

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Probate Division
Stanley Mosk Courthouse
Department ST5

BP153887
In re: THE DOROTHY HORWITZ
FAMILY TRUST - DTD 3-6-12, AS
AMENDED

August 3, 2016
10:00 AM

Honorable Maria E. Stratton, Judge

Evelyn Fortson, Judicial Assistant
Cynthia Piedra, Court Services
Assistant

Clarece Peters (#5667), Court Reporter
Luis Ruiz Jr., Deputy Sheriff

NATURE OF PROCEEDINGS: Nunc Pro Tunc Order Hearing

It appearing to the Court that through inadvertence and clerical error, the minute order of Wednesday, August 03, 2016 in the above entitled action does not properly reflect the order of this Court. Said minute order is corrected nunc pro tunc as of this date as follows:

By Deleting: Honorable Roy L. Paul, Judge and Andrea Avalos, Judicial Assistant

By Adding: Honorable Maria E. Stratton, Judge and Evelyn Fortson, Judicial Assistant

The Court orders the Clerk to give notice.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, SHERRI R. CARTER, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of August 3, 2016 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: August 3, 2016

By: /s/ Evelyn Fortson
Evelyn Fortson, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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**In re: THE DOROTHY HORWITZ
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Luis Ruiz Jr., Deputy Sheriff

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The following parties are present for the aforementioned proceeding:

No appearances.

Out of the presence of the court reporter, the Court makes the following findings and orders:

The Court having taken the above captioned matter under submission on Monday, June 20, 2016 hereby rules as follows:

[Ruling on Submitted Matter]

BP153887

The Dorothy Horwitz Family Trust dated March 6, 2012, as amended

On June 15, 2016, two petitions came on for court trial in Dept 5, the Honorable Maria E. Stratton, presiding. Petitioner Dennis Solomon represented himself. Margaret Morrow and Joseph N. Mirkovitch represented trustee Hoover Louie. Witnesses Margaret Morrow, Joe Ling, Nicolas Sanchez, and Dennis Solomon were called, sworn, and testified. Exhibits were admitted as more fully reflected in the minutes of the court. Petitioner presented his evidence, rested, reopened his case, and rested again. On June 20, 2016, the court took under submission the trustee's motion for judgment pursuant to CCP section 631.8.

Ruling

The motion is granted as to both petitions. The court finds that petitioner Dennis Solomon presented no credible evidence in support of his claims of undue influence, lack of testamentary and contractual capacity, breach of fiduciary duty, failure to provide accounting, and theft of assets from the estate. The amended petition filed December 5, 2014, is denied with prejudice. The amended petition filed January 11, 2016, for an accounting and to determine the validity of the trust, is denied with prejudice. Judgment is granted in favor of trustee Hoover Louie and against petitioner Dennis Solomon.

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Trustee shall prepare and lodge a proposed order forthwith.

The Trust Documents

On March 6, 2012, Dorothy Horwitz created The Dorothy Horwitz Family Trust dated March 6, 2012 (Exhibit 101). It provides that after payment of Dorothy's final debts and expenses, the residue of the trust shall be distributed to Murray Solomon, Dennis Solomon (petitioner), Nicolas Sanchez, and various charitable organizations listed in Schedule B (none were listed). (Exhibit 101, at section 5.3.)

In pertinent part, the Trust also provides any amendment to the Trust must be executed in writing by the trustor and delivered to the trustee. (Exhibit 101, at section 3.2) Finally, the Trust provides that the trustee shall not be required to render periodic accounts to any person, but shall render accounts at the termination of a trust and on a change of trustees to the person and in the manner required by law. (Exhibit 101, at section 6.21.)

