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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

In the Matter of

THE STERLING FAMILY TRUST

Case No. BP152858

Assigned to Hon. Michael Levanas, Dept. 5

DONALD T. STERLING'S POST-TRIAL BRIEF

Trial Dates: July 7, 2014 – July 23, 2014

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REGULATIONS

Respondent Donald T. Sterling ("Donald") respectfully submits his Post-Trial Brief addressing the three issues raised by the Court:

1) Is Rochelle Sterling's *Probate Code* section 17200 petition an appropriate action in winding down the affairs of the trust.

2) Was Donald Sterling properly deemed no longer a Co-Trustee.

3) Whether the Court should make orders under *Probate Code* section 1310(b).

SUMMARY OF ARGUMENT

First, Shelly's Petition is inappropriate because the Sterling Family Trust, an inter vivos revocable trust, was revoked prior to its filing. *See Prob. Code* § 15410(a). The letter of revocation demanded that "all income and principal of the community trust shall promptly be distributed to the Settlors as their community property . . . ." Ex. 29, ¶ 2.5.a. At no time since its creation did the Sterling Family Trust become irrevocable. The trustees are the same individuals as the settlors. There are no issues of accounting, distribution, or care or preservation of trust assets. There is no issue of payment of liabilities; there is only the matter of returning a stock certificate (LAC Basketball Club, Inc.[1]) back to Donald—a single asset which is managed within the corporate structure and not the stockholder. Ex. 40.

Second, Donald was not properly removed as a co-trustee under section 7.5.c (the "Removal Provision") of the Sterling Family Trust. The doctrine of unclean hands, which embraces Shelly's breaches of fiduciary duty, precludes enforcement of the purported removal of Donald as a trustee. The procedure used to remove Donald was not a good faith undertaking to remove a trustee incapable of performing his duties. Rather, it was a mechanism used to break a co-trustee deadlock about whether or not to sell the Clippers. Secret Plan B evolved as a means of circumventing Donald's unwillingness to sell. This misuse of the trust was accomplished by false pretenses and by the lawyers subverting the independence of the examining physicians and by securing letters which do not comport with or satisfy the provisions of *Probate Code* § 810 et seq.

[1] The Clippers are owned by LAC Basketball Club, Inc., a California corporation whose stock was owned 100% by the Sterling Family Trust and is now held by Donald, for Donald and Shelly as their community property.

The two doctors, Dr. Meril Sue Platzer and Dr. James Spar, who performed examinations and purported to certify as to Donald's incapacity, were working with and paid by Shelly's lawyers from the outset with a predetermined outcome with the singular objective concealed from Donald in a whirlwind rush to sell the Clippers. Shelly, her lawyers, and the doctors admittedly concealed from Donald and his lawyers that they were working for Shelly and her lawyers to remove him from the Trust to accomplish the sale. Shelly attempts to rationalize such illegal activity by claiming that Donald would have had to cooperate anyway. Shelly breached her fiduciary duties to her husband, co-settlor, co-trustee, and co-beneficiary by acting in her own self-interest and against her husband's interest. The letters do not comport to the trust provisions or satisfy *Probate Code* Section 810 et seq. requirements. The doctors' letters were wrongly obtained by false pretenses, breach of fiduciary duty, undue influence, and unclean hands. The doctors' letters contain disclosures which violate HIPAA, CMIA, and HITECH. Given the influence and pressure exerted by Shelly, her lawyers, and the NBA, the significant amount of assets owned by the then-existing Sterling Family Trust, the extraordinary speed with which they acted, and the extreme stress placed on Donald, the unclean hands of Shelly, Dr. Platzer, Dr. Spar, and Shelly's lawyers is overwhelming. The entire surreptitious process cannot be approved by the Court.

Third, the Court should not make orders under *Probate Code* section 1310(b) because the Clippers are a unique, irreplaceable asset and if sold under protest cannot be replaced by Donald. There is no precedent for the making of any such order. There is no issue of preventing *extraordinary* or *imminent* injury or loss of person or property; the value of the LAC Basketball Club, Inc. stock is going to remain the same or increase. Donald, a sophisticated businessman who has owned the Clippers for 33 years and made his fortune from "galloping inflation" with his real estate empire (T.T. 7/9/14, 69:9-13), testified about the "tremendous opportunity" in owning a sports franchise in the Los Angeles market, particularly in light of the valuable content and media deals. T.T. 7/8/14, 97:14-22, 103:4-22. Donald expects that the passage of time will increase the value of the team, a "trophy asset" in high demand, in a major metropolitan market, as we've seen with recent sale prices of other sports franchises, including the Dodgers, and franchises in much smaller markets such as the Sacramento Kings and Milwaukee Bucks. There is no record of an

NBA team ever depreciating in value, especially in Los Angeles, and the if the NBA confiscates the team, it must mitigate damages and cannot allow the team to sell for less.

Additionally, the former asset in question is stock, which is not being sold. LAC Basketball Club, Inc., a corporation, owns the franchise and the additional assets (defined in the Binding Term Sheet ("BTS") as the "Target Assets") which are the subject of the proposed sale. Orders by this Court cannot affect internal corporate acts or actions.

Further, the sale of the Clippers to Mr. Ballmer will significantly harm Donald. Because Donald purchased the Clippers for $12 million, there is an enormous capital gains consequence if the assets are sold. T.T. 7/21/14, 5:26-27. At the first death of Donald or Shelly, there will be a step up in basis and the Sterlings will save a currently estimated $650 million in capital gains taxes if a sale is consummated during the survivor's lifetime. Any Section 1310(b) order will prejudicially deprive Donald of his right to appeal since it will be rendered moot by the completion of the sale.

In sum, the Court must deny Shelly's Petition because (1) this Court does not have authority to direct Shelly to take active acts in winding up the Sterling Family Trust, (2) Donald was not removed as a trustee of his Sterling Family Trust, and (3) the injury prevention exception under Probate Code 1310(b) does not apply.

STATEMENT OF FACTS

It is undisputed that Dr. Platzer and Dr. Spar did not make a neutral, independent, or impartial determination of Donald's capacity. Neither Shelly, nor her lawyers, nor Dr. Platzer, nor Dr. Spar disclosed the true and illegitimate purpose of the medical examinations to Donald or his attorneys. Therefore, there was a breach of fiduciary duty and a breach of the duty of good faith and fair dealing. There was no informed consent and no valid and knowing waiver of disclosure of Donald's private medical records. Rather, both doctors were working with Shelly's attorneys from the outset to remove Donald as a trustee from the Sterling Family Trust for the singular objective of forcing the sale of the Clippers—the basketball franchise Donald has owned for 33 years as the "controlling owner"—over his vociferous objections. The examinations of Dr. Platzer and Dr. Spar cannot be relied upon as fair, independent, or impartial in this proceeding, as the

entire process was tainted by undue influence, unclean hands, false pretenses, and misconduct in violation of Donald's rights to privacy over his medical records. It is undisputed that Mr. O'Donnell and Ms. Zwicker, acting as Shelly's agents at the direction of their client, were the masterminds of secret Plan B, and were not acting in Donald's best interests. Indeed, Mr. O'Donnell deliberately concealed and withheld from production a substantial amount of communications between Shelly's lawyers at Greenberg Glusker and Dr. Platzer and Dr. Spar until trial, confirming the bias and prejudicing Donald's case and ability to properly prepare. T.T. 7/7/14, 17:25-18:27, 22:20-21, 25:15-26:27; 28:17-18, 29:5-14.

A. Timeline of Events

Donald and Shelly have been married for nearly 59 years, since 1955. T.T. 7/9/14, 54:3-4, 80:14-16. Shelly testified that she has been concerned about her estranged husband's health for three years. T.T. 7/9/14, 83:17-20. They have been living separately for at least a year but she testified that she remains his "only" caregiver. T.T. 7/9/14, 86:5-8.

Another person who claimed to be Donald's caregiver was Ms. V. Stiviano. In September 2013, Donald and Ms. Stiviano had a private conversation in her living room which, without Donald's knowledge or consent, was illegally recorded and released to the public in violation of his California constitutional right to privacy, and seven months later, was heard around the world.

On or about December 9, 2013, Donald bought a home for $1.8 million in Ms. Stiviano's name. *Sterling v. Stiviano*, Verified Complaint ¶ 15, Ex. A, filed Mar. 7, 2014, L.A. Superior Court, BC53869 (Fruin, J.).[2]

On December 18, 2013, Donald and Shelly restated the Sterling Family Trust. Ex. 29. Laura Zwicker of Greenberg Glusker was Shelly's attorney at that time. The Restatement changed the Removal Provision from the prior trust instrument, and eliminated the procedure for a removed trustee to be reinstated. *Compare* Ex. 29, ¶ 7.5.c *with* Ex. 4, ¶ XV B.3. Shelly testified that she

[2] Pursuant to Evidence Code § 452(d), the Court may take judicial notice of "[r]ecords of . . . any court of this state."

was not concerned about Donald's mental health at the time they restated the Trust with Donald as co-trustee. T.T. 7/10/14, 33:24-27.

In March 2014, Shelly sued Ms. Stiviano to recover gifts that Donald had purchased for Ms. Stiviano. *Sterling v. Stiviano*, Verified Complaint filed Mar. 7, 2014, L.A. Superior Court, BC53869 (Fruin, J.). On April 25 and 27, 2014, TMZ and Deadspin released recordings of the illegally recorded private conversation between Donald and Ms. Stiviano. Shelly and Donald were together in San Francisco at that time for Donald's 80th birthday and the playoff game between the Clippers and the Golden State Warriors. T.T. 7/10/14, 35:24-25. Shelly did not testify that she had any concerns about Donald's mental health in connection with the release of the recordings. She did not publicly come to his defense that Donald was sick nor did she contact the NBA to express any concerns about Donald's health during Commissioner Silver's investigation. On April 29, 2014, Commissioner Silver fined Donald $2.5 million, banned him for life, and stated that he would urge the NBA Board of Governors to terminate the current ownership of the Clippers.

On May 11, 2014, Donald conducted an interview with Anderson Cooper, and it aired on May 12. Ex. 17. Disclaiming any expertise as to Donald's mental state, Anderson Cooper explained that he "spoke with Donald Sterling for more than an hour" and that Donald "did not strike me as someone who is suffering from dementia." *Id.* at 18. "Donald Sterling, without counsel there, without a P.R. team there, clearly had things he wanted to say." *Id.* Donald was "very present" during the interview and when Anderson Cooper "skipped around on questions," Donald "would come back to questions I asked so he could finish his answers." *Id.* at 19. Mr. Cooper added: "Certainly, if he had clear signs of dementia . . .it's not something I would allow an interview to go forward with." *Id.*

Shelly and her lawyer, Mr. O'Donnell of Greenberg Glusker, vowed to fight for Shelly to retain her 50% ownership in the Clippers. On or about May 13, they met with Commissioner Silver in New York and, knowing that Donald—who is the longest-tenured NBA owner and has never sold *any* property—would not sell the Clippers, they began plotting with the NBA to wrest control of the team away from Donald. T.T. 7/914, 84:3-5. **This leads to secret Plan B.** By this

point, Shelly and Donald are separately represented by counsel and their interests are not aligned. That same day, Shelly called Donald and urged him to undergo neurological testing. Shelly testified that her concern arose from Donald's Anderson Cooper interview.

From the outset, Donald has wanted to fight the NBA's maximum punishment against him and the most severe in the history of the NBA. T.T. 7/9/14, 64:20-26, 65:15-26, 67:2-3. As widely reported in the press, Donald refused to pay the NBA's $2.5 million fine on the grounds that he did not violate the NBA's Constitution and Bylaws, and geared up to sue the NBA for violation of Donald's rights. On May 15, Donald's lawyer, Maxwell Blecher, wrote to the NBA:

> We reject your demand for payment because in the circumstances there has been no violation of Article 35A, warranting the punishment imposed under Article 24 or any other of the bases set forth in your demand, or any punishment at all. Even if there were, the penalty violates Mr. Sterling's due process rights, both procedural and substantive. Accordingly, this matter will need to be adjudicated.

Shelly contacted Dr. Platzer on May 15, and at Shelly's behest, Donald went to Cedars-Sinai Medical Center on May 16, 2014 and underwent a CT scan and PET scan of his brain as a diagnostic measure. Ex. 7-8.

On May 19, 2014 at approximately 2:30 p.m., Dr. Platzer arrived, unannounced, and took an 80-minute exam of Donald in his home. Ex. 1 at 1, 5; T.T. 7/8/14, 78:17-18.

Immediately after Dr. Platzer diagnosed Donald with Alzheimer's, Dr. Platzer went to the Polo Lounge with Donald's wife for a social interaction. T.T. 7/7/14, 55:21-25. When Donald wanted to join them, Shelly and Dr. Platzer testified that he was not welcome and Shelly "discouraged" it. T.T. 7/7/14, 56:15-18. And at some point that same day, Dr. Platzer spoke with Shelly's attorneys and received a subsequent email from Mr. O'Donnell. Ex. B17. From the very first day (May 19, 2014) that Dr. Platzer met with her "patient" Donald as his "treating physician," she was communicating with Shelly's lawyers, *with Shelly copied on the email*, about preparing, divulging protected health information, and sending a "draft" letter to Mr. O'Donnell. *Id.* Shelly was instrumental in setting up and carrying out secret Plan B.

Also on May 19, 2014, Commissioner Silver instituted the NBA's formal written charge (the "Charge") against the Clippers, which consisted of Counts I-VI and approximately 1,000

pages of exhibits. Ex. 26. Donald had **five** business days to file his Answer in order to avoid losing ownership of his team.

Shelly used these same five days to schedule Donald's medical examinations. It is undisputed that neither Shelly, nor her lawyer, nor Dr. Platzer, nor Dr. Spar disclosed to Donald or his attorneys that the purpose of the medical examinations was to determine Donald's capacity to serve as co-trustee of the Sterling Family Trust. Both doctors testified that added "anxiety" could negatively affect his test performance. T.T. 7/8/14, 37:4-17; 7/7/14, 53:9-15. Yet neither doctor accounted for the extreme stress, anxiety, and pressure Donald was under at the time of their examinations due to the unprecedented pending NBA proceedings against him or the extraordinary presence of his estranged wife at both examinations.

