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5 SUPERIOR COURT OF CALIFORNIA
6 COUNTY OF LOS ANGELES, CENTRAL PROBATE DIVISION

7 In Re) Case No.: BP153887
8)
9 THE DOROTHY HORWITZ FAMILY TRUST,) [PROBATE]
DATED MARCH 6, 2012)
10) Honorable: Judge Maria E. Stratton
11) Department: 5
12) Action Filed: July 17, 2014
13)
14) Revised Date: October 11, 2016
15) Time: 10:00 AM
16)
17) **PETITIONER PRO PER SOLOMON'S**
18) **NOTICE & MEMORANDUM IN SUPPORT**
19) **OF MOTION FOR NEW TRIAL**
20)
21)
22)
23)

24 **NOTICE IS HEREBY GIVEN** that on October 11, 2016 at 10:00 a.m., or as soon thereafter as
25 the matter may be heard, in Department 5 of this court, located at , 111 N Hill St, Los Angeles, CA
26 90012, Petitioner pro per Dennis Solomon, will, and hereby does, move for an new trial in the
27 above-captioned matter, or in the alternative, this Court order of August 23, 2016 be vacated, and
28 that the Dorothy Horwitz Family Trust be distributed in accordance with the explicit terms of its
Article 5.3(a) to Murray and Dennis Solomon, with a cash bequest of \$25,000 to Nicolas Sanchez.

The motion will be made on the grounds present in the accompanying Memorandum and Exhibits of material errors of fact and law by the Court.

The motion will be based on this notice of motion, and the supporting memorandum served and filed herewith, on the Petitioner Trial Exhibits 1-55 previously lodged with and in the possession

1 of the Court, records and file herein, and on such evidence as may be presented at the hearing of
2 the motion.

3
4 Respectfully submitted on September 6, 201,

5 *Dennis J. Solomon*

6 By: _____

7 DENNIS SOLOMON, Petitioner, pro per

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DECLARATION OF SERVICE

I certify under penalties of perjury under the Laws of California, that I have caused the aforementioned documents to be served upon Respondent's counsel Margaret Morrow, and counsel requesting special notice by email or electronic fax on or before May 24, 2016 and caused to be served by U.S. mail upon the following parties identified, on or before March 24, 2016.

By: *Dennis J. Solomon*
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**PETITIONER PRO PER SOLOMON'S MEMORANDUM
IN SUPPORT OF MOTION FOR NEW TRIAL**

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1 *"Look outside the window, there's a woman being grabbed*
2 *They've dragged her to the bushes and now she's being stabbed*
3 *Maybe we should call the cops and try to stop the pain*
4 *But Monopoly is so much fun, I'd hate to blow the game*
5 *And I'm sure it wouldn't interest anybody*
6 *Outside of a small circle of friends"* Phil Ochs, 1967.

7 **MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR A NEW TRIAL**

8 **I. BACKGROUND**

9 On November 25, 2013, my eight-four year old (84) devoted and Jewish Aunt Dorothy
10 Horwitz passed away at Garden Crest Hospice from an overdose of the dangerous combination of
11 opiates and benzodiazepine (hydromorphone and Lorazepam) when, after obtaining her signature
12 on bank documents giving him unfettered access to her accounts, her accountant Hoover Louie, in
13 conspiracy with his attorney brother-in-law Joe Ling and others, substituted a high potency opiate
14 for the ibuprofen she self-administered. Their criminal scheme included grand larceny of rare
15 Judaica, theft of U.S. Defense-related documents for foreign entities, personal enrichment and their
16 ingratiation with long standing, anti-Israel enemies of the Horwitz/Solomon family.

17 As cover for their actions, successor-trustee Louie sent the three beneficiaries of the Dorothy
18 Horwitz Family Trust, a crude, disjointed 'adumtum' purported to bequeath nearly the entire
19 Horwitz Estate including rare Judaica jewelry and art to her former co-worker Rose Aparicio and the
20 Catholic American Syrian Lebanese Associated Charities whose Boston directors are quiet
21 supporters of the anti-Israel BDS movement.

22 One year earlier in 2012, my Aunt Dorothy (my Uncle and Aunt were childless) updated their
23 joint trust as the Dorothy Horwitz Family Trust, drafted and duly executed with her local Estate
24 Attorney Kevin Chui. In its Article 5.3(a) it bequeathed the bulk of the Horwitz Estate to equally to
25 my brother Murray and I, "her nephews"; additionally making a small cash bequest (\$25,000) to
26 Nicolas Sanchez and unnamed charities. Both my Aunt Dorothy and Uncle Walter, who she adored,
27 discussed with me at length their wish that scholarships and research be established in the family
28 name at their favorite U.S. Veterans, Navy, Jewish and medical charities, particularly the U.S. Navy
Chaplain's Fund - my Uncle Walter chose to be buried at sea by the U.S Navy, his 2nd love.

 At the time of her death, my Aunt Dorothy had been looking forward to my visit in a few

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR A NEW TRIAL

1 weeks, and among other things, an update on a retrospective of my late Uncle Walter Horwitz's
2 original art at his alma mater, Massachusetts College of Art and the University of Nevada Las Vegas,
3 where they were married. As Dorothy had done for nearly fifty years, she had conversed with my
4 93 year old Mother a week or so earlier, who was also looking forward to the retrospective of her
5 brother's art work. My Father had a career as a pilot for TWA, often flying the LAX-TLV (Los Angeles
6 – Tel Aviv 747 route). My Father (and Mother) would often stay with Dorothy and Walter, as did I
7 during my annual visits to the Southwest.