On November 18, 2013, the Trust was amended by way of an Affidavit and Addendum to the Trust (Court's Exhibit A) consisting of five pages. The first two pages are form documents with a notary stamp and a signature of "Doris Tucker Notary Public" on the signature line for a notary public. Page 3 is an Addendum which changes the distribution of the Trust by assigning specific gifts to particular charities and individuals. It reads:

Upon my death the only ones to enter my condo and absolutely no one else are ; The Aparicio's and Hoover Louie. Rose can take what she wants except for the wood and tile sculptures, which are to be shipped prepaid to Murray Solomon. All household goods to be given to the Salvation Army or Goodwill. Condo is to be sold as is, by Rose Aparicio's Realtor; Steven Tran, the proceeds are to be used to pay my executor Hoover Louie. The balance is to be distributed amongst charities. All monies used by me before my death, are to be deducted from charities. I have three safe deposit boxes, one is at Bank of America at Valley and Ivar in the city of Rosemead, and listed under Walter & Dorothy Horwitz. The 2nd is at Wells Fargo on Las Tunas drive in Temple City and is listed under Dorothy Horwitz. The 3rd is at Chase Bank on Las Tunas Drive in Temple City CA, and is listed under Dorothy Horwitz. The safe deposit keys are at my home in the bedroom nightstand under a poster of Boston. Sell all jewelry and add to charities.

Jewelry to be sold and proceeds to go to St. Jude Childrens charity.

The Addendum has a signature line with a signature "Dorothy Horwitz" dated November 18, 2013. It also had a signature line for "Witness" which was executed and dated November 18, 2013.

Page 4 follows with a list of charities which are to receive specific monetary amounts. The two biggest bequests of \$300,000 each go to St. Jude and Los Angeles Children's hospital. Next are the American Lung Association and American Heart Association, each receiving \$100,000. Next are \$50,000 bequests to Alzheimer's Foundation and Kidney Foundation. The Braille Institute on Vermont Avenue in Hollywood and the American Diabetes Association are each to receive \$5,000. Muscular Dystrophy and Multiple Sclerosis (sic) (Montel Williams) each receive \$10,000. Finally the Los Angeles Mission is given \$15,000.

Page 4 also directs that two automobiles be donated to Cars for Causes and the proceeds given to Union Mission in Los Angeles.

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Finally, page 5 has a list entitled "Distribution of Assets." Rose Aparicio is given \$25,000 to hold for Nicolas Sanchez until November 2, 2020. If both Rose and Nicolas expire before November 2, 2020, the money is to be given to St. Jude.

Andrea Ebert is given \$10,000. Edward Liu is given "[A]ll patio plants plus floor to ceiling ladder in garage." Murray Solomon is given \$5,000. Dennis Solomon (petitioner) is given 5.00.

One week after executing the addendum, on November 25, 2013, Dorothy died.

The Petitions

1. Amended Petition filed December 5, 2014

On December 5, 2014, Dennis Solomon filed an Amended Petition For Order Invalidating the Purported November 18, 2013, Addendum to the Dorothy Horwitz Family Trust Dated March 6, 2012. The Amended Petition includes three claims for relief which list grounds upon which the Addendum can be invalidated: lack of testamentary and contractual capacity; undue influence by Rose Aparicio and others; constructive fraud; breach of fiduciary duty. The prayer for relief asks the court to invalidate the Addendum; instruct successor trustee Hoover Louie to distribute the trust assets in accordance with the original Trust document; and direct trustee Hoover Louie to prepare and file an accounting.

On January 22, 2015, trustee Hoover J. Louie filed an answer and objections to the Amended Petition.

On January 23, 2015, petitioner filed a Supplement to the Amended Petition. On August 5, 2015, petitioner filed a 2nd Supplement to the Amended Petition. The 2nd supplement added Fourth, Fifth and Sixth Claims for Relief for fraud in drafting the addendum; forgery of Dorothy Horwitz's signature to the Addendum; and breach of fiduciary duty to the Trust.

2. Amended Petition filed January 11, 2016

On January 11, 2016, Dennis Solomon filed a First Amended Petition for an Accounting; for a complete Copy of the Terms of the Trust; for the Determination of the Validity of the Purported Trust Addendum. The Amended Petition included six claims for relief based on the following theories: failure to provide copy of trust; conversion and concealment of assets; actions adverse to beneficiary; failure to preserve trust assets; and constructive fraud and breach of fiduciary duty. The Amended Petition also asks the court to compel trustee Hoover Louie to provide an accounting.