Dr. Spar testified he was contacted directly by Mr. O'Donnell on May 21, 2014 and was asked to conduct an examination of Donald for the purpose of determining capacity with respect to Donald's removal as co-trustee of the Sterling Family Trust. T.T. 7/8/14, 31:7-22. Shelly would have this court believe that she asked ***her lawyer*** to contact Dr. Spar because she was concerned about Donald's health—and not because of secret Plan B. T.T. 7/10/14, 51:10-12, 51:26-27. However, that contradicts Dr. Spar's testimony and what Mr. O'Donnell told the press: that they were "scrupulously" following the Removal Provision when he contacted Dr. Spar at Shelly's direction. Mr. O'Donnell was quoted in a June 17, 2014 *Forbes* article entitled "How Rochelle Sterling Got Donald Sterling's Medical Records to Claim Control of the Clippers":

> At the time I contacted Dr. Spar at the direction of my client, Shelly Sterling, we were fully aware of section 7.5c of the trust agreement signed by Donald Sterling. Attorneys at Greenberg Glusker scrupulously followed the terms of this provision, which authorized the release of Mr. Sterling's medical exams and reports for the purpose of securing the removal of an incapacitated trustee. Any claim to the contrary is entirely without merit.

T.T. 7/10/14, 57:18-21. Dr. Spar indicated he wanted to conduct the exam later next week, but Mr. O'Donnell urged him to do it the next day due to "time pressure." T.T. 7/8/14, 32:11-25. Dr. Spar arrived at Donald's house, unannounced, on May 22, 2014 at 1:30 p.m. to perform a 50-minute examination. T.T. 7/8/14, 50:7, 73:5-6. After the exam, Dr. Spar called Mr. O'Donnell to

let him know that he found Donald incapacitated and that he would write the report and send it over to him by the next week. T.T. 7/8/14, 39:20-24.

On May 22, 2014, Shelly told Donald that she had met with Commissioner Silver, and Shelly promised Donald that she would negotiate with the NBA to sell the team ***only*** on the condition that she retain at least a 20% ownership. T.T. 7/9/14, 63:8-65:6. Relying on Shelly's representation, Donald authorized Shelly to negotiate on his behalf with the NBA "as an accommodation to her." Ex. 14; T.T. 7/8/14, 73:13-22; T.T. 7/9/14, 67:20-28. The May 22, 2014 letter does not provide Shelly with Donald's power of attorney to consummate a sale or authorize her to negotiate with anyone other than the NBA.

The next day, on May 23, the NBA set forth the procedures for the June 3 hearing for the NBA Board of Governors to vote on the NBA's Charge against LAC Basketball Club, Inc. and the termination proceedings.

Between May 24-28, Shelly, without Donald's cooperation or involvement, worked with the NBA to solicit bids. The entire time secret Plan B was in the works. Shelly's expert Anwar Zakkour testified that he heard Shelly and her lawyers discussing Plan B as early as Monday, May 26, 2014. T.T. 7/22/14, 85:19-25. Shelly unilaterally accepted Mr. Ballmer's $2 billion offer and negotiated perks and benefits for herself to Donald's detriment. Ex. 3.

On May 27, 2014, Donald and Shelly separately filed Answers to the NBA Charge.

Also on May 27, 2014, Dr. Spar drafted a letter concerning his findings of Donald's examination and sent it directly to Mr. O'Donnell. Ex. 6.

On May 29, 2014—the same date of the BTS and Donald's refusal to sell the Clippers—Dr. Platzer signed a "Physician's Certification of Trustee's Incapacity" prepared by Shelly's lawyers with Greenberg Glusker's document number at the bottom of the page. Ex. 1. Using identical phrasing, both doctors conclude that Donald's "score is below normal for his age and advanced education." Exs. 1, 6.

On May 29, 2014, Donald refused to accept the terms of the deal with Mr. Ballmer to which Shelly had unilaterally agreed. Neither Sterling retained any ownership interest under Shelly's proposed deal. Ex. 3.

Thirty minutes later, Mr. O'Donnell notified Shelly that Donald had been deemed incapacitated and removed as trustee of the Sterling Family Trust (of which Donald had been the trustee since 1998). T.T. 7/10/14, 22:10-14. Donald's intimately personal confidential medical records were immediately leaked to the press, and Donald's private health records became widespread news. Shelly showed no remorse at trial for leaking Donald's private medical information records to the public or press.

Later that evening, Shelly and Mr. Ballmer signed the BTS, Shelly acting in her own self-interest and against the known and stated interest of her husband of 58 years and Clippers owner of 33 years. Ex. 3.

On May 30, 2014, Donald, faced with the imminent prospect of the NBA's confiscation of his team, filed a $1 billion lawsuit against the NBA with respect to the termination proceedings, lifetime ban, and $2.5 million fine for violation of his privacy rights under the California Constitution, antitrust, and other claims. *Sterling v. NBA* Complaint, CV-14-4192, C.D. Cal., filed May 30, 2014 (Olguin, J.).[3]

That same day, Shelly entered into a settlement agreement with the NBA in which she purports to indemnify the NBA on behalf of herself and the Sterling Family Trust—with complete disregard for Donald's welfare, dignity, or desire to fight the NBA to maintain ownership and economic opportunity. Ex. 44. When asked why she would want to take away Donald's right to sue the NBA, Shelly testified that she did not understand the indemnification. T.T. 7/10/14, 72:26 She similarly testified that she did not understand antitrust (T.T. 7/10/14, 71:19), even though she was married to Donald at the time the Clippers previously successfully used the antitrust laws to prevent the NBA from interfering with the Clippers' relocation from San Diego to Los Angeles. *See* T.T. 7/9/14, 52:3-53:15.

Shelly also incredulously testified that she never thought Donald would sue or not agree to the sale (T.T. 7/10/14, 70:10-11, 72:7-9), even though it was widely reported that Donald intended

[3] Pursuant to Evidence Code § 452(d), the Court may take judicial notice of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States...."

to sue and fight the NBA proceedings. As his wife and "only" caregiver, she should have known (and her lawyers certainly did know) that Donald had been preparing the complaint that was filed on the same day that she tried to take away his right to sue.

On June 4, 2014, the NBA suggested that "all outstanding issues" between the NBA and Donald would be resolved if Donald consented to the sale. T.T. 7/9/14, 66:1-27. However, by June 8, Commissioner Silver reversed course and, during a press conference, stated that there was no possibility that the ban or fine would be rescinded. T.T 7/9/14, 68:6-11.

On June 5, 2014, Mr. O'Donnell wrote the following letter to Mr. Schield, Mr. Walton, and All Employees of Beverly Hills Properties, with a "cc" to Shelly, which further evidences Shelly and her attorneys' disregard and disrespect for Donald.

> We represent Shelly Sterling, the sole Trustee of The Sterling Family Trust. This letter will put you on notice that Donald Sterling has been removed as a Trustee and Shelly Sterling is the only person authorized to act on behalf of The Sterling Family Trust and all of its assets, including Beverly Hills Properties. Until further notice, you are instructed not to write any checks and/or transfer any funds or other assets at the request of Donald Sterling. Any financial transactions must be expressly authorized by Shelly Sterling. Anyone who disobeys this instruction will be subject to immediate termination.

Ex. F; T.T. 7/9/14, 68:14-70:2.

On June 9, 2014, Donald revoked the Sterling Family Trust. Ex. 45; T.T. 7/9/14, 70:3-13. Shelly concedes that the revocation was effective and that Donald had sufficient capacity to revoke the Sterling Family Trust. Two days later, on June 11, 2014, Shelly filed the Petition in this Court.

B. Trial Testimony and Evidence

1. Dr. Cummings' Testimony on the Standard of Care

Dr. Cummings[4] testified as to the unusual circumstances surrounding the doctors' examinations, including the distractions and stress of Shelly's presence during both examinations.

Dr. Cummings opined that "... there are standards with regard to the mental status examination and how it's optimally conducted. And one would not conduct it in the presence of

[4] Dr. Cummings' CV is Exhibit L.

other people who might have a distracting influence." T.T. 7/23/14, 11:19-23. As to a doctor disclosing to his patient the purpose of a mental evaluation, Dr. Cummings testified that in his view there is an accepted standard of care with respect to the physician's disclosure to the patient in respect to the conduct of the examination and that "... a professional examination includes disclosure as to the purpose of the assessment." T.T 7/23/14, 17:14-18.

> THE OPTIMAL MENTAL STATUS EXAMINATION IS CONDUCTED WHEN THE PATIENT IS NOT DISTRACTED AND IS ABLE TO CONCENTRATE FULLY ON THE TASK AT HAND AS POSED TO BY THE EXAMINER. (*Id.*, 8:17-20.)
> * * *
> THE STANDARD OF CARE FOR A MENTAL STATUS EXAMINATION REQUIRES THAT THE PATIENT BE ABLE TO ATTEND FULLY AND COMPLETELY TO THE THINGS THAT ARE ASKED OF THE EXAMINER. (*Id.*, 9:8-11.)
> * * *
> I THINK THE WORD "DISTRACTION" AND AN INABILITY TO ATTEND TO THE TASK THAT WERE REQUESTED DURING THE MENTAL STATUS EXAMINATION IS THE MOST KEY THING THAT I WOULD EMPHASIZE IN TERMS OF DOING MY OWN MENTAL STATUS EXAMINATION. (*Id.*, 10:25-11:1.)
> * * *
> Q. DOES MR. STERLING'S REQUEST THAT MRS. STERLING BE PRESENT FOR THE EXAMINATION MITIGATE OR CHANGE ANY OF YOUR TESTIMONY ABOUT HER BEING PRESENT BEING INAPPROPRIATE?
> A. NO, IT DOES NOT.
> Q. SO DESPITE WHAT HE WOULD HAVE WANTED OR REQUESTED, YOU THINK HER PRESENCE WAS AN UNNECESSARY DISTRACTION, STRESS, SLASH, STRESS?
> A. YES, I DO. (*Id.*, 26:16-23.)
> * * *
> THE FACT THAT WE ARE IN THIS COURT WORKING ON THIS PROBLEM, WHICH SEEMS TO BE BETWEEN THEM, SUGGESTS TO ME THAT THERE WAS A STRESS IN THE RELATIONSHIP. (*Id.*, 13:9-11.)
> * * *
> I THINK A PROFESSIONAL EXAMINATION INCLUDES DISCLOSURE AS TO THE PURPOSE OF THE ASSESSMENT. (*Id.*, 17:17-18.)
> * * *
> YOU ARE TRYING TO DEVELOP A RAPPORT, A TRUST WITH THE PATIENT. THEY NEED TO TRUST YOU AND THEY NEED TO UNDERSTAND WHY IT IS THAT YOU'RE ASSESSING THEM. THIS WOULD BE PART OF EVERY MENTAL STATUS EXAMINATION. (*Id.*, 17:21-24.)
> * * *
> I COULD TELL FROM THE DIFFERENCES BETWEEN THE EXAMINATIONS THAT IT WAS LIKELY HE WAS DISTRACTED. (*Id.*, 22:25-26.)

2. Donald's CT Scan

The CT scan findings show "**mild** diffuse cortical deep atrophy with **mildly** enlarged cortical sulci, ventricles and basilar cisterns of a **mild** degree." The CT scan impression states: "**Mild** atrophy." Dr. Spar testified that the "CT scan was unremarkable." T.T. 7/8/14, 31:23-24.

3. Donald's PET Scan

The PET scan findings show "moderate cortical atrophy" and "reductions of a moderate degree in the bilateral parietal lobes" while the "basal ganglia and thalamic nuclei" and "cerebellar hemispheres are both "symmetric and within normal limits." The PET scan impression states: "The findings suggest the process is relatively **mild** at this time."

4. Dr. Platzer's Relationship with Shelly, Her Examination of Donald, and Privacy Concerns

Dr. Platzer testified that she was contacted by Shelly on May 15, 2014, and Shelly said she was very worried about Donald and his memory issues. T.T. 7/7/14, 40:26-27. After speaking on the phone with Shelly, Dr. Platzer arranged for Donald to have a CT scan and PET scan at Cedars-Sinai Medical Center. *Id.*, 41:6-8; T.T. 7/9/14, 15:21. At no time on May 15, 2014 did Dr. Platzer speak with Donald. T.T. 7/8/14, 15:22-24.

After the radiologist at Cedars-Sinai, Dr. Alan Waxman, transmitted the results to Dr. Platzer on May 16, 2014, Dr. Platzer contacted Shelly to set up an appointment with Donald for Monday, May 19, 2014 in his home. *Id.*, 16:11-15; T.T. 7/9/14, 32:23:24. Donald had no knowledge that an appointment was scheduled with Dr. Platzer at his home until she arrived at his house. Dr. Platzer testified that Donald was her patient from May 16 until June 9, 2014. T.T. 7/8/14, 24:20-25:1; T.T. 7/9/14, 14:24-27. Additionally, Dr. Platzer testified that she billed Donald's insurance for his medical services. T.T. 7/8/14, 8:10-18.

On May 19, 2014, unannounced, at approximately 2:30 p.m., Dr. Platzer arrived at Donald's home and took an 80-minute exam of Donald in his home with Shelly present. T.T. 7/7/14, 49:15-16. Prior to the examination, Shelly, not Donald, completed and signed the

notification of patient rights. Ex. A6. During the examination, Dr. Platzer took a medical history but she did not inquire into Donald's businesses or his foundation. T.T. 7/8/14, 22:4-11.

Dr. Platzer's notes state: "Mrs. Sterling states that her husband has had memory issues at least 3 years perhaps longer 5 years but was never evaluated for this problem." *Id.* As to Donald's mental status during the exam, Dr. Platzer notes: "Good eye contact," "fluent" speech, Donald "knew the month day of the week and year" and "oriented to the city county and state." *Id.* at 2. She notes the CT scan shows "**mild** atrophy" and the PET scan shows "moderate" atrophy and "**mild** to moderate" reductions, and the results match "mild to moderate Neurodementia of the Alzheimer's type." *Id.* at 3-4. Dr. Platzer testified that "the caregiver information is very important." T.T. 7/7/14, 55:2-3.

Dr. Platzer testified that when she met with Donald on May 19, 2014, ***there was no indication that her evaluation was part and parcel to anything related to capacity in a trust or Donald's capacity to be a trustee***. T.T. 7/8/14, 42:15-19; T.T. 7/9/14, 6:7-15, 36:20-28. Further, Dr. Platzer testified that she only did a neurological evaluation and not an evaluation to determine whether Donald had capacity to serve as a co-trustee of his trust because at that time Dr. Platzer was not aware of the Sterling Family Trust. T.T. 7/8/14, 21:12-20. She further testified that she had no knowledge of secret "Plan B" to forcibly remove Donald as a co-trustee of his trust. T.T. 7/9/14, 6:26-7:2. Dr. Platzer testified that Donald's medical file contained both "sensitive" and "protected health information." *Id.*, 13:3-8. Dr. Platzer testified that she had no knowledge of the Sterling Family Trust until May 23, 2014.