8 At Trial, I presented readily verifiable evidence in support of the above facts, and that the
9 Horwitz/Solomon has long history actively participating and contributing to the protection of our
10 freedoms as Americans and Jews worldwide. My great-uncle H. Horwitz was close with distant
11 cousin Henry Hurwitz, founding the Minnesota Chapter of the Menorah Society in the early 1900s.¹
12 His son, Henry Hurwitz, Jr. was a scientist who developed the hydrogen atomic bomb in the
13 Manhattan Project and the nuclear reactors for the U.S. Navy Seawolf submarines² who integrated
14 the Solomon MIT/Harvard circle of scientists including my Father, a U.S. Navy WWII veteran, who
15 assisted Ezer Weizman and Al Schwimmer, life-long family friends, in the founding of the Israeli Air
16 Force.³

17 Additionally, I presented articles from the historic Jewish Advocate newspapers⁴ documenting
18 the close relationship between my Grandfather, Morris Horwitz and our first cousin, the renowned
19 Cantor Pierre Pinchik⁵. I testified that it was our custom to listen during my visits to listen to records
20 of Cantor Pinchik in the Horwitz home. (Rose Aparicio deposed that she found record albums of
21 Cantor Pinchik and sent them to Murray Solomon).

22 I also testified to the JNF (Jewish National Fund) "Blue Box": which I observed was always on
23 their kitchen counter. Cantor Pinchik anchored a famous JNF benefit concert in 1942 with Harry
24 Ellis Dickson, father of Massachusetts First Lady Kitty Dukakis.

25 Dorothy's Jewishness was also affirmed in deposition by adverse witnesses Rose Aparicio

26 ¹ Harvard Crimson, April, 1923

27 ² New York Times, April 16, 1992

28 ³ Above & Beyond, 2015 documentary by Nancy Spielberg and Spielberg Foundation

⁴ Cantor Pinchik Hosts 50th Wedding Anniversary of his first cousins, the Horwitz, Jewish Advocate, 1928
Cantor Pinchik with Boston Symphony violinist Harry Ellis Dickson, Featured at Most Successful JNF Charity Event,
Jewish Advocate, 1942

⁵ Milken Foundation, Santa Monica, CA, Cantor Pierre Pinchik

1 and notary Doris Tucker, who purportedly only had one short encounter with Dorothy seven days
2 before she died. Respondent has not contested or controverted these facts.

3 I further testified to my close personal relationship with my Aunt and Uncle, including my
4 annual visits until the sequelae of an accident limited my travel from 2007-2011, and an illness,
5 Lyme disease and nerve palsy from 2014-2015. In 2012, I traveled to Las Vegas and California in
6 conjunction with the Live Design show where I met with UNLV Professor Brackley Frayer regarding a
7 retrospective of my Uncle Walter's artwork and scholarship in the Horwitz name and proudly
8 communicated this to my Aunt Dorothy. My special relationship with my Aunt Dorothy was
9 affirmed during Summary Judgment by the deposition of adverse witness Rose Aparicio who
10 deposed that "(Dennis) was among the first persons Dorothy contacted after being diagnosed (with
11 terminal cancer)"⁶ and of course, by the 2012 Dorothy Horwitz Family Trust, which affirms my Aunt
12 Dorothy's love and respect for her nephews, my brother and myself, one year before her death.

13 Respondents produced only one witness with personal knowledge, Nicolas Sanchez, who
14 testified that he once drove Dorothy and his mother, Rose Aparicio, a former co-worker, to the
15 doctors, and saw her when she visited their home, but otherwise he had no individual relationship
16 Dorothy. He testified he had no reason to believe he would receive 1/3 of the Horwitz Estate.

17 Respondent presented no evidence or witnesses which controverts my testimony, suggests
18 that my Aunt Dorothy became upset with me after 2012, or provides an iota of reason, justification
19 or insight into my Aunt Dorothy's radical abandonment of all Jewish and U.S. Navy charities as well
20 as her nephews. This is simply because there is none.

21 This Court's finding, (Ms. Maria Stratton, judge), and its conclusions of law are so bizarre as
22 to strongly suggest extreme coercion or corruption – not unexpected where the Respondents,
23 counsel and perpetrators have strong ties to Asian and Mexican racketeering enterprises.

24 This Petitioner requests that this Court grant a new trial, or in the alternative, reconsider its
25 ruling of August 3, 2016, and find that the Respondents produced no evidence to authenticate the
26 'adumtum'; no evidence that supports a change of heart by Trustor Dorothy Horwitz; and that the
27 duly-executed 2012 Dorothy Horwitz Family Trust expresses the true intentions of Dorothy Horwitz.,

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1 **ERRORS OF FACT AND LAW IN THE RULING OF AUGUST 3, 2013**

2 **II. LACKING OF STANDING OF RESPONDENT TRUSTEE LOUIE**

3 In Babbitt V. Superior Court Of Los Angeles County, B263917, Court of Appeals of California,
4 Second District, Division Seven. Filed April 25, 2016, the Court found:

5 *"Contentions based on a lack of standing involve jurisdictional challenges and may be raised at any*
6 *time in the proceeding." (Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 438; see*
7 *Sanowicz v. Bacal (2015) 234 Cal.App.4th 1027, 1043 [lack of standing "is a nonwaivable*
8 *jurisdictional defect"]; Drake v. Pinkham (2013) 217 Cal.App.4th 400, 407 (Drake) [""the issue of*
9 *standing is so fundamental that it need not even be raised below—let alone decided—as a*
10 *prerequisite to our consideration""].)*

11 Neither the Dorothy Horwitz Family Trust nor Respondent successor-trustee Louie have any
12 interest, benefit or standing to object to the Petition to Invalidate the Addendum. Doing so
13 Respondent seriously breaches his legal duty to be an ‘impartial’ trustee to the beneficiaries,
14 required under California Probate Law §16003. As unanimously recognized in Bowles v. Superior
15 Court (1955) 44 C2d 574, *“no trustee can properly act for only some of the beneficiaries--he must*
16 *represent all of them or he cannot properly represent any of them.”* This Court has erred permitting
17 Respondent Louie standing on the Petition to Invalidate.