On June 14, 2016, trustee filed objections to the First Amended Petition.

Evidence at Trial

Petitioner called Margaret Morrow, opposing counsel, as his first witness. Solomon asked Morrow questions that were largely irrelevant to the issues at hand. Morrow has seen three safe deposit boxes. One contained jewelry. Morrow photographed the jewelry, which did not include a charm bracelet. A second box contained a high school diploma and her husband Walter's Navy discharge papers. The third box contained miscellaneous papers. Morrow has not been through the Horwitz home.

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Solomon asked Morrow about circumstances surrounding the execution of and handwriting on the challenged addendum. Morrow had no knowledge as she was not involved with any of the parties at the time the addendum was executed. Morrow produced the original addendum and "dum dum" page, which were marked and received into evidence as Court's Exhibit A.

Joe Ling testified next. He has been an attorney since January 1958. He has known trustee Hoover Louie, his brother-in-law, most of his life. He shares space, a fax machine and telephones with the trustee. Otherwise, his practice and Hoover Louie's CPA practice are separate. About one month after Dorothy died, Hoover called him to ask questions about the Trust and the addendum. Ling agreed to represent Hoover as trustee. Ling does not remember the substance of their first two conversations about the Trust.

Ling confirmed that he and Solomon had spoken and Solomon advised that he was a beneficiary of the Trust. They swapped information about their own personal backgrounds, although Ling did not recall speaking with Solomon about the Danish Jewish underground in World War II or articles about Israel or a Neurotube Foundation. Ling received compensation for his services to the trust.

Nicolas Sanchez testified. His grandmother is Rose Aparicio. Dorothy Horwitz was Rose's best friend. Dorothy was always around their home -- at Christmas, at barbeques. Nicolas visited Dorothy's home with his grandmother, but Dorothy was usually the one to come to their home. Once he went with his grandmother to one of Dorothy's medical appointments. He does not know if he received a copy of the Trust. His mother handled any Trust paperwork because he was gone. His grandmother told him that he was a beneficiary of the Trust, which he has never read. He knows about it vaguely. He has not followed the litigation because it is not a priority to him. He works.

He received Court's Exhibit A, the addendum, and does not recall if he saw Doris Tucker's signature on the document. He is not Jewish and he has no reason to believe that Dorothy would have left him 1/3 of her estate.

Petitioner Dennis Solomon then testified. He had a long and loving relationship with his aunt Dorothy over his adult life. When he came to California he spent his time with Dorothy and her husband, Uncle Walter. Both were close to his own parents and his brother Murray. Solomon's father was a TWA pilot who flew the Los Angeles/Israel route. Dorothy and Walter visited the family in Boston and Florida. Dorothy was of Jewish heritage.

Pierre Pinchik is a giant among Jewish cantors. He is Solomon's first cousin, once removed. When Solomon spoke to Joe Ling, he told Ling that there was judaica in Dorothy's home along with historic albums of Pinchik.

Solomon's father helped found the state of Israel. Pinchik gave Dorothy and Walter Torah bells from the Ukraine. They were made into charm bracelets and in Solomon's opinion they have a value of \$7.4 million.

As an example of their close relationship, Walter bequeathed Solomon his U.S. Navy manual; a Maccabee wood sculpture; a self-portrait. Only four sculptures have been sent to Murray and Solomon himself received no list of the jewelry and collectibles found in Dorothy's home.

Solomon had a special relationship with his aunt Dorothy because she worked in the clothing industry for a company called Hollybra; Solomon himself designed clothing worn by the 1974 America's cup team, captained by the famous Dennis Connor. She enjoyed speaking to Solomon about his clothing designs.

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Walter told Solomon and Murray that he wanted to leave his half of the estate to them. Aunt Dorothy loved her husband very much so it is inconceivable that she would not honor his wishes. Dorothy was also very excited about Solomon's work on neurotubules.