After Dr. Platzer concluded her evaluation of Donald, Dr. Platzer went to the Polo Lounge with Shelly to further discuss Donald's diagnosis. ***However, according to Dr. Platzer's file, she received a telephone call and email from Mr. O'Donnell that same day.*** Ex. B18. Dr. Platzer testified that the email was sent to her and to Shelly on May 19, 2014. T.T. 7/9/14, 10:15-21. The email from Mr. O'Donnell with a time stamp of 6:28 p.m. to Dr. Platzer, ***with a copy to Shelly***, states: "Dear Dr. Platzer, it was nice speaking with you today" and it continues with Mr. O'Donnell providing his cell phone number to Dr. Platzer and requesting a "draft" of her letter. Ex. B18. But Dr. Platzer has no recollection about her conversation with Mr. O'Donnell on May

19, 2014. T.T. 7/9/14, 10:24-11:16. Dr. Platzer testified that she made no phone calls and received no phone calls during her examination of Donald or afterwards at the Polo Lounge; therefore, the conversation with Mr. O'Donnell had to have occurred ***prior*** to her examination of Donald.

To continue the cover-up, Dr. Platzer testified that she had no knowledge of any communications with Mr. O'Donnell on May 19, 2014. She finally admitted that she received communications from Mr. O'Donnell on the day of Donald's examination. She could not remember the conversation she had with him.

> Q. Did you call anybody before you got to the Polo lounge?
> A. No.
> . . . .
> Q. Did anybody call you?
> A. No.
> Q. Did you talk to anybody on the telephone?
> A. I don't recall that I called anyone on the telephone. I doubt it.

T.T. 7/9/14, 8:1-3, 8-12. Dr. Platzer testified that on May 20, 2014, without any documentation, she disclosed to Mr. O'Donnell that Donald was her patient, such disclosure being individually identifiable protected health information. *Id.*, 14:7-9.

From the very first day that Dr. Platzer met with her "patient" Donald as his "treating physician" on May 19, 2014, Dr. Platzer was communicating with Shelly's lawyers about preparing and sending a "draft" letter to Mr. O'Donnell. She testified that she was first contacted on May 23, 2014. T.T. 7/8/14, 12:15-23. Here, Dr. Platzer's records show that she was working with and for Shelly's attorneys from the very outset of "Plan B."

Over the course of the next 10 days, Dr. Platzer spent substantial time "discussing case with attorney Ms. Laura Zwicker and Mr. O'Donnell and writing examination report and writing a letter of competence related to the Sterling Family Trust" and "[d]iscussion with attorney Ms. Laura Zwicker . . . prior to composing letter for the trust." Ex. B17-18.

On May 21, 2014, Mr. O'Donnell advised Dr. Platzer: "Mrs. Sterling is concerned that her husband no longer has capacity to prudently carry out the numerous duties imposed by the trust instrument and by state law on a trustee, especially given the extraordinary value and complexity

of the assets held by the Trust . . . must. . . be removed as a trustee in order to safeguard the assets and interests of the beneficiaries of the Trust . . ." Ex. A55-56.

On May 23, 2014, Shelly's attorney, Ms. Zwicker, similarly provided Dr. Platzer with a sample certificate in a form to follow: "If it is not possible to complete your report today, would you feel comfortable providing a certificate in a form similar to the attached." Ex. A30. Even though she was ordered to produce all of her records, Dr. Platzer testified that she did not produce the form certificate. It appears that the form provided by Ms. Zwicker is the certificate signed by Dr. Platzer on May 29, 2014 with the Greenberg Glusker document number on the page.

Dr. Platzer also expressed serious reservations about sharing Donald's private medical records, which Mr. O'Donnell referred to as dealing with a "headache." Ex. B17. On May 21, 2014, after Dr. Platzer requested documentation from Mr. O'Donnell and Ms. Zwicker that authorized her to release Donald's medical information, Mr. O'Donnell sent an email to Dr. Platzer and Ms. Zwicker asking "How do we deal with this latest headache?" T.T. 7/9/14, 17:2-13; Ex. B21. Later that day, an email was sent with an attached letter from Mr. O'Donnell to Dr. Platzer. Ex. A55. The letter misrepresents the provisions of the Sterling Family Trust and oversimplifies the purported "waiver" language. *Id.* Mr. O'Donnell did not send Dr. Platzer the terms of the Removal Provision under section 7.5.c of the Sterling Family Trust. T.T. 7/9/14, 19:2-5.

Dr. Platzer testified that after spending significant time discussing the trust with Shelly's lawyers and reviewing the trust provision, she ultimately concluded that the trust provision provided a waiver that allowed her to share Donald's medical records with Shelly's lawyers. ***Dr. Platzer never discussed the fact that she prepared a report based on her prior medical examination that she now understood was intended to disqualify her patient, Donald, as a co-trustee of the Sterling Family Trust.*** T.T. 7/8/14, 23:28-24:1-4.

On May 29, 2014—the same date of the BTS and Donald's refusal to sell the Clippers—Dr. Platzer signed a "physician's certification of trustee's incapacity" prepared by or in conjunction with Shelly's lawyers. Dr. Platzer states that Donald is "suffering from cognitive impairment secondary to primary dementia Alzheimer's disease" and states that the PET scan was

"positive for moderate reductions" in the anterior mesial regions of the temporal lobes and bilateral parietal regions right greater than left."

Unequivocally, Dr. Platzer testified that she never discussed the release of Donald's private and confidential medical records with Donald even though she knew that releasing such information was in conflict with her patient's interests. T.T. 7/9/14, 20:6-11, 21:17-26; 29:17-22. Dr. Platzer did not discuss with Donald or his attorneys the release of Donald's confidential medical records —but instead discussed that with Shelly's attorneys. Based upon their representation and solely on the purported "waiver" in the Sterling Family Trust (which by its terms is not an effective waiver under the stringent requirements for waivers under HIPAA or CMIA), Dr. Platzer released Donald's private and confidential medical records to third parties. *Id.*, 34:22-25, 44:19-21.

5. Dr. Spar's Relationship with Mr. O'Donnell, Examination of Donald, and Disclosure of Donald's Private Medical Information

Dr. Spar made clear that he was working for Shelly and her lawyers from the outset to implement secret Plan B. Dr. Spar actually testified that Donald was not his patient. He was hired with a predetermined objective.

On May 21, 2014, Dr. Spar testified he was contacted by Mr. O'Donnell and was asked to conduct an examination of Donald. T.T. 7/8/2014, 31:9. Dr. Spar indicated he wanted to conduct the examination later next week, but Mr. O'Donnell urged him to do it the next day. *Id.*, 32:12-32. Dr. Spar testified that he arrived at Donald's house on May 22, 2014 at 1:30 p.m. and performed a 50-minute examination with Shelly present. Dr. Spar did not ask Donald for permission to write a report about him. *Id.*, 50:1-21. Dr. Spar did not ask Donald anything about his business operations. *Id.*, 51:4-6. Dr. Spar did not take a complete medical history. *Id.*, 51:9-10. Dr. Spar conceded that Donald was distracted and preoccupied by a meeting with his attorneys in the other room, that Donald exerted "a possibly less-than-optimal effort," and "on some of the test items he tended to 'give up' easily," even stating "I don't want to do it" and "I have to get back to my meeting" and that he did not finish the exam. Ex. 6. This is consistent with Dr. Cummings' testimony that outside "stress" could produce a suboptimal performance. It is undisputed that

Donald was under extreme stress because of the five-day window to respond to the unprecedented NBA charge to confiscate his team coupled with the fact that he was the center of a media firestorm.

After the exam, Dr. Spar dutifully called Mr. O'Donnell to let him know that he found Donald incapacitated and that he would write the report and send it over to him by next week. *Id.*, 58:25-28.

On May 27, 2014, Dr. Spar drafted a letter concerning his findings of Donald's examination and sent it directly to Mr. O'Donnell. Dr. Spar's letter states that Donald was "well dressed and groomed, alert and in no distress," "his mood was generally euthymic and his affect was **appropriate** in direction and degree. There were **no abnormalities** of the form, flow or content of thought, and his psychomotor behavior was entirely **within normal** limits." Ex. 6 (emphasis added). Donald scored 24/29, and had Dr. Spar asked and had Donald properly answered "what floor are we on" that score would have been 25/30—within normal range. *Id.* Donald's "naming was **intact**," his "recall of remote, interpersonal events and information was **mildly to moderately** impaired. His frontal executive function as reflected by clock drawing was **within normal** limits; as reflected by similarities and word list generation was **mildly** impaired." *Id.* Dr. Spar's concludes that Donald is "suffering from **mild** global cognitive impairment, with relatively greater impairment in memory and frontal executive functions." *Id.*

Although Dr. Spar's letter refers to his examination as a "second opinion," Dr. Spar testified that he did not know there was a prior opinion, and thought that referred to the PET scan. T.T. 7/8/14, 61:11-18.

Dr. Spar admitted that the PET scan and CT scan constitute protected health information. *Id.*, 54:9-12. Dr. Spar did not request from Donald or his attorneys any written authorization for disclosure of his protected health information. *Id.*, 56:17-20. Dr. Spar never even received or reviewed the waiver provision. He simply trusted Shelly and her lawyers. To this date, despite asking Mr. O'Donnell to send him the trust language where Donald waived his federal and state medical and mental health privacy rights, Dr. Spar has never seen the trust language other than a little excerpt in *Forbes* online. *Id.*, 51:13-22. Dr. Spar admitted that UCLA compliance officers

advised him that he "may not have been in compliance with" HIPAA. *Id.*, 53:15. It is undisputed that Dr. Spar was a hired gun.

6. Donald's Trial Testimony

Donald was never informed that the purpose of the examinations was to determine his capacity under the Removal Provision of the Trust. T.T. 7/8/14, 89:6-17; T.T. 7/9/14, 56:11-23, 57:10-13, 57:26-58:7. Donald trusted his wife when she represented that the examinations were "routine" medical examinations for his 80th birthday. *Id.*; T.T. 7/9/14, 56:6-10. Donald did not provide informed consent, he was not able to consult his attorneys, he was not able to schedule the appointments at a convenient time when he was not under enormous stress and time-sensitive deadlines. He was deprived of the opportunity to cooperate in the choosing of independent and impartial doctors.

> Q. Okay. Now, were you told before you were examined by Dr. Spar and Dr. Platzer -- were you told that the purpose of the examination was to see if you were competent to remain as a trustee?
> A. Absolutely not. Neither of them told me any reason they were there. I trusted my wife. It was my 80th birthday and she said: At this stage in your life you should be examined. She sent me for a heart exam, and thIn she said these two doctors are coming in. It's a routine exam for your 80th birthday so you'll live and be happy and we can live together. I didn't know that these were two people who were adversaries and came in to examine me and were hired guns who were going to testify against me.
> . . .
> Q. If you had been told, sir, that the purpose of the examination was to determine whether you were competent to stay as a trustee, would you have submitted to the examination?
> A. Do you think any first-year law student would let the adversary examine you on the capacity hearing?

T.T. 7/8/14, 89:5-26. Donald testified that he purchased the team. T.T. 7/9/14, 52:3-53:14. Donald testified about the five areas of assets in the Sterling Family Trust and his involvement in every area. T.T. 7/8/14, 89:28-90:1, 93:15-17; T.T. 7/9/14, 47:24-26, 48:2, 54:5-18, 72:17-75:22. First, he has a charitable foundation, the Sterling Charitable Foundation, supporting 50 charities, and Donald knows how much is contributed to each charity. T.T. 7/9/14, 72:24-73:10. Second, he has a real estate empire of approximately 200 buildings, 10,000 apartments and some homes and the Clippers practice facility, all of which Donald has acquired and negotiated and managed

the mortgages for, never missing a payment or selling anything. T.T. 7/9/14, 50:28, 73:11-74:20. Third, he has owned the Clippers for 33 years, negotiating coaches' and players' contracts. T.T. 7/9/14, 74:21-26. Fourth, Donald has a professional law corporation and a continuously active bar number (#31124) for over 50 years, dating back to 1961. T.T. 7/9/14, 75:1-15. Fifth, he has a stock portfolio, and Donald selects the stocks and bonds. T.T. 7/9/14, 75:21-22.

In fighting to keep the Clippers, Donald explained that he is motivated by economics, not ego: "I'm trying to generate as much success for my trust as I can." T.T. 7/8/14, 97:5-28. The Clippers are negotiating a new TV deal, and Donald testified that he expected it would be comparable to the Lakers $3 billion TV deal. Also, given the Clippers' success, several radio stations are offering a "substantial fee." *Id.*, 97:14-22, 103:4-22.

7. Shelly's Trial Testimony

Shelly confirmed that she almost always set up Donald's medical appointments and acted as his caregiver. T.T. 7/9/14, 86:3-27. It is curious that Shelly had ***her lawyers*** schedule a second opinion with Dr. Spar, who testified that he was solely hired for the purpose of preparing a letter for Donald's removal as co-trustee from the Sterling Family Trust. 7/10/14, 51:23-52:6.

Shelly testified that she had no knowledge of "Plan B" and that she did not know about the Removal Provision (¶ 7.5.c) in the Sterling Family Trust until May 29, 2014 after Donald refused to sell the Clippers to Mr. Ballmer. *Id.*, 22:10-16, 53:21-23.

> Q. WHEN DID YOU FIRST BECOME AWARE OF THE TRUST'S REMOVAL PROVISION?
> A. WHEN YOU HANDED ME THE PAPER.
> Q. ON MAY 29?
> A. YES, WHEN HE WOULDN'T SIGN.
> * *
> Q. MRS. STERLING, HAVE YOU HEARD THE TERM "PLAN B"?
> A. NO, I HAVE NOT.
> Q. YOU NEVER HEARD OF PLAN B?
> A. NO. WHAT'S PLAN B?
> * * *
> Q. HE DID NOT SAY THAT?
> A. NO. HE GAVE ME A PAPER A LITTLE LATER, MAYBE A HALF HOUR LATER, AND HE SAID, "WOULD YOU SIGN THIS TO REVOKE HIM FROM THE TRUST," AND I SAID YES.

Id., 22:10-16, 53:21-54:21.