18 **III. ERROR OF FACT: NO INSTRUMENT AMENDING THE DOROTHY HORWITZ FAMILY TRUST**
19 **WAS INTRODUCED OR AUTHENTICATED AT TRIAL**

20 At no time during the trial did any party with personal knowledge introduce an instrument
21 alleged to be a verified original of an amendment to the Dorothy Horwitz Family Trust. This
22 Petitioner averred in the Petition and present at trial that a fraudulent and forged document was
23 sent to him by the successor-trustee attorney Joe Ling four months after the death of Dorothy
24 Horwitz. Respondent counsel Ling and Morrow produced the original of that fraudulent document
25 – referred to as the ‘adumdum’ or ‘addendum’. It was never admitted or authenticated as a
26 amendment to the Dorothy Horwitz Family Trust. It is an instrument of fraud with the intent to
27 deceive the beneficiaries by Respondent and evidence of breach of duty: Cal Prob Code §16000,
28 16001(b), 16002, 16003, 16004, 16005, 16006, 16007, 16011, 16012, and 16014 among others.

The six page document, five pages of which had been sent to him by attorney Joe Ling four
months after the death of Dorothy Horwitz and the other page a blank unfilled acknowledgement
form revealed fifteen months later in discovery, had the stamped but no signature of a notary who

1 allegedly witnessed its execution. The purported signatures of Dorothy Horwitz were smooth and
2 flowing, who at the time seven days before her death could not make legible entries in her
3 checkbook. It's typeface and formatting was foreign to any Dorothy had ever used. The person
4 who hand printed "adumdum" lacked the capacity to read the proper spelling of 'addendum' typed
5 one inch away on the document. The 'adumdum' gave Rose Aparicio, a fiduciary, confidant who
6 deposed having transcribed the document exclusive access to the Horwitz home and "anything she
7 wants". On its face, it is prima facie evidence of fraud, undue influence and lack of capacity.

8 Mr. Ling admitted the facts and time of sending the document from Long Beach to the
9 Petitioner in Massachusetts. One signed page of the document has the word 'ADUMDUM' hand
10 printed near the top of the page. There is no reference to the Dorothy Horwitz Family Trust on that
11 page or any of the other purportedly signed pages. It was produced and is prima facie evidence of
12 Respondent successor-trustee Louie's breach of duty under §16000, 16001(b), 16002, 16003,
13 16004, 16005, 16006, 16007, 16011, 16012, and 16014 among others, including but not limited to
14 breach of impartiality. The Family Trust had no interest or benefit in or from the 'adumdum'.

15 LASC RULE 3.205(b) states: *Authentication. Unauthenticated documents will not be received*
16 *in evidence unless their authenticity has been pleaded in the complaint and admitted by entry of*
17 *default."* The "Adumdum" was never admitted or plead as authentic, or admitted by default, nor
18 was any evidence or testimony of authentication by an individual with personal knowledge of the
19 drafting, transcribing or execution introduced at trial. The Court erred in finding the Dorothy
20 Horwitz Family Trust was amended in accordance with its terms or California law and precedent.

21 **IV. CLEAR ERRORS OF MATERIAL TRIAL FINDINGS OF FACT**

- 22 a. Attorney Joe Ling, brother-in-law of successor-trustee and Respondent Hoover Louie, is a de
23 facto partner and co-located with trial counsel Margaret Morrow and Joseph Mirkovich at
24 One World Trade Cetner, Long Beach, CA. (Trial M Order, P. 4, Lines 4-7)
- 25 b. The POLST (P. Exhibit 12) NOT signed by Dorothy Horwitz. It is signed by POA Rose Aparicio
26 and attending physician Dr. Khang on 11/12/13, prior to the purported date of execution of
27 the 'adumdum' on 11/18/13. (Trial M Order, P. 6, Lines 9-11.)
- 28 c. Petitioner Solomon never called Respondent Louie prior to Dorothy's death. He called

1 Dorothy's next door neighbor, Edward Lui, (no relation to Respondent) who gave him Rose
2 Aparicio's phone number. (Trial M Order, P. 5, Lines 12-13)

3 d. Petitioner Solomon testified that he had no documents at trial related to his 2012 trip to the
4 LDI Show in Las Vegas and California. However, Petitioner testified to meeting UNLV Prof.
5 Brackley Frayer and discussing a retrospective of the art of Walter Horwitz and a scholarship
6 in their name on that trip, officials and editors of Live Design, as well as other records to
7 support his travel in 2012. (Trial M Order, P.5, Line 24)

8 e. Petitioner contracted Lyme disease in the summer of 2014. (Trial M Order, P. 5, Line 11)

9 **FACTS AND LAW IF THE COURT HOLDS THE ADUMDUM WAS ADMITTED AS AN AMENDMENT**

10 **V. ERROR OF LAW: LACK OF DUE EXECUTION - REGARDING THE INITIAL BURDEN OF PROOF OF**
11 **THE DUE EXECUTION OF A WILL/TRUST INSTRUMENT**

12 It is well-established law in California that the proponents have initial burden of proof of the
13 due execution of a Will/Trust instrument. This is codified in Cal. Prob. §8252(a) and discussed at
14 length in Estate of Ben-Ali, 216 Cal.App.4th 1026 (2013). Neither the Respondent trustee Hoover
15 Louie nor any of the alleged witnesses appeared at trial to authenticate any instrument of
16 amendment to the Dorothy Horwitz Family Trust. Respondent counsel testified that they had no
17 personal knowledge of the documents prior to the her death. None had ever met Dorothy Horwitz.

18 **VI. ERROR OF FACT: AUTHENTICATION OF SIGNATURES - NO PERSON WITH PERSONAL**
19 **KNOWLEDGE APPEARED AT TRIAL TO AUTHENTICATE ANY RELEVANT SIGNATURES**

20 Respondents produced no testimony or witness with personal knowledge of the signatures of
21 Dorothy Horwitz, notary Doris Tucker or any other relevant signor. Neither the Respondent trustee
22 Hoover Louie nor any of the alleged witnesses appeared at trial to authenticate any instrument of
23 amendment to the Dorothy Horwitz Family Trust: All reside within 25 miles of the Mosk Courthouse
24 and were available to appearance.

