Louis G. Hoffman and Leatrice G. Hoffman Revocable Family Trust.

The face of the pour over will attached to the verified petition establishes that the petitioner is not entitled to an order that decedent's 50% share of the community property passes directly to petitioner as the surviving spouse.

Petitioner declares that she is sole beneficiary of the Trust; and requests the court to disregard the provisions of the pour-over will and to order that the distribution of decedent's 50% share of the community property directly to petitioner as the surviving spouse in order to avoid probate of the will.

The assets of the Trust after the death of the 1st trustor is to administered for the benefit of the surviving trustor, paying to the surviving trustor or applying for her benefit all net income of the Trust and upon the death of the surviving Trustor, the Trust provides for distribution to the trustor's descendants. (Trust Instrument, Section 4.02 and 5.04.) Disregarding the pour over will and ordering distribution of the IRA account outside of the Trust directly to the surviving trustor could result in decedent's 50% share of the community property in the IRA account not being available for distribution to the trustors' descendants if any amount of the IRA remained

after the surviving trustor's death. In other words, a court order as requested by petitioner would interfere with the express intent of the decedent testator.

The court is not inclined to disregard or redraft the will.

TENTATIVE RULING # 17: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON WEDNESDAY, AUGUST 11, 2021 IN DEPARTMENT EIGHT. IF YOU WOULD LIKE TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT tdavy@eldoradocourt.org AND MEETING INFORMATION WILL BE PROVIDED.