This statement is wholly inconsistent with actions taken by Shelly, Donald's doctors who were hired by Shelly, Mr. O'Donnell and Ms. Zwicker, Shelly's attorneys and agents. Ex. A30, B17-18. This statement is also refuted by the testimony of Anwar Zakkour, Shelly's financial adviser and expert witness, who testified that he heard Shelly and her attorneys discussing secret Plan B as early as May 26, 2014. T.T. 7/22/14, 85:19-25, 86:1, 4-6.

Shelly would have this court believe that the first time that she was made aware that she could act as the sole trustee of the Sterling Family Trust was by Mr. O'Donnell, her attorney, on May 29, 2014 ***after*** Donald refused to sell the Clippers to Mr. Ballmer. T.T. 7/10/14, 54:11-13. Shelly also stated that at that time she did not know that the examinations of Dr. Platzer and Dr. Spar were going to be used as a basis for removal of her husband as trustee. *Id.*, 54:14-21; 73:19-21, 74:3-9. Shelly cannot be trusted. Her credibility is entirely lacking and her story is contradicted by the facts. She was copied on the May 19, 2014 email from Mr. O'Donnell to Dr. Platzer (Ex B17) and she and her attorneys were placed in the Greenburg & Glusker conference room on May 26, 2014, discussing Plan B. T.T. 85:19-25, 86:1, 4-6.

Shelly repeatedly stated that, when she and her attorneys arranged for the two doctors to come to Donald's house for his medical examinations, ***it was not for purposes of the trust***:

> **I was concerned for his health, not for anything else. I had no other purpose in mind.**

T.T. 7/10/14, 52:18-20. Shelly testified that she had "no idea" why her attorney asked Dr. Spar to prepare a report. *Id.*, 53:1-3.

Shelly never talked about the trust's Removal Provision with either Dr. Spar or Dr. Platzer. *Id.*, 10:5-10; 23:26-27:1-4. Shelly did not disclose to Donald that the purpose of the medical examinations was to remove him as co-trustee of their trust. *Id.*, 9:4-7. In connection with setting up Dr. Spar's examination, Shelly testified that she told Donald "that [they] are getting a second opinion" because she was "worried about [Donald] and [she] wanted to make sure that the diagnosis that [she] had gotten before was correct." *Id.* Shelly testified that she was unaware that her attorneys were consulting with Dr. Platzer and Dr. Spar about the report she hired them to give concerning Donald. *Id.*, 48:2-8. Nor was Shelly aware that Dr. Platzer was billing her for services

after Dr. Platzer conducted the medical examination of Donald. *Id.*, 48:20-27; 49:1. Nor was Shelly aware that her attorney and agent, Mr. O'Donnell, requested Dr. Spar to evaluate Donald for trust purposes, and not out of concern for Donald's wellbeing. *Id.*, 50:7-15.

Shelly was copied on the May 19, 2014 email from Mr. O'Donnell to Dr. Platzer but denied having any knowledge of the telephone call between Mr. O'Donnell and Dr. Platzer that day. T.T. 7/10/14, 42:16-43:9. According to Shelly, she did not know that her attorney contacted Dr. Platzer on May 19, 2014 until Dr. Platzer took the stand. *Id.* When asked if she found it unusual that her lawyers were talking to the doctor that she retained because she was concerned about Donald's mental health, Shelly avoided answering the question. *Id.*, 43:14-26.

8. No Evidence During Trial Testimony Relating to *Probate Code* section 1310(b) of Immediate or Imminent Injury or Loss to Person or Property

No evidence was offered that meets the strict requirement that the risk of injury or loss to person or property be extraordinary or imminent.

Darren Schield, the Chief Financial Officer of Beverly Hills Properties, a dba of both of the Sterlings, testified that the Sterlings owned real properties worth approximately $2.5 billion subject to $480 million in debt. T.T. 7/21/14, 22:18-20. The debt in terms of mortgages and lines of credit are with three different banks: Union Bank, Bank of America, and City National Bank. *Id.*, 7:23-28. He testified that he had ***not*** received an actual Notice of Default from any of the three lenders. *Id.* 20:16-23. Mr. Schield was unable to testify about whether the mortgages or lines of credit were in jeopardy as a result of the revocation of the Sterling Family Trust. *Id.*, 21:10-15. He responded, "That would be a question for our bankers." *Id.*, 21:15. He testified that if there was an actual notice of default issued by the lenders, the Sterlings would be afforded the opportunity to cure the default by borrowing from other lenders, borrowing from private lenders, or taking the company public. *Id.*, 22:10-13, 24:2-6.

Shelly offered Mr. Schield's testimony for the proposition that, if the mortgages and line of credit are called, Beverly Hills Properties will have no choice but to sell some of its real estate holdings. This argument ignores the Sterlings' other holdings outside of this entity, including their

stock and bond portfolio. Mr. Schield was unable to state with certainty that if real estate holdings were sold to cure the default that they would be sold for less than fair market value. *Id.*, 18:23-28. At most he was only able to speculate.

Mr. Schield did not testify about any immediate or irreparable harm to person or property as a result of the revocation of the Sterling Family Trust. The only damage he testified to was a potential financial risk of a higher interest rate if new loans were obtained. *Id.*, 22:25-23:2.

Richard Parsons, the interim Chief Executive Officer of the Clippers, testified that the Clippers are a "trophy asset" and that there is no way to get to the $2 billion dollar price tag on a "financial metric basis" (T.T. 7/22/14, 9:26-10:8), making the totality of his and Anwar Zakkour's testimony on the topic of valuation of the Clippers irrelevant. Mr. Parsons testified that "it's not a financial transaction . . . it's like buying a Faberge egg." *Id.*, 10:1-4. "Its value is to the person who wants to own it, who wants to acquire it because you can't get there on the numbers." *Id.*, 10:4-7. Most poignantly and to the issue of *Probate Code* section 1310(b), Mr. Parsons unequivocally testified that if the sale of the Clippers to Mr. Ballmer was not approved, as he was informed by Commissioner Silver, the NBA would quickly and swiftly move to reinstitute their proceedings to remove Donald as an owner from the NBA. *Id.*, 10:19-26. This evidence alone demonstrates that there will be no irreparable or immediate loss to Shelly if this Court does not grant Shelly's Petition or her request for an exception to the stay provision. If the prophesy of Mr. Parsons' "death spiral" comes true, the "death spiral" is cured when the NBA holds a vote to seize the team and force a sale. *Id.*, 29:13-25. Because of the NBA's ability to seize the team, there has been no evidence offered establishing an extraordinary circumstance of an immediate or imminent risk of injury or loss to person or property.

Nor has there been any testimony that if the NBA team is seized that the same or higher price could not be obtained from Mr. Ballmer or another buyer. Dean Bonham, Donald's valuation expert, opined that a full auction could achieve the same or higher price. T.T. 7/22/14, 95:13-96:5. Irrespective of whether the team is subsequently sold for a lower price, such damage is not the sort of damage that the exception to the stay provision contemplates. No one is arguing or stating that $2 billion dollars for the sale of the Clippers is a bad deal. But because the sale of

the team was done in less than one week, required all cash buyers, and only one outbound call was made to international buyers, it is also likely that it was not the best offer that Shelly and Donald could have received. *Id.*, 86:27-87:6. Mr. Bonham testified that the unusual circumstances and unusually short timeline with Shelly's bidding process for the Clippers potentially deprived a complete bidding process among all interested owners. T.T. 7/22/14, 104:26-105:11.

LEGAL ARGUMENTS AND POINTS AND AUTHORITIES

I. Shelly's Petition Is Not an Appropriate Action in Winding Up the Affairs of the Trust

Shelly is not asking this Court to interpret or construe the terms of the revoked revocable trust instrument. Shelly is not asking this Court to confirm the sale of an asset under existing *Probate Code* procedures. Instead, Shelly seeks relief under *Probate Code* section 17200 solely to "bless" the actions already taken by her, to which no "blessing" is required (or should be permitted as an advisory opinion) under the terms of the Sterling Family Trust. Because (a) the transaction contemplated under the BTS is a sale of assets by LAC Basketball Club, Inc., a corporation, and not a sale of its stock which was held in the Sterling Family Trust, and (b) the trust was self-executing and was revoked before Shelly filed her Petition, this Court should abstain from intervening in the matter and dismiss Shelly's Petition as improvidently filed—without confirming Shelly's acts or transactions or approving the sale as Shelly and Mr. Ballmer seek under the terms of the BTS.

If Mr. Ballmer wants to waive the condition precedent in the BTS as to his receipt of an irrevocable consent by Donald or a final non-appealable order of this Court confirming Shelly's authority to unilaterally bind the Sterling Family Trust and sell the Target Asset and attempt to force the prospective sale to satisfy the BTS, that matter belongs in another court on another day with a claim for specific performance against Shelly and Donald, individually, because they now hold their community property assets in such capacity. Ex. 40. Probate court does not exist to approve the sale of assets of an NBA basketball team owned by a corporation.

If the Court decides that Shelly successfully removed Donald as a co-trustee of the Sterling Family Trust (which it should not), the revocation of the Sterling Family Trust precludes Shelly

from relying on any authority as a former trustee of the Sterling Family Trust to unilaterally act to pursue the future sale of the Clippers. Shelly, as a former trustee, does not have the continuing authority to sell the Clippers to Mr. Ballmer because (a) all rights and title to the Clippers are held by LAC Basketball Club, Inc., a corporation whose stock is held by Donald, as the community property of Donald and Shelly, and not by Shelly as the former trustee (*see* Ex. 40), and (b) to the extent that life may be breathed into the Sterling Family Trust, after its revocation on June 9, 2014, the sale of the Clippers to Ballmer is not within the scope of Shelly's alleged wind-up authority.

The Sterling Family Trust was expressly made revocable by its terms. The trust instrument is, and was, revocable by either settlor during their joint lifetimes. *See Prob. Code* § 15407(a) ("a trust terminates when any of the following occurs: . . . (5) The trust is revoked.").

As stipulated by the parties, Donald exercised his unilateral right to revoke the Sterling Family Trust on June 9, 2014, and the revocation was immediately effective to terminate the trust. This was prior to the Petition herein being executed or filed on June 11, 2014.

A. Donald Holds All of the Stock of LAC Basketball Club, Inc. That Was Previously Funded into The Sterling Family Trust

When the Sterling Family Trust terminated by operation of Donald's revocation, the trust became passive, and legal as well as equitable title reverted back to the beneficiaries—in this case including all of the stock of LAC Basketball Club, Inc. to Donald, who was the original sole shareholder. Ex. 40. Shelly incorrectly concludes that if she cannot consummate the sale of the Clippers to Mr. Ballmer, then Mr. Ballmer's rights under the BTS are extinguished. Shelly argues that that the trust cannot escape its binding contractual obligations by revocation after the contract has been formed. However, as the former trustee of the Sterling Family Trust, Shelly cannot take any additional active role in the sale of the assets of LAC Basketball Club, Inc. Any further action required of the stockholder of LAC Basketball Club, Inc. in the sale of its stock of LAC Basketball Club, Inc. must be done by Donald in his individual capacity.

Donald's revocation of the Sterling Family Trust in no way impedes Donald and Shelly from participating as shareholders in the sale of the assets of LAC Basketball Club, Inc. to Mr.

Ballmer if Donald agreed to do so. But, as Donald testified and as Shelly and Mr. Ballmer knew at the time they executed the BTS, Donald made clear that he did not and does not agree to sell the assets of LAC Basketball Club, Inc. to Mr. Ballmer under the present terms and circumstances. Ex. 14, T.T. 7/9/14, 67:16-19; 7/8/14, 73:13-22, 67:20-28. Because the Sterling Family Trust is, and was, revocable, the trust instrument is a legal fiction as to claimants because Donald and Shelly, individually, are still the equitable owners of the assets held therein and liable for the obligations thereof.

The law is plain that any prospective sale of the assets of LAC Basketball Club, Inc. as it relates to its stockholder is now properly in the hands of Donald and Shelly, as individuals.

Probate Code section 15410(a)(1) states: "At the termination of a trust, the trust property shall be disposed of as follows: (a) In the case of a trust that is revoked by the settlor, the trust property shall be disposed of in the following order of priority: (1) As directed by the settlor." Upon Donald's revocation of the Sterling Family Trust, Donald and Shelly, as husband and wife, exclusively hold the right to control the assets. The stock of LAC Basketball Club, Inc. reverts back to Donald, who was the original shareholder. This right trumps Shelly's right as former trustee to wind up the trust's affairs. *See Masry v. Masry*, 166 Cal. App. 4th 738, 743 (2008) ("married parties are permitted to dispose of their share of the community without the consent of the other spouse").

Here, Donald has directed, and Shelly refuses, to return all his assets which were funded into their trust. Shelly's failure to return the trust assets is another breach of her fiduciary duties owed to Donald. "A settlor with the power to revoke a living trust effectively retains full ownership and control over any property transferred to that trust . . ." *Arluk Med. Center Indus. Group, Inc. v. Dobler*, 116 Cal. App. 4th 1324, 1331-32 (2004); *see Fisch, Spiegler, Ginsburg & Ladner v. Appel*, 10 Cal. App. 4th 1810, 1813 (1992) (homestead exemption valid even though title to couple's home held in their revocable living trust; living trust is simply an "estate planning device"). Because a revocable inter vivos trust is essentially "a probate avoidance device," courts generally treat the trustor as the true owner of the estate assets. *Galdjie v. Darwish*, 113 Cal. App.

4th 1331, 1349 (2003); *see also Walgren v. Dolan*, 226 Cal. App. 3d 572, 578 (1990). Donald and Shelly, in their individual capacities, were viewed as the owners of the assets in their revocable trust. For example, the Internal Revenue Service and the California Franchise Tax Board generally tax property in a revocable trust as if it were owned by Donald and Shelly, in their individual capacities (and not as co-trustees), and the trustors' creditors are entitled to reach trust property. *Galdjie*, 113 Cal. App. 4th at 1350; *Walgren*, 226 Cal. App. 3d at 578; *see also Gagan v. Gouyd*, 73 Cal. App. 4th 835, 842 (1999) *disapproved on other grounds by Mejia v. Reed,* 31 Cal. 4th 657 (2003) (property in a revocable trust is subject to creditor claims to the extent of the debtor's power of revocation).[5] Additionally, for purposes of determining the "unity of ownership" element under easement law, the fact that an owner transferred his interest into an inter vivos revocable trust does not mean there was an actual transfer of property. *Zanelli v. McGrath*, 166 Cal. App. 4th 615, 633 (2008). Moreover, "[p]roperty transferred to, or held in, a revocable inter vivos trust is deemed . . . the property of the settlor . . ." *Id.; see also Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP*, 184 Cal. App. 4th 196, 208-09 (2010); *Cal Rev. & Tax Code* § 62 (transfer by settlor to revocable trust is not a change in ownership).