25 **VII. ERROR OF FACT: FRAUD, FORGERY AND SUBORNING PERJURY RELATED TO THE**
26 **'ADUMDUM' - CONTEMPT OF THE COURT BY RESPONDENT COUNSEL**

27 The Court on Page 2, Lines 11-15 of its Minute Order of August 3, 2016 states:

28 *"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*

1 *notary stamp and a signature of "Doris Tucker Notary Public" on the signature line for a notary*
2 *public."*

3 The Petitioner avers in the Petition that the notary signature is fraudulent and was not affixed
4 on November 18, 2013. No evidence or witnesses with personal knowledge were admitted at trial.
5 No other examples of the signatures of Doris Tucker were presented.

6 Further, there is no evidence that the signature found in the jurat form document is that of
7 Doris Tucker. Notary Tucker is a local California notary who was available to testify at trial.
8 Respondent attorney Ling testified at trial that he sent the beneficiaries and a form jurat without
9 any notary signature.

10 Both Respondent attorneys Ling and Morrow testified that the jurat was NOT signed by the
11 notary on November 18, 2013 as presented. They further testified that they had no personal
12 knowledge of its signing.

13 The initial burden of proof of due execution and authentication lies with the proponents of the
14 amendment (addendum). Notary Tucker is a local notary who was available to authenticate her
15 signature. Respondent did not call her to testify. There was no evidence of any sort admitted to
16 refute the averment that the Addendum documents are fraudulent, nor does the purported notary
17 stamp, provide any evidence that notary Tucker witnessed the signing of said documents.

18 It is an improper notary act in California to present in any Court or official proceeding a notary
19 document which has been altered after the date of the notary act (purportedly November 18,
20 2013), specifically to falsely date the completion of a notary act. Further, it is a criminal act to
21 influence a notary to commit an improper act under Gov Code § 8225.

22 CA CIVIL CODE §1189(a)(1) -*"The certificate of acknowledgment must be filled completely out at*
23 *the time the notary public's signature and seal are affixed."*

24 CA SEC OF STATE: NOTARY NEWS & RULES 2013, Page 2 - *"Improper Notary Acts -A notary*
25 *public may not stamp a document with the official seal then sign, or sign and date the document*
26 *without completing or attaching a notarial certificate. A notary public may not stamp with the*
27 *official seal any pages other than the page with a completed notarial certificate."*

28 In the Deposition of Doris Tucker, Pages 21-22, lodged and referred to in this Court during
Summary Judgment, Ms. Tucker, questioned by attorney Morrow deposed:

 "24 Q. Okay. Sometime after November 18th, were you
 25 called by Orit Shapiro in regards to a missing signature

1 1 on this document here which is marked HORW0042?

2 2 A. This is optional.

3 12 Q. Okay. But at some time did you later go back and

4 13 sign the document upon Orit's request?

5 14 A. I did.

6 15 MS. MORROW: Okay. I'll mark the five-page

7 16 addendum as Exhibit 2."

8 This Court is aware by separate uncontroverted affidavit signed by Orit Shapiro, Garden Crest
9 administrator, and Respondent counsel Morrow that Ms. Shapiro attests that she did not call Ms.
10 Tucker at a later date. Since attorney Ling sent the beneficiaries an unsigned copy of the original
11 four months after Dorothy's death, the purported signing of the jurat would have to have occurred
12 afterwards, long after Garden Crest's involvement.

13 A Cal Jurat requires the notary administer an oath to the affiant in person, and complete the
14 notary act by personally signing and stamping the notary certificate at the same time. Failure
15 constitutes an Improper Notarial Act as explicitly defined in official Notary Rules and Definitions,
16 January, 2013, page 2:

17 *"Proper notarization of a signature includes the completion of a notarial certificate, such as an
18 acknowledgment or jurat, by the notary public. A notary public may not stamp a document with the
19 official seal then sign, or sign and date the document without completing or attaching a notarial
20 certificate. A notary public may not stamp with the official seal any pages other than the page with a
21 completed notarial certificate.*

22 According the Respondent's undisputed facts presented at Summary Judgment, the 'adumdum'
23 documents were presented to trustee Louie by Rose Aparicio approximately one month after the
24 death of Dorothy Horwitz.

25 It is a criminal act to influence a notary to commit an improper act under Cal Gov Code § 8225.
26 If these criminal acts which are designed to defraud the beneficiaries of the Dorothy Horwitz Family
27 were committed by successor-trustee Louie or his agents, it would be a material breach of duty. An
28 attorney who attempts to or does mislead the court is guilty of direct contempt:

29 *"The presentation to a court of a statement of fact kn." Vaughn v. Mun. Ct.(1967) 252 CA2d
30 348, 358, 60 CR 575, 581own to be false presumes an intent to secure a determination based upon it
31 . . .; Vickers v. State Bar (1948) 32 C2d 247, 253, 196 P2d 10, 13-14—"The conduct denounced . . . is
32 not the act of an attorney by which he successfully misleads the court, but the presentation of a
33 statement of fact, known by him to be false, which tends to do so"*

1 Cal Bus Code §6068 states that an attorney must only counsel or maintain just actions or
2 defenses, "except the defense of a person charged with a public offense." BP §6068(c)(d) embodies
3 the duty of candor by stating that "employ ... those means only as are consistent with truth, and
4 never to seek to mislead the judge . . . by an artifice or false statement of fact or law." This Court
5 appears to condone the suborning of perjury of notary Doris Tucker, violations under Cal Penal
6 §127, offering and preparing fraudulent evidence under Cal Penal §132 & §134, solicitation of a
7 crime under Cal Penal §653f(a), and direct contempt of this Court regarding material and
8 determinative facts. This Court and the beneficiaries have been deceived by this fraudulent Jurat.