In 2011 Dorothy was diagnosed with cancer. Rose Aparicio told Solomon that he was one of the first people she called. Solomon offered to come out at any time on a moment's notice. He called his cousin David Horwitz, an attorney in San Diego; he also called family and friends at various local Jewish temples in the Los Angeles area.

Aunt Dorothy had Kaiser medical care and her neighbors were very helpful to her. Murray and Solomon spoke to her regularly by telephone. In 2007, Solomon had an accident which injured his knee; he stopped traveling. In 2012, he contracted Lyme disease and palsy. He has gained 100 pounds since 2007. His medical issues are resolving.

In October 2013, Dorothy went into the hospital and could not call Solomon. Solomon called Hoover Louie who gave him Rose's number. He called Rose and planned a trip to Los Angeles in December, 2013. On November 26, 2013, Dorothy died. Solomon did not see Dorothy before she died.

In the five years before Dorothy died, she gave no indication that her relationship with Solomon and his brother had changed. She did not appear upset at either of them and she never indicated that she would not follow her husband's wishes.

When Dorothy died, the facility did not call him. He called the facility who told him Dorothy had been discharged. Solomon called Rose who told him Dorothy had died. Rose said she did not call him because she did not have his telephone number. This astonished Solomon because he had left his number in Dorothy's address book which was in Rose's possession.

About three weeks after Dorothy died, Solomon asked Rose about Dorothy's estate and she referred him to Hoover Louie and gave Solomon only vague information. Louie told him that Dorothy's original intention was to leave her estate to Solomon only (cutting out Murray). Then she had a change of heart. Solomon knew that his aunt was sharp and would not use an addendum to change her trust and would not change it on her own. She would have contacted her attorneys to make sure there was no contest to her plan.

Solomon was confused. Louie referred him to Ling, with whom he spoke. He asked Ling many questions. He could not understand why there was no memorial. He knew she was looking forward to Solomon presenting an art retrospective of his uncle's work. He had seen judaica in Dorothy's home. He felt he was getting the runaround. Ling sent him a copy of the trust on the 120th day after Dorothy's death. There was a sixth page never completed by a notary.

On cross-examination, Solomon testified that he had no documents to support his previous statement that he had visited decedent in October 2012. He testified that he had not been in Dorothy's house since 2005 or 2006. He presented photos allegedly taken in the Dorothy home by Lisa Aparicio, Rose's daughter. He retrieved the photos from the internet and recognized the art work as his uncle's. Although Dorothy had a computer in her home, she and Solomon did not email each other.

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Solomon concluded his testimony and rested. He then asked to reopen his case. The court permitted him to reopen. He testified that he knew Dorothy's signature and in his lay opinion, he believes the handwriting on the addendum is not the same as the signature on the trust document. The letter D is different on each document and the signatures are very different. In addition, Dorothy's check register showed that Dorothy made entries up until October 2 and Rose Aparicio made entries thereafter. Rose wrote herself a check for \$200 on October 28, 2013. There are no writings by Dorothy after October 31, 2013.

Solomon opined that it was unlikely she could write a flowing signature on the jurat given the jagged nature of her writing in the check register. He also looked at the POLST form (Exhibit 12) she signed six days prior to signing the addendum and Dorothy's signatures in her health records (Exhibit 106) (The court ended up striking Solomon's opinion testimony as it lacked foundation.)

Solomon's last conversation with Dorothy was in November, 2013, the month she died. He found her delirious, very spiritual, looking forward to seeing Walter, in a great deal of pain, and ready to pass on. She missed Walter very much and was very sad about his passing.

Solomon told Dorothy he was coming to Los Angeles in early December. She said she looked forward to it as she expected to live until February. She did not display sharpness or acuity as she had before. She was "transfixed" on seeing Walter. She said she wanted to be cremated so she could be with Walter in the ocean. Solomon told her he would make those arrangements and "come out at that time."