Under general principles of trust law, trust beneficiaries hold "an equitable estate or beneficial interest in" property held in trust and are "'regarded as the real owner[s] of [that] property.'" *Title Ins. & Trust Co. v. Duffill*, 191 Cal. 629, 647 (1923). The trustee is "'merely the depositary of the legal title'" to the property; "'the legal estate'" the trustee holds "'is … no more than the shadow . . . following the equitable estate. . . .'" *Id.* at 648. Any interest that

[5] A number of California statutes reflect the Legislature's recognition of these principles. *See Prob. Code* §§ 15800 (holder of revocation power, not beneficiary, has rights otherwise afforded beneficiary under California's Trust Law (*Probate Code* § 15000 et seq.) and is owed duties of trustee), 15801, subd. (a) (holder of revocation power, not beneficiary, has power to consent or withhold consent where beneficiary's consent may, or must, be given before action may be taken), 15802 (holder of revocation power, not beneficiary, shall be given any notice that is to be given to a beneficiary), **15410, subd. (a) (when settlor revokes trust, property shall be disposed of as settlor directs)**, 16001, subd. (a) (trustee of revocable trust shall follow written directions of holder of revocation power), 16064, subd. (b) (trustee of revocable trust need not report information or account to beneficiary), 18200 (during lifetime of settlor who retains revocation power, trust property is subject to claims of settlor's creditors to extent of revocation power), 19001, subd. (a) (property subject to revocation power at the time of settlor's death is subject to claims of creditors of deceased settlor's estate).

beneficiaries of a revocable trust have in trust property is "merely potential" and can "evaporate in a moment at the whim of the [settlor]." *Johnson v. Kotyck*, 76 Cal. App. 4th 83, 88 (1999); *see also Security First Nat'l Bank v. Wellslager*, 88 Cal. App. 2d 210, 214 (1948) (settlor with revocation power "retain[s] the power and control of the trust estate and [can] with a stroke of the pen ... divest[] the beneficiaries of their interest").

Thus, although Donald transferred legal title of the stock of LAC Basketball Club, Inc. to himself and to Shelly as co-trustees, Donald and Shelly, as the trust beneficiaries and holder of the revocation power, continued to hold the entire equitable estate personally and effectively retained full ownership of the assets. Under these circumstances, it cannot be said that the transfer of bare legal title to Donald and Shelly as co-trustees constituted a "change in ownership" and the parties do not contend otherwise.

Through the enactment of *Probate Code* sections 18200 and 19001, the Legislature made clear that a settlor, during his or her lifetime, cannot create a revocable trust to avoid his creditors. *See Laycock v. Hammer*, 141 Cal. App. 4th 25, 31 (2006). *Probate Code* section 18200 states, "[i]f the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor." That claim, however, is a determination that belongs in a civil courtroom, and not within a trust proceeding involving a revoked trust, which is before this Court. Even if it is later determined that Mr. Ballmer had a valid contract, he still would not be able to sue for specific performance because as of now, a condition precedent has not been met—namely, Shelly does not have Donald's consent, nor can she obtain a court order "blessing" the transaction unless he waives the same.

Because the assets of LAC Basketball Club, Inc. are held by Donald as the sole shareholder, the Court must dismiss Shelly's Petition under *Probate Code* section 17202 because this proceeding is not reasonably necessary to protect the interests of Shelly and Donald. Probate court *has absolute discretion* to "dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary." *Prob. Code* § 17202. The Legislature even went as far as to state that "[t]he administration of trusts is

intended to proceed expeditiously and *free of judicial intervention*, subject to the jurisdiction of the court." *Prob. Code* § 17209 (emphasis added). Section 17206 of the *Probate Code* expressly grants this Court the authority to dismiss Shelly's Petition, which requests that this Court take action over a corporate entity which is not before this Court. Section 17206 states that this Court "in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition. . . ." *Prob. Code* § 17206.

The Court correctly noted that Shelly is *not* asking this Court to interpret the terms of the trust instrument. Instead, Shelly seeks relief under *Probate Code* section 17200 to do nothing more than "bless" the actions taken by her, to which no "blessing" is required under the terms of the Sterling Family Trust or by LAC Basketball Club, Inc. Because the trust is self-executing and Donald is the sole shareholder of LAC Basketball Club, Inc., this Court should abstain from intervening in the matter and dismiss Shelly's Petition as improvidently filed without approving the sale as Shelly and Ballmer seek under the terms of the BTS. If Mr. Ballmer wants to force the sale to satisfy the BTS, that matter belongs in superior or federal court with a claim for specific performance. Probate court does not exist to approve the sale of NBA basketball teams.

B. The Assets of the Sterling Family Trust Must Be Immediately Distributed to Donald and Shelly

The express terms of the Sterling Family Trust require immediate distribution. *See Prob. Code* § 15410(a)(1). The Sterling Family Trust provides that upon revocation, assets "shall promptly be distributed to the settlors as their community property." Ex. 29, ¶ 2.5.a. The trust does not require or permit any additional time. Shelly's reliance on the provision that "the Trustee may retain sufficient assets to secure payment of liabilities lawfully incurred by the Trustee" (*see id.*) is unavailing because (1) until all conditions precedent are satisfied under the BTS, the Sterling Family Trust has incurred no liability to Mr. Ballmer, (2) the terms of the trust do not authorize a former trustee to create a new liability, and (3) the language is limited to the ***payment of existing*** liabilities.

The survivorship provision is not applicable in cases of revocation by a settlor. Upon revocation, the assets held by the Sterling Family Trust are immediately distributable to Donald

and Shelly, as husband and wife, the settlors of the trust. Survivorship provisions are triggered upon the death of a settlor and only apply to beneficiaries. Because Donald and Shelly are the settlors of their trust, this provision does not apply. In any event, the 30-day period has expired, rendering this argument moot.

C. Shelly's Attempt to Pursue a Future Sale of the Clippers Is Not an Authorized Passive Act to Wind Up the Trust

Because the Sterling Family Trust was revoked, this Court can only authorize a former trustee of a revocable inter vivos trust to take ***passive*** actions in winding up the trust. California law does not authorize a former trustee of a revocable inter vivos trust to take acts that are active. Shelly and Mr. Ballmer have failed to cite any California case law that addresses the issue of the revocation of an inter vivos revocable trust.

If Shelly has any authority to act as a former trustee of her and Donald's revocable trust, the winding up period is solely for the benefit of the settlors to afford them the opportunity to attribute liability to the trustee for their improper acts and transactions.

Probate Code Section 15407(b), which authorizes a trustee "powers reasonably necessary under the circumstances to wind up the affairs of the trust," is constricted by the fact that the Sterling Family Trust was a revocable trust that became passive, and that legal as well as equitable title of assets reverted back to Donald and Shelly in their individual capacities. *Prob. Code* § 15407(b).

Nor does the Restatement (Third) of Trusts § 89 support Shelly's position. The Restatement (Third) of Trusts § 89 provides that "[t]he powers of a trustee do not end on the trust's termination date but may be exercised as appropriate to the performance of the trustee's duties in winding up administration." The comments make clear that the provision relates only to unsaleable interests:

> The period for winding up the trust refers to the period after the termination date and before trust administration ends by complete distribution of the trust estate. . . If . . . the trust terms or circumstances require the sale of property that is ***not readily saleable***, the period for winding up the trust may be longer than it would be in the absence of these or other complimentary circumstances.

Rest. 3d Trusts, § 89 (emphasis added).

In *Ball v. Mann*, 88 Cal. App. 2d 695, 699 (1948), the appellate court upheld the superior court's ruling determining that the wife had no right, title, or interest in property that was conveyed to a grantee in trust for two minor children. The *Ball* court found that the trust terminated upon the youngest child becoming of legal age, and that the trust became passive upon its termination and was to be administered solely for the purposes of winding up the trust.

A "court of equity has power to terminate a dry, simple or passive trust and may do so even before the time fixed for its termination by the terms of the trust instrument." *Id.* (citation omitted). Additionally, *Ball* held that "[w]hen the objects of a trust have been fully performed the title of the trustee ceases and the legal as well as the equitable title vests in the beneficial owner unless the intention of the creator clearly appears that the legal title should continue in the trustee." *Id.*

Probate Code section 2630 is instructive regarding Shelly's duties in winding up the Trust's affairs. Like a trust estate, guardianship and conservatorship estates terminate. A guardianship estate terminates upon a ward attaining majority or by death of the ward. A conservatorship estate ends on the death of the conservatee. Similarly, a revocable trust "dies" if a settlor revokes his trust. The probate court maintains some limited jurisdiction for ministerial acts such as settling an accounting or enforcing any orders incident to the accounting (such as enforcement of a surcharge against the fiduciary) or overseeing the termination of the ward-guardian and conservatee-conservator relationship. *Prob. Code* § 2630. There are no California cases which authorize a guardian or a conservator to take affirmative steps that are outside the scope of winding up the affairs of the guardianship/conservatorship estate. At most, case law solidifies the fact that a guardian/conservator can present an account to the Court to approve the amount of charges and receipt, and acts and transactions of the fiduciary. *See, e.g., Keck v. Keck*, 16 Cal. App. 2d 521 (1936) (former conservatee (referred to as former incompetent) was able to compel accounting from former conservator (referred to as guardian)); *In re Guardianship of O'Connor*, 28 Cal. App. 2d 527 (1938) (former ward compelled guardian to account after she was restored to competency).

Guidance can also be drawn from *Probate Code* section 2631, which limits the contractual ability of the guardian/conservator. *Probate Code* § 2631(a) states:

> Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the disposition of the remains of the deceased ward or conservatee, and for unpaid court-approved attorney's fees, and may pay the unpaid expenses of the guardianship or conservatorship accruing before or after the death of the ward or conservatee, in full or in part, to the extent reasonable, from any personal property of the deceased ward or conservatee which is under the control of the guardian or conservator.

At most, the fiduciary is able to pay expenses of last illness, burial, and accrued expenses – nothing more.

The limitation of the scope of a guardian/conservator's duties as set forth in the *Probate Code* is consistent with the terms of the Sterling Family Trust. The sale of the assets of LAC Basketball Club, Inc. is by no means the satisfaction of an outstanding liability.

The Sterling Family Trust property in question, specifically the Target Assets of LAC Basketball Club, Inc., is readily saleable. Indeed, Shelly testified that from May 23 through May 28, 2014—generally before the doctors' letters of May 27th and May 29th were available—Shelly and her lawyers and advisors were in contact with numerous parties in connection with the sale of the Clippers, three of whom submitted formal bids ranging from $1.2 billion to $2 billion. Shelly, as the purported sole trustee of the Sterling Family Trust, unilaterally accepted the $2 billion bid submitted by Mr. Ballmer. But Donald revoked the trust before Shelly filed her Petition alleging she was still the trustee. The key to this case is that the BTS contains a condition precedent which still exists, making the BTS an nonfinalized transaction.

The two main cases relied on by Shelly to support her position that she has wind-up authority to transfer the Target Asset from LAC Basketball Club, Inc. to Mr. Ballmer irrespective of the fact that the trust was revoked and that the shares reverted back to Shelly and Donald are *Botsford v. Haskins & Sells*, 81 Cal. App. 3d 780 (1978) and *Myrick v. Enron Oil & Gas Co.*, 296 S.W.3d 724 (Tex. App. El Paso 2009). Neither of these cases support Shelly's position that she may consummate the sale of the Clippers to Mr. Ballmer. Rather, *Botsford* supports Donald's

position. *Botsford* looks at cases[6] nationwide where, after trust revocation or termination, permitted acts were limited to:

1) Those necessary for the proper winding up of the trust;

2) Those necessary for the proper preservation of trust property;

3) Those necessary to provide care for trust property;

4) Those in which an accounting was needed to be tendered or settled; and

5) Those where the winding up of the trust is according to the directions of the settlor.

Botsford states that "[i]t would have been wholly unreasonable for the trustee, upon the trusts' termination, to distribute that cause of action to the 500-odd shareholders of plaintiff corporations, as their individual interest might appear. Indeed such as a distribution would patently have frustrated the purpose of the trust." *Id.* Here, prior to Shelly's attempts to remove Donald as co-trustee, the shares of LAC Basketball Club, Inc. were held solely by Donald. It is reasonable that the shares could be returned to a single individual and that this would not frustrate the purposes of the trust. It is Shelly's action in failing to return the trust assets to Donald that is frustrating the purposes of the trust and is in violation of the terms of the Sterling Family Trust and *Probate Code* section 15410. No case cited within *Botsford* permits a trustee to sell assets held in a corporation whose stock is held by the settlors or either of them in their individual capacities.

Myrick is distinguishable and provides no support for Shelly's position regarding her windup authority. In *Myrick*, the settlor, William Lewis Moody III, created an irrevocable trust and named a bank (Moody Bank) to serve as the trustee. Two months prior to the settlor's death, the Bank's Trust Committee approved a proposed gas and oil lease. After the settlor's death and before making a final distribution to the beneficiaries, the Bank made a determination that because of the "ongoing litigation in Galveston County," it was "reasonable" to enter into the lease after the settlor's death. *Myrick,* 296 S.W.3d at 728. The court found that the "pending Trust 25 litigation prevented Moody Bank from 'winding up' the affairs of Trust 25 and making a final

[6] Virtually all reported cases relate to testamentary or other irrevocable trusts terminating because of a given event (e.g., beneficiary reaching a given age or death), or at a specified time or other occurrence. Donald is unable to find any cases which deal with an ***inter vivos revocable trust.***

distribution . . . ." *Id.* It further stated that the Bank had a "continuing duty to manage the trust estate and seek the best possible result for the beneficiaries." *Id.*

This case only hurts Shelly's position. Before this Court is a revocable trust that was revoked by a settlor. In *Myrick*, the trust was ***irrevocable***—it terminated upon fulfilling its purposes. Moody Bank's duty to manage the trust estate for the benefit of the beneficiaries is not synonymous to our case. Here, unlike *Myrick*, the settlors and beneficiaries are one and the same. In *Myrick*, the reference to beneficiaries was to the children and grandchildren of William Lewis Moody III. Lastly, there is no pending litigation that precludes Shelly or Donald from distributing the assets to them in their individual capacities. The law actually requires them to do so. This is not the situation of administering a trust with the goal of a "final distribution" to the named vested beneficiaries. The facts and the law in *Myrick* are distinguishable and should not be considered by this Court.