9 **VIII. ERROR OF FACT: CLEAR AND CONVINCING EVIDENCE IS THAT THE TWO ADDENDUM
10 DOCUMENTS DO NOT RELATE TO ANY OF SIGNED PAGES OF THE ADUMDUM.**

11 On its face, the purported original 'adumdum' pages bear the date "10/31/13" prominently on
12 the top of each page. The jurat makes NO REFERENCE to this document date but rather to a
13 document having a document date of '11/18/13" which is not found in the heading on any of the
14 purported original 'adumdum' pages. Further, there was no testimony or evidence presented at
15 trial which relates the three 'adumdum' pages together, each having a different heading appearing
16 as a codicil, living trust and family trust respectively. The Affidavit only makes reference to a "Living
17 Trust'. Evidence presented at trial showed that Dorothy never used the term 'Living Trust' in any of
18 the letters, summaries or other documents produced by the trustee, always using the term "Family
19 Trust". (Trial Pet. Exhibit 5)

20 The Jurat makes no reference to any Family Trust or document having a date of "10/31/13". It
21 explicitly refers to a document having a date of "11/18/13" consisting of five pages.

22 The signed 'adumdum' page references no trust at all and appears more as a codicil to a will.

23 My Aunt Dorothy, an office manager and bookkeeper, was always specific and well-structured
24 in her personal notes, letters and personal summaries. At trial, no evidence was presented that
25 Dorothy drafted, instructed to be transcribed, or executed these fraudulent documents.

26 **IX. ERROR OF LAW: UNDUE INFLUENCE – GENERAL STANDARD OF BURDEN OF PROOF & CAL
27 PROBATE CODE §21380**

28 In David v. Hermann, 129 Cal.App.4th 672 (2005)[28 Cal.Rptr.3d 622], the Court discussed at
length the standards and law related to burden of proof in "undue influence".

"The proof of undue influence by circumstantial evidence usually requires a showing of a

1 number of factors which, in combination, justify the inference, but which taken individually and
2 alone are not sufficient." (12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, ? 189, p.
218.)

3 "...a presumption of undue influence may arise, shifting to the proponent of the disposition
4 the burden of proving by a preponderance of the evidence that the donative instrument
5 was not procured by undue influence." (Conservatorship of Davidson (2003) 113 Cal.App.4th 1035,
6 1059.)... A presumption of undue influence "arises upon the challenger's showing that (1) the person
7 alleged to have exerted undue influence had a confidential relationship with the testator; (2) the
8 person actively participated in procuring the instrument's preparation or execution; and (3) the
9 person would benefit unduly by the testamentary instrument." (Rice v. Clark, supra, 28 Cal.4th 89,
10 97; Estate of Fritschi (1963) 60 Cal.2d 367, 376.)

11 This Court admitted into evidence a POLST form, Exhibit 12 (P. 6. Line 8) which clearly shows
12 that Rose Aparicio had power of attorney and was the 'Legally-Recognized Decisonmaker" on and
13 after 11/12/13. (The 'adumdum' was purportedly executed on 11/18/13.). This confidential
14 relationship was also supported by the testimony of Nicolas Sanchez, Rose Aparicio's grandson, who
15 testified that Rose Aparicio was handling the 'adumdum'. In Summary Judgment, this Court
16 received Respondent's evidence Rose Aparicio printed the 'adumdum' on Dorothy's printer and
17 presented it to the successor-trustee thirty days after Dorothy's death. Under both well-established
18 standards and CPC §21380, there is a presumption of fraud and undue influence shifting the burden
19 of proof to the proponents of the 'adumdum', which may be overcome only by 'clear and
20 convincing evidence.' No evidence of any sort was presented by the proponents at trial.

21 **X. BREACH OF TRUST: UNDUE INFLUENCE, FRAUD, FORGERY & LACK OF CAPACITY: THE**
22 **SUCCESSOR-TRUSTEE TO ENGAGED IN ACTIVITY ADVERSE TO THE INTERESTS OF THE**
23 **NAMED BENEFICIARIES OF THE TRUST**

24 In the context of the breach of duty of the successor-trustee, the Petitioner presented
25 extensive evidence of the fraud, undue influence and lack of capacity related to the purported
26 'adumdum' documents including but not limited to:

- 27 1. On November 18, 2013, Dorothy was a depondent adult under §21366, unable to provide
28 for her personal needs and due to deficits in mental funcations had difficulty managing
her own financial resources, or resisting fraud or undue influence..
2. Dorothy could not write or print legibly on and after October 31, 2013, as evidenced by
the checkbook page, . The purported signatures could not be authentic or witnessed on
November 18, 2013.

- 1 3. "Addendum" is spelled correctly on the computer-printed pages, but the person who
2 performed the hand printing on the fraudulent documents could neither spell addendum
3 correctly from memory, nor read the spelling on the page and repeat it on the same
4 page. If the trier of fact attributes the hand printing to Dorothy, the inability to read and
5 remember a single word is clear and conclusive evidence of an impairment of capacity to
6 read and understand the instrument being signed.
- 7 4. Dorothy in all her known writings, letters and summaries referred to the trust as the
8 "FAMILY TRUST" or "DOROTHY HORWITZ FAMILY TRUST". At no time did Dorothy ever
9 use the term "Living Trust".⁷
- 10 5. The typeface employed on the 'adumdum' page was never used by Dorothy. Readily
11 apparent is the difference in the lower case 'a'.
- 12 6. The formatting of columns of numbers was importantly different: formal accounting
13 structure - column right on Dorothy's personal papers and summaries, but a writer's
14 column left on the fraudulent adumdum pages.
- 15 7. The purported source of the Addendum, Rose Aparicio, was a fiduciary and confidant,
16 who claims to have transcribed the Addendum and given it to the Respondent Trustee
17 nearly a month after the death of Dorothy Horwitz. (See Estate of Swetmann (2000), 85
18 Cal.App.4th 807. (Respondent's Undisputed Statement of Facts, Summary Judgment, and
19 Deposition of Rose Aparicio. The Court on Summary Judgment found that Rose Aparicio
20 was new beneficiary of the "Adumdum'.)
- 21 8. The Trustee knew and the Trial Court acknowledged the POLST document, Trial Exhibit
22 12, P. 6, Line 6-10, evidence that Rose Aparicio was a fiduciary, and that Dorothy's
23 condition on 11/12/13 precluded Dorothy acknowledging the POLST. It was executed by
24 the fiduciary Rose Aparicio and physician Dr. Khang. These facts established the
25 'adumdum', Rose Aparicio and her 'favorite' charity, ALSAC as disqualified recipients
26 under Cal Prob Code § 21380.
- 27 9. The term 'addendum' is not the method of amendment permitted in the language of the
28 Dorothy Horwitz Family Trust; is not found in any of Dorothy's writings, and is not the

⁷ See Trial Exhibit 5 (8 pages)

1 term used in any of the self-help literature. It is not a term used by estate attorneys in
2 California. It is a term used by shipping and insurance lawyers.