In 2012, Solomon left a document containing his trade secrets with Dorothy. He asked her to hold on to them until the U.S. Navy retrieved them. The document was not listed in the inventory of Dorothy's home. Neither was a "List of Righteous" that contained "sensitive names" entrusted to the family.

In 1994, Solomon took a photograph of Dorothy. She is wearing a diamond ring on her finger worth \$25,000 and a necklace with a small diamond worth \$2000. She also owned a chain with a miniature mezuzah hanging from it. It came from the first director of the Mossad. These items have not appeared on the inventory. He is certain that they disappeared because of Joe Ling and Margaret Morrow. Morrow and Mirkovitch are in a shipping business in Long Beach which is a center of anti-Israeli sentiment and Solomon has a history of being pro-Israel and of complaining to Senator Ted Kennedy about anti-Israeli speech and actions. He believes that Ling and Louie grew up as friends of the Stazi and this motivated them to exclude all Jewish charities and substitute Syrian charities as beneficiaries of the trust and also to lose Dorothy's judaica. St. Jude's, a Syrian charity, appears on all new trust documents.

At the conclusion of his testimony, petitioner rested his case. Respondent trustee moved for judgment pursuant to CCP section 631.8.

Applicable Law

Code of Civil Procedure section 631.8 allows a party, in a court trial, to move for judgment at the conclusion of plaintiff's case. The purpose of the statute is to enable the court, after weighing the evidence at the close of the plaintiff's case, to find the plaintiff has failed to sustain the burden of proof, without the need for the defendant to produce evidence. (Ford v. Miller Meat Co. (1994) 28 Cal.App.4th 1196, 1200; Heap v. General Motors Corp (1977) 66 Cal.App.3d 824, 829.) In weighing the evidence the trial judge may exercise the prerogatives of a fact trier by refusing to believe witnesses and by drawing conclusions at odds with expert opinion. If the motion is granted, the trial court's findings are entitled to the same respect on appeal as any other findings and

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are not reversible if supported by substantial evidence. (Id. at pp. 829-830; see also *Wilson v. County of Los Angeles* (1971) 21 Cal.App.3d 312; *Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 204-205.) Ordinarily, the party attempting to invalidate a trust has the burden of proof. (*Rice v. Clark* (2002) 28 Cal.4th 89.) However, where the contestant can show that a party was in a fiduciary relationship with the decedent, the burden shifts to the fiduciary to show no undue influence or duress. (Ibid.) Here the court finds that petitioner has presented no evidence to shift the burden and no evidence to support any of his claims for relief.

Amended Petition Filed December 15, 2014

The amended petition filed December 15, 2014, seeks to invalidate the Trust addendum on three grounds. Each is discussed below.

1. Lack of Testamentary Capacity

The amended petition alleges that Dorothy lacked testamentary capacity when she executed the “addendum” to her trust. Probate Code section 810(c) requires evidence of deficits of mental functions, not just a diagnosis of a disease. The court finds no credible evidence in support of this theory. There was no evidence of mental deficits. There were no medical opinions or medical evidence presented. Solomon’s evidence is his own belief that his aunt would never disinherit him, his brother, or any Jewish charities because of her own Jewish heritage. Even his opinion was unsupported by facts. Solomon had not seen his aunt since 2007 or 2006 when he stopped traveling because of his own medical infirmities. He unpersuasively claims he saw her in October 2012, a year before her death, even though his own medical infirmities prevented him from traveling. He had not spoken to her about her estate plans for many years. He described their telephone conversations together: their chats appeared to be about him and his life, not about her and her life. Petitioner simply had no reliable information on the issue of testamentary capacity.

2. Undue Influence

The amended petition alleges that Rose Aparicio, Dorothy’s best friend, unduly influenced Dorothy into executing the addendum which disinherited petitioner. Again, petitioner presented no evidence of undue influence. Rose was not called as a witness and no other witness was called to talk about what happened when Dorothy signed the addendum. Notably the addendum reduces the bequest to Rose’s grandson, which argues against undue influence by Rose. In addition, there was no evidence that Rose was ever Dorothy’s caretaker. Before her hospitalization, Dorothy lived alone and after her hospitalization, Dorothy went to an assisted living facility. While Rose and Dorothy appeared to be lifelong friends, petitioner did not prove that Rose was Dorothy’s caretaker.