Shelly's attempt to unilaterally sell the assets of LAC Basketball Club, Inc. for $2 billion is not a passive act and does not wind up the affairs of the Sterling Family Trust. If the Court finds Shelly is authorized to wind up the affairs of the Sterling Family Trust, at most Shelly is a trustee of a passive trust, which no longer maintains legal or equitable title over the Target Assets, which have reverted back to Donald by operation of law. Shelly cannot unilaterally proceed to consummate the prospective sale of the assets to LAC Basketball Club, Inc. to Mr. Ballmer because she is not the shareholder of the corporation.

Shelly's reliance on *Estate of Nicholas*, 177 Cal. App. 3d 1071 (1986) is wholly misplaced, as the context is fundamentally different from the instant circumstances, which relate to the issue after the creation of a testamentary trust under the decedent's will. In *Estate of Nicholas*, William Nicholas died in 1966, leaving his entire estate to Bank of America, in trust, until his youngest child reached the age of 40 years. The testamentary trust terminated by its own terms in 1982 when the youngest child turned 40. The Sterling Family Trust is and was a revocable inter vivos trust. This distinction has significant legal implications. *Estate of Nicholas* is inapposite because it addresses the wind-up of an irrevocable testamentary trust and concerns post-death administration, which is entirely irrelevant to this proceeding.

Estate of Scrimger, 188 Cal. 158 (1922) concerns a testamentary trust that was created on the death of Nancy Scrimger. Four charitable institutions were named as the remainder beneficiaries of an undivided one-third (1/3) interest of the trust estate, including the Roman Catholic Orphan Asylum. However, Roman Catholic Orphan Asylum changed its name to Roman Catholic Orphan Asylum of San Francisco. Again, Shelly relies on a case where the context is fundamentally different. In *Estate of Scrimger*, the court was required to construe the testamentary trust to determine who was the correct beneficiary. The circumstances of *Estate of Scrimger* offers no guidance here because that case dealt with distribution of assets to a beneficiary after the death of the testator.

In relying on *Hise v. Superior Court*, 21 Cal. 2d 614 (1943), Shelly has confused an inter vivos trust, such as the Sterling Family Trust, and a constructive trust or other types of trust agreements. *Hise* did not concern a revocable inter vivos trust and was not created by settlors. Instead, this matter dealt with equitable liens, debtor-creditor relationships, and an agreement where a company took title to and possession of all assets, both real and personal, owned by a loan association. Again, this case addresses legal issues not even contemplated by the *Probate Code*.

All other cases cited by Shelly are distinguishable, not based on California law, are secondary sources, and do not need to be relied upon by this Court. Shelly cites non-California cases in a feeble attempt to locate authority for her position. None of those cases address a situation where a court is asked to wind-up a revocable trust.

Shelly's attempt to rely on inapplicable New York authority offers her no more support. *In re Lathers' Will*, 243 N.Y.S. 366 (N.Y. Sur. Ct. 1930) is a case in which the decedent, Mr. Lathers, left numerous gifts and left the residue of his estate to his executors and the survivor thereof in trust. This secondary source from 1930 does not relate to the facts at hand. Again, Shelly is relying on a case concerning a testamentary trust where the trust was created on the death of the testator. *Lathers* is readily distinguishable from this matter, which involves a revocable trust that was revoked by a co-settlor and co-trustee.

Neary v. City Bank Farmers Trust Co., 24 N.Y.S.2d 264 (App. Div. 1940) does not advance Shelly's position. In *Neary*, the grantor created a living trust naming herself as the

beneficiary and a trust company as the trustee. At a later time, the grantor revoked the trust by sending a letter to the trustee and demanded that the trustee immediately turn over to her all trust assets. *Neary* held that as a result of the termination of a trust, the trustee was able to render an accounting and seek approval of its past acts. *Neary* only concerns passive management in the rendering of an accounting. Nothing in *Neary* permits a *former* trustee, in this case Shelly, to take affirmative acts and sell a trust asset.

Shelly's reliance on *Peoples Bank v. D'Lo Royalties, Inc.*, 235 So.2d 257, 266 (Miss. 1970) for the proposition that Shelly continues to have the authority to take active steps to sell the Clippers is misplaced. Again, Shelly has confused an inter vivos trust, such as the Sterling Family Trust, with a "business trust" or "Massachusetts Trusts." Neither a business trust or Massachusetts Trust have anything to do with her case. Those trusts were widely used in the southern portions of the United States after the First World War in lieu of incorporation. *Peoples Bank* offers Shelly no support.

It is clear that this Court does not have jurisdiction over the now revoked Sterling Family Trust. The law is well established that during the joint lifetimes of the settlors, Donald and Shelly, they were able to hold assets in their trust as a legal convenience. The moment Donald revoked the Sterling Family Trust, all such assets reverted back to Donald and Shelly in the manner in which they were originally held. Shelly would have this Court accept the legal formalities of the trust creation and powers conferred to the trustee to take acts but at the same time ignore the trustees' obligation to promptly return such assets to their rightful owner. Shelly cannot have it both ways.

II. Donald Sterling Was Not Properly Deemed No Longer a Co-Trustee

For many reasons, discussed below, Donald was not legally removed as a co-trustee of his trust: (1) the doctors' letters do not comply with the Removal Provision or the PEI Provision, (2) the medical evaluations and doctors' letters were obtained by Shelly and her agents through false pretenses, undue influence, unclean hands, and in breach of Shelly's fiduciary duties to Donald, as her husband, co-trustee, and co-settlor, (3) the medical records and doctors' letters were obtained

and disclosed in violation of HIPAA, HITECH, and CMIA. Moreover, the doctrine of estoppel or best interests does not cure Shelly's wrongdoings and inequitable conduct.

A. The Doctor's Letters Do Not Comply with the Trust Provisions

California law on incapacity applies, as defined by the Sterling Family Trust's provision. Ex. 29, ¶ 10.24. *Probate Code* section 810 provides for a "rebuttable presumption" with respect to capacity:

> 810. The Legislature finds and declares the following:
> (a) For purposes of this part, **there shall exist a rebuttable presumption** affecting the burden of proof that **all persons have the capacity to make decisions and to be responsible for their acts or decisions**.
> (b) A person who has a mental or physical disorder **may still be capable of** contracting, conveying, marrying, making medical decisions, **executing** wills or **trusts**, and performing other actions.
> (c) A judicial determination that a person is **totally without understanding**, or is **of unsound mind**, or **suffers from one or more mental deficits so substantial** that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a **deficit in one or more of the person's mental functions** rather than on a diagnosis of a person's mental or physical disorder.

Prob. Code § 810 (emphasis added). Shelly bears the burden of overcoming the presumption of Donald's capacity. *Estate of Mann*, 184 Cal. App. 3d 593, 602 (1986); *In re Preston*, 2014 WL 495635, at *9 (Bankr. C.D. Cal. Feb. 14, 2014) (finding trust did not meet § 810 burden to overcome capacity presumption of crack cocaine addict; "[t]o the contrary, it appears that Debtor was actively working and participating in social engagements up until the petition date").

Probate Code § 811 requires a mental deficit in (1) alertness and attention, (2) information processing, (3) thought processes, or (4) ability to modulate mood and affect, as well as evidence of a *"correlation" between the deficit and the decision or acts in question. Id.* § 811(a) (emphasis added).

> In other words, under this statutory scheme, incompetency due to an 'unsound sound' cannot be based on the diagnosis of a medical or physical disorder, and it is not enough identify a few mental deficits. There ***must be a causal link*** between the impaired mental function and the issue or action in question.

In re Marriage of Greenway, 217 Cal. App. 4th 628, 640 (2013) (emphasis added).

The deficit may be considered only if it "*significantly* impairs the person's ability to understand and appreciate the consequences of his or her actions *with regard to the type of act or decision in question.*" *Prob. Code* § 811(b) (emphasis added). To lack capacity, the deficit must be "*so substantial* that the person lacks the capacity to do a certain act" and "the *frequency, severity, and duration* of periods of impairment" should also be considered. *Id.* § 811(c).

> 811. (a) A determination that a person is of **unsound mind or lacks the capacity to make a decision or do a certain act**, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to **execute trusts**, shall be supported by evidence of a **deficit** in at least one of the following **mental functions**, subject to subdivision (b), and evidence of a **correlation between the deficit** or deficits and the **decision or acts in question**:
> (1) **Alertness and attention**, including, but not limited to, the following:
> (A) Level of arousal or consciousness.
> (B) Orientation to time, place, person, and situation.
> (C) Ability to attend and concentrate.
> (2) **Information processing**, including, but not limited to, the following:
> (A) Short- and long-term memory, including immediate recall.
> (B) Ability to understand or communicate with others, either verbally or otherwise.
> (C) Recognition of familiar objects and familiar persons.
> (D) Ability to understand and appreciate quantities.
> (E) Ability to reason using abstract concepts.
> (F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
> (G) Ability to reason logically.
> (3) **Thought processes**. Deficits in these functions may be demonstrated by the presence of the following:
> (A) Severely disorganized thinking.
> (B) Hallucinations.
> (C) Delusions.
> (D) Uncontrollable, repetitive, or intrusive thoughts.
> (4) **Ability to modulate mood and affect**. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.
> (b) A deficit in the mental functions listed above may be considered **only if the deficit**, by itself or in combination with one or more other mental function deficits, **significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question**.
> (c) In determining whether a person suffers from a deficit in mental function **so substantial** that the person lacks the capacity to do a certain act, the court may take into consideration the

> **frequency, severity, and duration** of periods of impairment.
> (d) The **mere diagnosis of a mental or physical disorder shall not be sufficient** in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.
> (e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decisionmaking process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

Prob. Code § 811 (emphasis added). Section 812 provides that a person lacks capacity only if he cannot appreciate the rights, duties, consequences, risks, and benefits "*involved in the decision.*" *Id.* § 812 (emphasis added). "'It has been held over and over in this state that old age, feebleness, forgetfulness, filthy personal habits, personal eccentricities, failure to recognize old friends or relatives, physical disability, absent-mindedness and mental confusion do not furnish grounds'" for finding incapacity. *Anderson v. Hunt*, 196 Cal. App. 4th 722, 727 (2011) (citation omitted).

It was clear during the course of Donald's testimony that he was alert, maintained attention, he was able to process information, and completely understood and appreciated the consequences of his actions with regard to whether the sale should go through. The evidence has also clearly established that the specific requirements set forth in the Sterling Family Trust were not followed by Shelly or Dr. Platzer or Dr. Spar, and that therefore, Shelly has not removed her husband of nearly 60 years from his co-trusteeship. It has been determined that Donald's capacity is not properly in issue in this proceeding.

Section 7.5.c (the "Removal Provision") and Section 10.24 (the "Procedure Establishing Incapacity Provision" or "PEI Provision") set forth the requirements to remove Donald, as a trustee of the Sterling Family Trust, from his fiduciary position. Shelly failed to comply with the strict terms and conditions of the Removal Provision, which relies on the procedural requirements in the PEI Provision. Therefore, Donald was not removed as a co-trustee.

Shelly and her lawyers relied on the Removal Provision to effectuate her purported unilateral removal of Donald as co-trustee. The Removal Provision, Section 7.5.c, provides:

> Any individual who is deemed incapacitated, as defined in [the PEI Provision], shall cease to serve as a Trustee of all trusts administered under this document. Each individual who agrees to serve as a Trustee of any trust administered under this document (A) shall cooperate in any examination **reasonably appropriate** to carry out the provisions of this [Removal Provision], (B) waives the doctor-patient and/or psychiatrist-patient privilege **with respect to the results of such examination**, and (C) shall **allow a Co-Trustee or Current Beneficiaries of the trust to review the individual's individually identifiable health information or other medical records**, waiving any privacy rights governed by the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C § 1320d (HIPAA), and the regulations thereunder, including 45 C.F.R. §§160-164, to the extent required to implement this [Removal Provision]. . . . (emphasis added).

The PEI Provision states that a co-trustee may be removed if he or she lacks capacity. Specifically, Section 10.24 provides:

> "Incapacity" and derivations thereof mean **incapable of managing an individual's affairs under the criteria set forth in California Probate Code Section §810 et seq.** An individual shall be deemed incapacitated if any of the following conditions exist: (a) the individual's regular attending physician (provided such a physician is not related by blood or marriage to any Trustee or beneficiary) examines the individual and certifies in writing that the individual is incapacitated, **(b) two licensed physicians who, as a regular part of their practice are called upon to determine the capacity of others, and neither of whom is related by blood or marriage to any Trustee or beneficiary, examine the individual and certify in writing that the individual is incapacitated**, or (c) an order of the court having jurisdiction of the trust as to which the individual is serving as a Trustee or as to which the individual is a beneficiary, as the case may be, finds that the individual is incapacitated. . . .

Shelly chose option (b) above to secretly orchestrate her husband's removal as co-trustee in order to sell the Clippers out from under him against his will. Unbeknownst to Donald or his attorneys, Shelly's lawyers obtained letters from two licensed physicians who, as a regular part of their practice are called upon to determine the capacity of others, and who examined Donald. Without Donald's knowledge, the doctors then disclosed Donald's private medical records to Shelly, Shelly's attorneys, Mr. Ballmer, the NBA, other third parties, and the public—with complete disregard to Donald's welfare or privacy and complete disregard of Federal and State law.

By filing her Petition and seeking the Court's approval of her acts, Shelly has asked the Court to bless her usurpation of power and removal of Donald as co-trustee—which if granted by

this Court would amount to a judicial finding that Donald is incapacitated without providing Donald the opportunity to present his own doctor's testimony to rebut the two doctors hired by Shelly and her lawyers. The Court should be wary of setting this type of precedent to allow one spouse to take advantage of the other and deny them their rights to property.

Shelly did not comply with the PEI Provision because (1) Donald was not given notice of Shelly's intent to cause mental examinations to be conducted, nor did Donald have any ability to cooperate in the selection of doctors or schedule a convenient time for determining his capacity to serve as trustee, (2) Shelly fraudulently failed to disclose the purpose of the examinations that she and her lawyers orchestrated, (3) Donald was deprived of the opportunity to consult his attorneys; (4) neither of the letters obtained from the physicians comply with the specific requirements set forth in the Sterling Family Trust or Probate Code §§ 810-813, and (5) Dr. Spar's and Dr. Platzer's letters are based, in part, upon privileged information and protected material, release or use of which Donald did not knowingly consent to waive at the time of the examinations, and disclosure of which violated state and federal law. As a result, Dr. Platzer's and Dr. Spar's letters offered by Shelly are insufficient, on their face, to remove Donald as a co-trustee of the Sterling Family Trust.