3 10. Dorothy adored her late husband Walter and she would never not honor his instructions
4 to bequest his half of the Estate to their nephews, Murray and Dennis.

5 11. Dorothy adored her late husband Walter and she would never not honor his instructions
6 to bequest the Cantor Pinchik papers, recordings and other heirloom Judaica and jewelry
7 his half of the Estate to their nephews, Murray and Dennis.

8 12. At the time of Dorothy's passing, my Mother, Walter's sister, eight-nine years old, was
9 alive, alert, and speaking with Dorothy every two weeks. They both adored Walter
10 Horwitz. The decision to leave Walter's half of the Estate to her nephews was jointly
11 made at the time of Walter's passing in 2007. Even if Dorothy was upset at her nephews
12 (which she was not), she would bequest Walter's half of the Estate to my Mother. She
13 would NEVER EVER bequest the Horwitz heirlooms, Judaica and art, to Rose Aparicio,
14 ALSAC and any other party. (See "undue profit" in Estate of Sarabia(1990), 221
15 Cal.App.3d 599.)

16 These numerous inconsistencies and the absence of any evidence or testimony of witnesses
17 where two are alleged, are prima facie evidence of lack of due execution, lack of authentication and.
18 It is well-established law in California that the proponents have initial burden of proof of the due
19 execution of a Will/Trust instrument. This is codified in Cal. Prob. §8252(a) and discussed at length
20 in Estate of Ben-Ali, 216 Cal.App.4th 1026 (2013). Further, discussed below, Rose Aparicio, the
21 "anything she wants" new beneficiary, is a disqualified person, subject to a presumption affecting
22 the burden of proof that a gift to a disqualified person was procured by fraud, menace, duress, or
23 undue influence." (Graham v. Lenzi (1995) 37 Cal.App.4th 248, 257.)

24 Neither the Respondent trustee Hoover Louie nor any of the alleged witnesses appeared at
25 trial to authenticate any instrument of amendment to the Dorothy Horwitz Family Trust, controvert
26 averments and evidence of undue influence by Rose Aparicio and lack of capacity of Dorothy
27 Horwitz on November 18, 2013.

28 This Court erred in concluding the trustee Louie did not breach his duty to the Petitioner
under Cal Prob. Code §16003 (impartiality), appearing as objector on behalf of the proponents of

1 the 'adumdum, impeding access to the Horwitz Estate objects of Judaica, jewelry, art, finances,
2 personal phone and address books, papers and photo albums; and by concealing evidence
3 favorable to the named beneficiaries of the 2012 Dorothy Horwitz Family Trust.

4 **XI. EVIDENCE OF SIGNATURE FORGERY**

5 *It is well-established and common knowledge among* jurists familiar with document forensics
6 that if one has control over the writing materials – paper, pen and printer, and knowledge of the
7 forensic tools employed by document examiners, it is nearly impossible to distinguish between an
8 original and a well-crafted forgery. This is the certainly the case here where the perpetrators of the
9 forgery, attorney Ling and accountant Louie, had extensive experience with document forensics and
10 over four months of unfettered access to the Horwitz home, papers, computer and printer before
11 the presentation of the purported 'adumdum' four months later.

12 The deterioration of Dorothy's motor functions – her 'shaking hand' (Deposition of the
13 notary Doris Tucker⁸), or the unsuccessful scrawl in her checkbook register on October 31, 2013,
14 which required the intervention of her fiduciary Rose Aparicio to assume the responsibility of
15 writing and recording Dorothy's checks are not reflected in three signatures allegedly executed on
16 November 18, 2013 0- the adumdum, jurat, and affidavit. (See Trial Exhibit 10, Motion Exhibit 1.)

17 **XII. UNDUE INFLUENCE - NO EVIDENCE OF PRIOR DONATIONS TO NEW CHARITIES**

18 The only charities evidenced in the bank documents are a small amounts to American Heart
19 Assc., American Lung Assc. and the L.A. Mission which was close to my Aunt Dorothy's place of
20 employment. The bank records produced by Respondent in discovery include NO evidence that
21 Dorothy ever donated to the American Lebanese Syrian Associated Charities (St. Jude's) or USC
22 Children's Hospital. Catholic ALSAC with historic ties to the Croatian Ustasa is the most un-natural
23 of beneficiaries for my Jewish Aunt Dorothy. USC Children's Hospital which is associated with the
24 unsuccessful Brausen v Holonyne, LASC BC389984 litigation, is equally un-natural.

25 (It may be noted the Respondent counsel Morrow intentionally misleads the Court in its
26 written memorandum asserting evidence of donations to St. Judes where none exists).

27 This Court erred in light of the uncontroverted testimony at trial and other evidence of
28 Jewishness and ties to the U.S. Navy, by concluding that the elimination of all U.S. Veterans, Navy

⁸ Lodged Deposition of Doris Tucker, P. 25, Line 2

1 and Jewish charities, and the substitution of Catholic ALSAC/St. Jude's as the sole donative recipient
2 for the Judaica and Horwitz heirloom jewelry, and a majority funds was unnatural and evidence of
3 undue influence on an elderly Jewish woman with a long-standing Jewish identity and heritage.

4 **XIII. STANDARDS FOR PRO SE TRIALS**

5 From: HANDLING CASES INVOLVING SELF-REPRESENTED LITIGANTS - JANUARY 2007 - CALIFORNIA
6 JUDICIAL COUNCIL

7 "The trial judge has a "duty to see that a miscarriage of justice does not occur through
8 inadvertence." Lombardi v. Citizens Nat. Trust & Sav. Bank (1951) 137 Cal App.2d 206, 209,
9 [289 P.2d 8231]."