3. Constructive Fraud and Breach of Fiduciary Duty

The amended petition alleges constructive fraud by Rose Aparicio. At trial, petitioner’s theory changed: the fraud allegations now included Hoover Louie, and then the three attorneys for the trust, Joe Ling Margaret Morrow, and Joseph Mirkovitch. There was no evidence of fraud by any of these individuals.

Overall, petitioner posited two overarching theories: that Dorothy’s signature on the Addendum was not her signature and that the Addendum was invalid because the notary affixed her signature to it at a later date.

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As to the forgery allegation, petitioner brought in no experts and relied on his own lay opinion about the forged signature. However, petitioner himself was not a reliable witness. He spent a lot of time burnishing his credentials as inventor, scientist, clothing designer, and confidante of military and government officials. He glowingly described a loving relationship with Dorothy, whom he had not seen in eight years at the time of her death. He described the disappearance of items that he had not seen in Dorothy's possession since 1994. He ascribed their disappearance to anti-semitic beliefs held by Ling, Louie, and Morrow, for which he could lay no factual foundation. His testimony was heartfelt, fanciful, and not credible. Moreover, by outlandishly ascribing anti-semitic beliefs to trustee's counsel, he did his credibility no favors. The court finds petitioner not credible.

His second global allegation is that by failing to sign the Addendum when Dorothy executed the document, the notary invalidated the Addendum. Petitioner brought in no admissible evidence that the notary belatedly signed the addendum. Even if she did sign it at a later date and that tardiness invalidates the notarization, notarization is not required to validate the document. (*Osterberg v. Osterberg* (1945) 68 Cal.App.2d 254, 262.) Neither the law nor the Trust itself requires notarization of Dorothy's signature.

Amended Petition Filed January 11, 2016

Petitioner filed an Amended Petition on January 11, 2016, which focused on trust accounting issues. The motion is granted as to this petition as well.

First, petitioner asks the court for an order compelling an accounting. Beneficiaries are not entitled to an accounting if the trust itself waives an accounting. The trust at section 6.21, page 16, waives an accounting.

Second, petitioner avers that he was not provided a copy of the trust. However, he testified at trial that Joe Ling gave him a copy of the trust.

Third, petitioner alleges that Hoover Louie concealed and converted Dorothy's assets in excess of \$20 million. This allegations was not proven at trial. Petitioner had not been in Dorothy's home since 2006, one year before Walter died and seven years before Dorothy died. He did not know about Walter's estate plan and he had no idea what Dorothy owned at the time of her death. He called no witnesses, including Louie, to testify about the trustee's actions. The only testimony he presented was his own: to wit, that he felt he was being given the "runaround" when he inquired about the estate after Dorothy's death. There was no testimony that Louie in any way used trust assets for his own personal benefit or profit. There was no evidence that Louie pursued any interest or agenda adverse to the trust.

Fourth, petitioner alleged that the trustee failed to preserve trust assets and unduly influenced Dorothy to change her Trust. Again, there was no evidence presented as to any acts by the trustee or any motive to act as petitioner alleged. Indeed, Louie is not a beneficiary of the Trust under any version thereof.

Finally, petitioner repeats his allegations of lack of testamentary capacity, undue influence, duress, fraud, and breach of fiduciary duty. The record does not support these allegations.

Conclusion

Based on petitioner's failure to present sufficient, credible evidence in support of his two amended petitions, the petitions are denied. The motion for judgment pursuant to CCP section 631.8 is granted in favor of trustee and against petitioner.

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The Court orders the Clerk to give notice, and Moving Party to notice any omitted parties.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, SHERRI R. CARTER, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of August 3, 2016 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: August 3, 2016

By: /s/ Andrea Avalos

Andrea Avalos, Deputy Clerk

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