The doctors' letters fail to comply with the requirements of the Probate Code Sectin 810-813, the PEI and Removal Provisions, and are based upon illegally obtained material. The doctors' letters make conclusory statements about Donald's alleged deficits in mental function, none which amount to or shows that Donald lacked capacity as defined by *Probate Code* sections 810 and 811. In addition, Dr. Spar's letter is not certified as required under the PEI Provision. Neither letter is sufficient from an evidentiary basis since neither purports to express an opinion or finding as to a medical certainty. The doctors' letters also fail to make any finding of incapacity under Probate Code sections 810 and 811. The letters are insufficient on their face.

The examinations and letters are defective and incomplete. Dr. Spar only asked Donald 29 of 30 questions from the Folstein Mini-Mental Examination, neglecting to inquire "Where are we? (Floor)." A correct answer would have given Donald a score of 25 of 30. Dr. Platzer appeared to make changes to her determination of Donald's score by crossing out certain scores.

Significantly, Shelly has used her Petition as a backdoor to rubberstamp her ouster of Donald as a co-trustee. This is not permissible. Shelly is asking the Court to indirectly confirm Donald's incapacity without a capacity hearing, which would violate Donald's right to due process. In the alternative, Shelly is asking the Court to ignore an unsuccessful attempt to remove Donald by her failure to comply with the Sterling Family Trust requirement.

The Removal Provision states that Shelly and Donald must "cooperate" with one another regarding the determination the mental capacity of either of them. The procedures set forth in the Removal Provision are vague as to the terms "reasonable" and "cooperate" in their interpretation, use, or application. Cooperation (the noun of cooperate) is defined by Black Law Dictionary, 8th Edition, to mean: "an association of individuals who join together for a common benefit." There is no conceivable way that Donald can cooperate unless he knows that the removal provision is being invoked. There is no conceivable way that Shelly cooperated with Donald in the selection of the doctors or the obtaining of the medical examinations, let alone the doctors' letters. Neither Shelly nor her lawyers nor Dr. Platzer, nor Dr. Spar disclosed to Donald or his attorneys that Donald was purportedly participating or cooperating in an evaluation to be used for legal purposes. That lack of disclosure and lack of notice violate the terms of the trust. Shelly her lawyers, Dr. Platzer, and Dr. Spar all concealed their true intentions behind Donald's appointments with Dr. Platzer and Dr. Spar, and failed to give Donald any notice that the evaluations or letters were being used for legal purposes. No trustee has unrestricted authority, nor can they dupe their co-settlor, co-trustee, co-beneficiary, and husband into unauthorized removal, especially where they already believe that person is susceptible to undue influence or fraud of others. Here, Shelly used her position of trust and confidence to deprive Donald of the right to fight the confiscation of his finances.

"The requirements of loyalty and fair dealing and good faith are at the core of every trust instrument, whether specifically stated or not." Rest. (Second) of Trust § 164 cmt. h, at 343-44 (1980). The Court should find that Secret Plan B fails to comply with Probate Code §§ 810-813 and the Removal and PEI Provisions of the Sterling Family Trust. Thus, the doctors' letters did not remove Donald as Co-Trustee.

B. Shelly's Efforts to Remove Donald as Co-Trustee of the Sterling Family Trust Were Through False Pretenses, Undue Influence, Unclean Hands, and in Breach of Her Fiduciary Duties to Donald as Her Husband, Co-Trustee, and Co-Settlor

The evidence shows that both Dr. Platzer and Dr. Spar's letters obtained by Shelly were induced by false pretenses, undue influence, unclean hands, and a breach of Shelly's fiduciary duties owed to Donald.

1. Shelly's Hands are Unclean

Shelly and the NBA have always known that Donald did not want to sell the Clippers. Shelly, her lawyers, and the NBA undertook to oust Donald and put Shelly in a position to unilaterally sell the Clippers. This became Secret Plan B. It is undisputed that neither Shelly nor her lawyers, nor the doctors disclosed to Donald or his lawyers that the doctors' examinations were being used for purposes of removing him as co-trustee of the Sterling Family Trust. This secrecy and speedy timeline ensured Donald had no opportunity to protect himself or stop the execution of the BTS or the Settlement Agreement with the NBA, to his detriment. As Donald testified:

> Q. Okay. Now, were you told before you were examined by Dr . Spar and Dr. Platzer -- were you told that the purpose of the examination was to see if you were competent to remain as a trustee?
> A. Absolutely not. Neither of them told me any reason they were there. I trusted my wife. It was my 80th birthday and she said: At this stage in your life you should be examined. She sent me for a heart exam, and then she said these two doctors are coming in. It's a routine exam for your 80th birthday so you'll live and be happy and we can live together. I didn't know that these were two people who were adversaries and came in to examine me and were hired guns who were going to testify against me.
> . . .
> Q. If you had been told, sir, that the purpose of the examination was to determine whether you were competent to stay as a trustee, would you have submitted to the examination?
> A. Do you think any first-year law student would let the adversary examine you on the capacity hearing?

T.T. 7/8/14, 89:5-26.

Had he known, Donald would have consulted his own lawyers and engaged doctors who only had Donald's health, welfare, best interests, and privacy in mind—not the egregious conflict of interest that was forced upon and concealed from him. And he would have been well rested, focused, and chosen the time and place most convenient for him. That is the advantage secrecy played to Shelly's enormous benefit and to Donald's unfortunate detriment.

From the outset, both doctors were expert witnesses working with and for Mr. O'Donnell. Shelly and her lawyers hired, advised, and oversaw both doctors as to their mission, and both doctors reported directly to and communicated frequently with Shelly's lawyers—and never with Donald or his lawyers. Shelly's lawyers spent significant time assisting Dr. Platzer with her report. Dr. Spar admitted he was a hired gun, testifying Donald was not his patient and addressing his letter directly to Mr. O'Donnell with the opening words "At your request." Dr. Platzer and Shelly either had a serious memory lapse or outright lied about when she first learned about secret Plan B. Dr. Platzer's and Dr. Spar's reports lack the impartiality and objectiveness envisioned and required by the Sterling Family Trust. The doctors' active participation in Plan B is exacerbated by their cavalier treatment of Donald's privacy rights.

Shelly's Petition must be denied due to her unclean hands. Courts have held that, "'[h]e who comes into equity must come with clean hands.'" *Jacobs v. Universal Dev. Corp.*, 53 Cal. App. 4th 692, 699 (1997); *Crosstalk Prods. v. Jacobson*, 65 Cal. App. 4th 631, 647 (1998). As such, the doctrine of unclean hands "'closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.'" *Jacobs*, 53 Cal. App. 4th at 699 (citation omitted). California courts apply unclean hands to legal and equitable claims and to both tort and contract remedies. *Id.*

Unclean hands is a well-established equitable doctrine that prevents a party with unclean hands in the matter at issue from obtaining relief in Court. *See, e.g., Magic Kitchen LLC v. Good Things Int'l Ltd.*, 153 Cal. App. 4th 1144, 1166 (2007); *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal. App. 4th 970, 985 (1999); *Dickson, Carlson & Campillo v. Pole*, 83 Cal. App. 4th 436, 446 (2000). It prevents "a wrongdoer from enjoying the fruits of his [or her] transgression."

Kendall–Jackson, 76 Cal. App. 4th at 978. "Of course if a party comes into a court of equity with unclean hands relating to the transaction before the court, he will be denied relief." *Fibreboard Paper Prods. Corp. v. East Bay Union of Machinists*, 227 Cal. App. 2d 675, 729 (1964). "The unclean hands doctrine 'closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.'" *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 841 (9th Cir. 2002), quoting *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945). "What is material is not that the plaintiff's hands are dirty, but that he dirtied them in acquiring the right he now asserts, or that the manner of dirtying renders inequitable the assertion of such rights against the defendant." *Republic Molding Corp. v. B. W. Photo Utils.*, 319 F.2d 347, 349 (1963).

> The doctrine of unclean hands requires unconscionable, bad faith, or inequitable conduct by the plaintiff in connection with the matter in controversy. Unclean hands applies when it would be inequitable to provide the plaintiff any relief, and provides a complete defense to both legal and equitable causes of action. 'Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries.'

Mendoza v. Ruesga, 169 Cal. App. 4th 270, 278-79 (2008) (citations omitted).

Unclean hands is an "equitable rationale for refusing relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his claim. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it." *Id.* at 279 (citation omitted).

"Courts have 'gleaned a three-pronged test to determine the effect to be given to the plaintiff's unclean hands conduct. Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries.'" *Jay Bharat Developers, Inc. v. Minidis*, 167 Cal. App. 4th 437, 445-46 (2008) (citation omitted).

As here, where conduct relates to issues or matters before the Court (and requested relief), the doctrine of unclean hands can prevent the totality of the relief requested. By analogy, as discussed, the disclosure of private medical records is illegal, and in the civil context, such

evidence has been suppressed in sister state jurisdictions. The disclosure of Donald's intimately personal medical records by "hired gun" expert witnesses for the adverse party in order to accomplish a singular objective—the sale of the Clippers in the face of Donald's vociferous refusal to sell—was unlawful, severely detrimental to Donald, and goes to the very core of Shelly's entire Petition. Shelly and her lawyers' secretive conduct in obtaining Dr. Platzer's and Dr. Spar's letters in an attempt to achieve the sale of the Clippers that Donald refused cannot be ignored. Accordingly, Donald requests that the Court find that the unclean hands doctrine eliminates Shelly's entire action.

2. The Doctors' Letters Were Obtained Through False Pretenses, Undue Influence, and Unclean Hands

Donald was induced to submit to medical examinations under false pretenses. Shelly, his wife, induced him to meet with doctors she hired based on fraudulent representations. More specifically, Shelly told her husband, to whom she owed fiduciary duties, that the examinations were for "routine examinations" for Donald's 80th birthday. The doctors also failed to disclose the purpose, nature, and consequences of the mental examinations or value Donald's privacy with respect to his medical records in violation of federal and state law.

As soon as Shelly's lawyers decided to pursue their secret "Plan B" (seeking to push Donald aside), they scrambled to find two doctors who could give Shelly what she wanted, namely letters to declare Donald "incapacitated" so that he was removed as co-trustee and from management of the Sterling Family Trust and its assets, including the Clippers. However, Shelly's attorneys decided to cut a few corners in the process. The short cuts by the doctors chosen by Shelly's attorneys are apparent from reading the doctors' letters.

Behavior which "brings the clean hands doctrine into operation must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants." *Camp v. Jeffer, Mangels, Butler & Marmaro*, 35 Cal. App. 4th 620, 639 (1995). Pursuant to Civil Code section 1709, "[o]ne who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." Civil Code section 1575 defines undue influence

as: "(1) In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; (2) In taking an unfair advantage of another's weakness of mind; or (3) In taking a grossly oppressive and unfair advantage of another's necessities or distress." Undue influence occurs when one is "induced to do or forbear to do an act which he would not do, or would do, if left to act freely." *Odorizzi v. Bloomfield School Dist.*, 246 Cal. App. 2d 123, 132 (2014).

Admittedly, neither Shelly, nor Dr. Platzer, nor Dr. Spar disclosed to Donald that the alleged tests and examinations of Donald were in any way related to the Sterling Family Trust, or done for any legal purpose. Shelly, her lawyers, and the doctors never disclosed or discussed that Donald's supposed incapacity was at issue. To the contrary, Donald agreed to "routine" examinations, and Shelly told Donald that the "exam" was a continuation of and done as a result of the tests Donald underwent earlier at Cedars-Sinai Medical Center.

On May 19, 2014, when Dr. Platzer examined Donald at his Beverly Hills home, Dr. Platzer never inquired if Donald understood the nature of their meeting, if Donald was aware why she was there. She never informed Donald of her change of status from Donald's treating physician to Shelly's expert witness. Shelly and her lawyers knew, and they had a duty to disclose this information to Shelly's husband and co-trustee. Shelly intentionally failed to disclose the information to Donald to gain a legal advantage over her husband, in breach of the covenant of good faith and fair dealing and in violation of her fiduciary duties owed to Donald.

Like Dr. Platzer, Dr. Spar similarly failed to inform Donald about the purpose of their meeting. And again, Shelly was present and intentionally concealed from Donald her true intentions. In fact, Dr. Spar's letter specifically states that Donald was yanked out of his business meeting and on several occasions tried to leave to return to his meeting, when Shelly stopped Donald and prevented him from leaving. Ex. 6.

These admissions from Shelly and the two doctors support Donald's position that the two doctors' letters were improperly and/or illegally obtained. Shelly and her lawyers, acting in

Shelly's own self-interest with complete disregard to Donald's interests, orchestrated the medical examinations based on false pretenses with malice aforethought.

3. Shelly Breached Her Fiduciary Duties Toward Donald

The record is clear that Shelly sacrificed her fiduciary obligations to her husband for her own personal gain and benefit to Donald's detriment. The *Family Code* prohibits this behavior between spouses. *Family Code* section 721 imposes "the highest good faith and fair dealing on each spouse":

> . . . (b) Except as provided in Sections 143, 144, 146, 16040, and 16047 of the Probate Code, in transactions between themselves, a **husband and wife are subject to the general rules governing fiduciary relationships** which control the actions of persons occupying confidential relations with each other. This **confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse**, and **neither shall take any unfair advantage of the other**. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:
>
> . . .
>
> (2) Rendering upon request, **true and full information of all things affecting any transaction which concerns the community property**. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

Fam. Code § 721 (emphasis added). "'[I]f one spouse secures an advantage from the transaction, a *statutory presumption* arises under section 721 that the *advantaged spouse exercised undue influence and the transaction will be set aside*.'" *Lintz v. Lintz*, 222 Cal. App. 4th 1346, 1353 (2014) (citation omitted) (emphasis added). The spouse advantaged by the transaction bears the burden of establishing that the "disadvantaged spouse acted freely and voluntarily, with full knowledge of all the facts, and with a complete understanding of the effect of the transaction." *Id.* (internal quotations omitted). Because direct evidence is "'rarely obtainable,'" the Court "'must determine the issue of undue influence by inferences drawn from all the facts and circumstances.'" *Id.* at 1355.

In addition, Corporation Code § 16404 states in pertinent part:

> (a) The fiduciary duties a partner owes to the partnership and the other partners are the **duty of loyalty and the duty of care** set forth in subdivisions (b) and (c).
>
> . . .
>
> (d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of **good faith and fair dealing**.