10 "*The judge cannot rely on the pro per litigants to know each of the procedural steps, to raise*
11 *objections, to ask all the relevant questions of witnesses, and to otherwise protect their due*
12 *process rights. Ross v. Figueroa (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289."*

13 *I. To decide cases fairly, judges need facts, and in self-represented litigant cases, to get facts,*
14 *judges often have to ask questions, modify procedure, and apply their common sense in the*
15 *courtroom to create an environment in which all the relevant facts are brought out.*

16 *II. In short, judges have found as a practical matter that a formalized, noncommunicative role*
17 *in dealing with cases involving self-represented litigants can lead to serious decision-making*
18 *problems. Without the additional facts that active judicial involvement brings to light, judges*
19 *are at risk of making wrong decisions."*

20 Lay opinion may be received on physical condition of health, sickness, or injury. Waite v.
21 Goodfrey (1980) 106 Cal.App.3d 760, 764, 163 Cal. Rptr. 881, 883 and identification of handwriting.
22 Cal Evid. Code § 1416; Fed. Rules Evid. 901(b)(2). Opinion testimony is not objectionable merely
23 because it embraces the ultimate issue to be decided. Cal Evid. Code § 805; Fed. Rules Evid. 704(a).

24 Cal Evid. Rule 1416 states:

25 "*A witness who is not otherwise qualified to testify as an expert may state his opinion whether*
26 *a writing is in the handwriting of a supposed writer if the court finds that he has personal*
27 *knowledge of the handwriting of the supposed writer. Such personal knowledge may be*
28 *acquired from:*

29 *(a) Having seen the supposed writer write; (TRUE) (b) Having seen a writing purporting to be*
30 *in the handwriting of the supposed writer and upon which the supposed writer has acted or*
31 *been charged ; (TRUE) (c) Having received letters in the due course of mail purporting to be*
32 *from the supposed writer in response to letters duly addressed and mailed by him to the*
33 *supposed writer; (TRUE) or(d) Any other means of obtaining personal knowledge of the*
34 *handwriting of the supposed writer. (TRUE)"*

35 It is clear that if Petitioner's uncontroverted and readily verifiable evidence was admitted, a
36 presumption of fraud and undue influence, and the burden of proof would shift to the Respondent.

1 **XIV. PREJUDICE OF THE COURT**

2 This Court erroneously and prejudicially: denied discovery motions ESSENTIAL to proving
3 undue influence and the breach of trustee’s duty to secure the Estate including requests for photo
4 albums, personal papers, cards, address and phone books, pictures and listing contents of safe
5 deposit boxes, pictures of art works and Judaica, and the identity of persons who receive items of
6 the Estate after the death of Dorothy Horwitz from Rose Aparicio; Denied discovery motions related
7 to the ‘new’ computer witness – Conrad Blinker – prejudicial to proving an alternation of evidence;
8 and, persuaded Petitioner that a post-trial opposition memorandum was not necessary. This Court
9 had personal and prejudicial knowledge of opposing counsel’s role in the unlawful racketeering
10 activities of the Chinese import-export businesses in Long Beach, facts presented in a preemptory
11 challenge denied on June 9, 2016.

12 **XV. DANGEROUS PRECEDENTS & SUMMARY**

13 The August, 2016 Order is a dangerous precedent which reopens to door to trustee,
14 fiduciary and confidant fraud and larceny. It condones a sole trustee representing proponents of a
15 deathbed instrument adverse to the Family Trust beneficiaries on the most specious grounds,
16 obstructing of discovery, concealing evidence, and forcing the legitimate beneficiaries into costly
17 litigation to assert their rights. It is so contrary to California Law and precedent as to appear to be
18 obtained by the coercion or corruption of the Court.

19 To my 92 year old Mother, who spoke with Dorothy every few weeks, this fraud is absolutely
20 transparent: Dorothy would never, dead or alive, step into the Pacific Ocean of her ‘adored
21 husband’ Walter Horwitz, having abrogated her oath to protect and bequeath the Horwitz art,
22 Judaica, heirlooms and half the monetary value of the Estate to their nephews, Murray and Dennis
23 Solomon; a truth well understood by those family and friends, from our Rabbi and clergy, Under-
24 Secretaries of Defense, Chairs of renowned medical schools of recent visit. May God have mercy
25 upon your souls.

26 Respectfully submitted on September 6, 2016,

27 *Dennis J. Solomon*

28 By: _____

DENNIS SOLOMON, Petitioner, pro per

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EXHIBIT LIST

TRIAL EXHIBITS 1- 55 LODGED WITH THE COURT

1. HORWITZ FAMILY HISTORY
Cantor Pierre Pinchik, Milken Archive 2015, Great Cantorial Concert
Great-Grandparents 50th, The Jewish Advocate, July 29, 1934
"Above & Beyond" – Nancy & Stephen Spielberg, TWA, Israel
"Touro Synagogue, Torah Bells"
Walter Horwitz , Blue Jacket Manuel 1940,
Walter Horwiz, Self-Portrait, Temple Peacock
Prof. Nancy Aleo, MassArt, discussed retrospective of alumus Walter Horwitz
Prof. Herbert Lin, Stanford U, NAS, MIT 73
2. DENNIS SOLOMON SPECIAL RELATIONSHIP WITH AUNT DOROTHY
"Success of nephew in the ocean oriented sports 'garment' trade
Holly Bra was a swimwear manufacturer.
3. DENNIS SOLOMON PROFESSIONAL EXHIBITS
Expertise as an analytical microscopist and trajectories
Expertise in computers
Expertise in biomedicine
4. DOROTHY HORWITZ FAMILY TRUST, MARCH 6, 2012
-Article 5.3 Bequest of Horwitz Estate to Murray and Dennis Solomon, nephews;
Nicolas Sanchez and Charities according to Schedule B
-Article 3.1 Method of Amendment, Irrevocable After Death
-Article 6.19 Trustee Liability
5. INTRODUCTION TO DOROTHY HORWITZ – OFFICE MANAGER
("FAMILY TRUST")
H-0002 "Family Trust" Letter, 4/19/12
H-0189 "Family Trust" Letter, 4/3/12
H-0136 "Family Trust" Letter, 8/9/12
H-0029 "Family Trust" Letter, 8/21/12
H-0038 "Family Trust" Letter, 8/21/12
H-0204 "Family Trust" Envelope, 9/4/12
H-0226 "Family Trust" Envelope, no date
H-0176 "Family Trust" Stocks, 6/20/13
6. THREE SEPARATE PAGES OF THE FRAUDULENT ADUMDUM
"Adumdum"; 'Living trust'; Forged 'family trust' – Document date: "10/31/13"

- 1 7. TUCKER - ORIT SHAPIRO DECLARATION & DENIAL AS SUBSCRIBING WITNESS
- 2 8. TUCKER UNSIGNED NOTARY ACKNOWLEDGEMENT & JURAT
Notary Tucker refused to sign based on Dorothy's refusal to acknowledge.
3 Affidavit addresses on the "Living Trust"
4 Jurat Document Date is: "11/18/13", no reference to "10/31/13"
- 5 9. TUCKER JURAT SIGNED SOME TIME AFTER 3/18/14
6 Notary Tucker Dep "Morrow suborning notary Tucker to affirm Orit Shapiro as Requester"
- 7 10. DOROTHY HORWITZ CHECKBOOK PAGE "10/31/13"
8 Last attempt to print "Garden Crest", most by Rose Aparicio
9 Couldn't have printed the headings "Dorothy Horwitz 10/31/13"
on the three addendum pages
-Signed JURAT
- 10 11. DOROTHY MEDICAL RECORDS
11 Highly drugged with morphine, hydromorphone (opioids) and Lorazepam (anxiety);
12 a dangerous combination causing death by the depression of respiration.
- 13 12. ROSE APARICIO POA EXECUTED BY DR. KHANG ON 11/12/13- FIDUCIARY
14 In addition to fiduciary relationship regarding finances, home and influence
15 POLST was formally executed prior to the purported signing of the addendum on 11/18/13.
- 16 13. ROSE APARICIO DEP. P.14-15 - PRINTED ADDENDUM ON DOROTHY'S COMPUTER
17 'Transcribed or caused to be transcribed the instrument of donative transfer to herself'
Prohibited person under Sec. 21380, (See adumdum, St. Jude's for drafting evidence.)
- 18 14. ROSE APARICIO DEP. P.41 - GAVE TO TRUSTEE LOUIE AFTER DOROTHY DIED
19 Describes going back until about a month after Dorothy died.
20 Prohibited person under Sec. 21380, (See adumdum, St. Jude's for drafting evidence.)
- 21 15. ROSE APARICIO DEP. P.28 - SAFE DEPOSIT BOX KEYS TO TRUSTEE LOUIE
22 "I had no keys, keys went to trustee Louie"
- 23 16. LOUIE RESPONSE TO SPECIAL INTEROGS
24 "Three safe deposits boxes only contained 7 stock certificates"
- 25 17. ROSE APARICIO DEP. P. 29 - SENT PHOTOS TO HER BEST FRIEND - "ADELE"
26 "Refuses to provide the address of Aunt Dorothy's Best Friend"
- 27 18. ROSE APARICIO DEP. P.34, 26, 22, 35 JEWISH & RELATIONSHIP WITH FAMILY
28 Page 34, 'Of course, Dorothy was Jewish.'
Page 26. 'She adored him (Walter).'
Page 22, "She said she called you (Dennis) as soon as she was diagnosed"

EXHIBITS IN SUPPORT OF PETITIONER'S MOTION FOR A NEW TRIAL

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- Page 35 "Sent Cantor Pinchik album to Murray... he's a very nice man."
19. ATTORNEY JOE LING LETTER TO BENEFICIARIES DATED MARCH 24, 2014
Attorney Morrow as representing the Dorothy Horwitz Family Trust
"Sent Unsigned JURAT to all Beneficiaries at this time"
20. STATEMENT OF JAMES GREEN, DOCUMENT EXAMINER ON FORGERY BY ALTERATION OF
ADDENDUM CHARITIES PAGE
The Addendum "Charities" page was forged by alteration after a first hand printing of
"Dorothy Horwitz" to read: "Family Trust" – an impossibility under the testimony
of Rose Aparicio and notary Doris Tucker.
21. FBI - FORSENIC DOCUMENT ANALYSIS GUIDELINES
FBI Handwriting Examination Paper, October 2009
FBI Examples of Handwriting Forgeries
FBI Guidelines for Forensic Document Examination
Konrad Kujau, Amateur artist forges Hilter Diaries, Stern Magazine, 1989
Harvard Theological Review, "Laboratory Tests Can't Always Catch Modern Forgeries"
22. COMPUTER METADATA PROGRAM – ATTRIBUTE MAGIC
Popular program which allows the change of metadata on MS WORD and other documents:
Date Created; Last Date Modified; Author; for example.
23. LISA APARICIO WEB PICTURES OF THE ART OF WALTER HORWITZ
Four pages of photographs from the open port of Lisa Aparicio's computer showing the
original artwork of Walter Horwitz in the Horwitz home. Retrieved by Petitioner.
24. ADL/SENATOR KENNEDY LETTERS ON MCMANUS/BDS ANTI-SEMITIC ACTS
Letter from U.S Customs to Senator Kennedy
Note from ADL attorney Sally Greenberg
25. ALPERIN V VATICAN BANK 242 F. Supp. 2nd 686 (2003)
Discussion of the role of the Catholic Church in the emigration of the Croatian Nazi
collaborators to the United States with purloined fortunes, and in particular Southern California.
34. UFFE HORWITZ – DANISH UNDERGROUD
35. NEUROTUBULE FOUNDATION – PROF ILLANA GOZES
- APPENDED EXHIBITS 1. From Summary Judgment – Comparison of Signatures of Dorothy Horwitz
- End of List