Corp. Code § 16404 (emphasis added).

A revocable trust created by two settlors as husband and wife is a contract between the spouses. Implied in every contract is a covenant of good faith and fair dealing. Restatement (Second) of Contracts, § 205. As co-trustees, Donald and Shelly each owed fiduciary duties to each other as trustees and beneficiaries of the Sterling Family Trust.

Shelly negotiated terms within the BTS for her own benefit, including the rights to tickets, parking, VIP passes, rings, and titles. *See* Ex. 3 at 9-10 [BTS, Lifetime Rights]. Shelly's assignment of these rights to the Sterling Family Trust as "community property" (*see* Ex. 33) is illusory by virtue "of the restrictions in effect with respect to Donald['s]...further participation in any activities involving or relating to the ... NBA ... or the Clippers ..." *Id.* Finally, Shelly, under the terms of the BTS, negotiated the right to allow up to 10% of the stock in the Corporation owning the Clippers to be retained and contributed to a charitable foundation. *See* Ex. 3 at 1-2. If exercised, this would deprive Donald of up to $100,000,000 from his share of the community property interest. The "benefits" and "perks" Shelly testified that she retained for her own self-interest are a breach of her fiduciary duty under Probate Code § 16003.

As explained above, the doctors' letters that Shelly obtained to remove Donald as a co-trustee were obtained on false pretenses by means which constitute unclean hands. Shelly, her lawyers acting on her behalf, and the doctors working for and with her lawyers concealed from Donald that he was being asked to participate in an evaluation to be used for legal purposes, more specifically, to remove him from all decision-making in running the Sterling Family Trust. The lack of disclosure and lack of notice violate the terms of the Sterling Family Trust.

When Shelly decided to push Donald aside by any means necessary, her actions were in violation of her duties to Donald as her spouse and as her co-trustee.

4. The Conduct of Shelly's Lawyers, As Her Agents, Is Imputed to Her

Shelly cannot insulate herself from the acts of her lawyers and their intentional and nefarious acts in creating and implementing secret Plan B. Even if secret Plan B was created and carried out solely by Shelly's lawyers, as Shelly falsely testified, such acts can be imputed to Shelly because of her agency relationship with her counsel. "An agent is one who represents another, called the principal, in dealings with third persons." *Civ. Code* § 2295. In California, "agency is either actual or ostensible." *Id.* § 2298. "An agency is actual when the agent is really employed by the principal." *Id.* § 2299. A party is held to know what their attorney "knows and should communicate to [them]." *Lazzarevich v. Lazzarevich*, 39 Cal. 2d 48, 50 (1952); *accord Civ. Code* § 2332 (principal deemed to know whatever agent knows "and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the [principal]").

The knowledge of the agent in the course of the agency is the knowledge of the principal. *In re Marriage of Cloney*, 91 Cal. App. 4th 429, 439 (2001). This is true even if "the knowledge acquired by the agent was not actually communicated to the principal." *Riordan v. Federal Kemper Life Assurance*, 36 Cal. 4th 281, 288 (2005). A client has constructive notice where, as here, "'the knowledge of the attorney has been gained in the course of the particular transaction in which he has been employed by that principal.'" *Zirbes v. Stratton*, 187 Cal. App. 3d 1407, 1413 (1986) (citation omitted). It is well-settled that "'one who acts through another will be presumed to know all that the agent learns during the transaction, whether it is actually communicated to him or not.'" *Watson v. Sutro*, 86 Cal. 500, 517 (1890); *accord Maron v. Swig*, 115 Cal. App. 2d 87, 90 (1952). The rule applies to attorneys as well as other agents. *See, e.g., Stalberg v. Western Title Ins. Co.*, 27 Cal. App. 4th 925, 930 (1994). "Notice to counsel or attorney is constructive notice to client." *Watson*, 86 Cal. at 516-17. Thus, "'one who acts through another will be presumed to know all that the agent learns during the transaction, whether it is actually communicated to him or not.'" *Id.* at 517. As such, the unclean hands of Shelly's attorney must be imputed to Shelly.

C. The Doctors' Letters and Medical Information Therein Were Obtained in Violation of CMIA

California law has long recognized that a person's medical profile is an area of privacy infinitely more intimate and more personal in quality and nature than many areas already judicially recognized and protected. *Cutter v. Brownbridge*, 183 Cal. App. 3d 836 (1986). Moreover, individuals, as patients, have a substantial interest in the privacy of their medical information. *Hill v. Nat'l Collegiate Athletic Assn.,* 7 Cal. 4th 1 (1994). There is a reasonable expectation to privacy under the California Constitution. "A person's medical profile is an area of privacy infinitely more intimate, more personal in quality and nature than many areas already judicially recognized and protected." *Board of Medical Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669, 679 (1979).

With this in mind, the California Legislature enacted the Confidentiality of Medical Information Act ("CMIA") in an attempt to further protect and safeguard the release of an individual's private medical information. CMIA specifically states that "a provider of health care . . . shall not disclose medical information regarding a patient of the provider of health care . . . without first obtaining an authorization. . ." *Civ. Code* § 56.10(a).

The purported waiver of medical privacy rights in the Sterling Family Trust is invalid because it fails to comply with the statutory requirements for a valid waiver. CMIA specifically states that "a provider of health care . . . shall not disclose medical information regarding a patient of the provider of health care . . . without first obtaining an authorization, except as provided in subdivision (b) or (c)." *Civ. Code* § 56.10(a). None of the exceptions provided for under either subdivision (b) or (c) are applicable in this case. In order for a patient to waive or authorize the release of their confidential individual identifiable private medical information, the authorization is valid if it:

> (a) Is handwritten by the person who signs it or is in a typeface **no smaller than 14-point type.**
>
> (b) **Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.**

. . . .

> (d) States the specific uses and limitations on the types of medical information to be disclosed.
>
> (e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.
>
> (f) States the name or functions of the persons or entities authorized to receive the medical information.
>
> (g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.
>
> (h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.
>
> (i) Advises the person signing the authorization of the right to receive a copy of the authorization.

Civ. Code § 56.11. On the face of the Sterling Family Trust, there was no compliance with the provisions of the CMIA to effectuate a valid waiver. Moreover, CMIA expressly provides that "**[a]ny waiver** by a patient of the provisions of this part, except as authorized by Section 56.11 or 56.21 or subdivision (b) of Section 56.26 [both of which are inapplicable], **shall be deemed contrary to public policy and shall be unenforceable.**" *Civ. Code* § 56.37 (emphasis added.)

Statutory requirements of type size and formatting to make waivers and notices effective **are not mere formalities**, but rather serve to ensure that minimum requirements for imparting notice or understanding of the consequences of an action. A waiver or notice is invalid if the statutory requirements are not satisfied. *See, e.g., Harustak v. Wilkins*, 84 Cal. App. 4th 208 (2001) (involved invalidity of a Probate Code section 16061.7 notice), *See also Conservatorship of Link*, 158 Cal. App. 3d 138, 141-42 (1984). HIPAA's and CMIA's requirements for a valid waiver involve policies and issues of personal health autonomy that are of more importance than the policy underlying the time limitations on contesting a trust. The waiver provision in the Sterling Family Trust is not conspicuous and therefore not reasonably equivalent to the statutory requirements for type face and style. Any purported waiver must be narrowly construed and does

not broadly encompass Donald seeking treatment regardless of the secret and nefarious motive and objective of Shelly and her attorneys.

On the face of the Sterling Family Trust, there is no waiver of Donald's rights under CMIA. Even if the Court attempted to construe the purported waiver of HIPAA to apply to CMIA, the statutory requirements under the CMIA are net met by the Removal Provision located at Section 7.5.c of the Sterling Family Trust. There is no case law that allows this Court to ignore the statutory requirements under CMIA for an effective waiver. *Civ. Code* § 56.37. The law states that there shall be not waiver if there is not complete compliance and that the any other attempt to waive this right which does not comply "**shall be deemed contrary to public policy and shall be unenforceable**." *Civ. Code* §56.11 (emphasis added).

In addition, here, it is undisputed that Donald believed that the doctors were present for treatment of Donald's perceived memory problems based on Shelly's concerns for her husband. It is also undisputed that Donald was not advised that the purpose of the doctors' visits was to evaluate and determine Donald's capacity and removal as trustee as co-trustee of the Sterling Family Trust he established with his wife. Any purported waiver of HIPAA must be determined in light of Donald's belief and understanding that he was being treated by Dr. Platzer and Dr. Spar. The fact that Shelly's attorneys dispatched the doctors for the purpose of determining Donald's capacity to serve as co-trustee of the trust he established cannot alter Donald's understanding that the doctors were there to treat him.

Even if the purported HIPAA waiver were valid (which it is not for failing to satisfy the statutory requirements), it must be narrowly construed. Indeed, courts may not extend the waiver of privileges, including the physician-patient privilege, beyond the express limits of section 912. *Simmons v. Ghaderi*, 44 Cal. 4th 570, 586 (2008). In light of the important public policies underlying privileges, the scope of the waiver of a privilege is generally construed narrowly. *See Fortunato v. Superior Court* 114 Cal. App. 4th 475, 482 (2003) (privilege against forced disclosure of tax return); *2,022 Ranch v. Superior Court*, 113 Cal. App. 4th 1377, 1395 (2003) (attorney-client privilege); *San Diego Trolley, Inc. v. Superior Court*, 87 Cal. App. 4th 1083, 1092

(2001) (psychotherapist-patient privilege); *Transamerica Title Ins. Co. v. Superior Court*, 188 Cal. App. 3d 1047, 1052 (1987) (attorney-client privilege).

Thus, by its express terms, the Removal Provision does not waive the privacy rights afforded to Donald under CMIA. Moreover, Section 264(c)(2) of HIPAA explicitly provides that a regulation promulgated under HIPAA shall not supersede a contrary provision of state law if the provision of state law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation. In other words, HIPAA does not preempt CMIA, and the California Supreme Court's holding in *Brown v. Mortensen*, 51 Cal. 4th 1052 (2011) stands for this proposition. Accordingly, Donald's medical information is protected under CMIA, and the release of his medical information to Shelly, her lawyers, the NBA, other third parties, and the public without his consent is absolutely unlawful.

At no time did Donald authorize, in writing or otherwise, Dr. Platzer or Dr. Spar to release his private medical information to Shelly, her attorneys, or any other third party. Yet, quite incredulously and in direct contravention and violation of CMIA, Donald's doctors released his private medical information without his written consent or authorization. CMIA is clear that any person or entity that wishes to obtain private medical information on an individual pursuant to subdivision (a) of Section 56.10 must obtain a valid authorization for the release of this information. At the time of the examinations, Donald provided no valid, knowing authorization to Shelly, Shelly's lawyers, or Donald's physicians with regard to the release of his medical records.[7] CMIA affords Donald additional privacy protections, and Donald's privacy rights as to his medical information were not waived under the Removal Provision of the Sterling Family Trust document. Accordingly, Shelly must not be permitted to rely on Donald's medical records which were obtained inequitably by unclean hands.

[7] Even if the waiver provision in section 7.5.c were read to include CMIA, the waiver does not comply with CMIA's stringent requirements, e.g. larger type, set apart, and separately signed and dated.

1. The Medical Information Illegally Obtained May Not Be Used For the Purposes of Removing Donald as a Co-Trustee

If a patient is treated by a physician for one purpose, that confidential individual identifiable private medical information cannot be used for another purpose. In *Pating v. Board of Medical Quality Assurance*, 130 Cal. App. 3d 608 (1982), the court held that "exclusionary rule [applied] to [prevent the] admission of evidence obtained in violation of the patient's constitutional right of privacy." *Id.* at 617. "Such a misuse of information that was properly obtained for another purpose can also form the basis of a claim for violation of the state constitutional right to privacy." *Pettus v. Cole*, 49 Cal. App. 4th 402, 458 (1996) (citation omitted). "It is equally reasonable, pursuant to the provisions of section 56.20 [CMIA], for an employee to expect that extraneous information about his personal life and thoughts, communicated in confidence to a psychiatrist in an employment-related examination, will not be used by his employer as the basis for adverse personnel action." *Id.* at 459.

In *Skeels v. Pilegaard*, 2013 U.S. Dist. LEXIS 34302 (court date 2013), the court recognized a "that a disclosure of medical information in violation of the CMIA supports a privacy claim under the California Constitution. *See Pettus*, 49 Cal. App. 4th at 440-47 (noting that the reasonableness of a plaintiff's expectation of privacy in his medical information was confirmed by the protection of such information by the CMIA, and that this supported a constitutional privacy claim)."

Kramer v. Policy Holders Life Insurance Assn., 5 Cal. App. 2d 380 (1937) involved non-waiver of the doctor-patient privilege. Kramer is instructive in connection with Shelly's retention of Dr. Platzer and Dr. Spar and the concept that a doctor may not serve two masters:

> If, upon request or upon his own motion he (the doctor) assumes to advise or administer treatment to the patient, and the latter in any manner acquiesces therein, the physician thereby casts aside his relation as an employee of the company, and transfers his allegiance to the patient. In such instances a case is presented where one cannot serve two masters at one and the same time. The allegiance of the physician must be wholly upon one side or the other. It matters not, in this connection, who calls him in the first instance, or who pays him. He may present himself at the side of the patient of his own motion and he may not expect or in fact receive pay.

Id. at 387.

While on the stand on three separate occasions, Dr. Platzer unequivocally testified that she did not conduct the examination on May 19, 2014 for the purposes of the Sterling Family Trust. As in *Pettus*, Donald had a reasonable expectation of privacy that his communications regarding his medical health would not be used for the purposes of his removal. Donald was never informed of Shelly's secret "Plan B" or that the results would be used for another purpose.

More specifically, Dr. Platzer (and maybe Dr. Spar) had a duty to claim the privilege on behalf of her non-consenting patient. In this case, Donald did not consent to the release of his private medical records for another purpose – to use to disqualify him as a co-trustee of his trust. In *Board of Medical Quality Assurance v. Gherardini*, 93 Cal. App. 3d 669, 675 (1979), the court confronted:

> [A] threshold question of the right of [the provider] to assert the statutory privilege or constitutional rights to privacy on behalf of the patient who, insofar as the record reflects, has not been notified of the Medical Board's desire to look at the data or consented to such an examination by the investigators. [The provider], a third party recipient of privileged matter, has standing to claim the privilege on behalf of the absent nonconsenting patient (citation omitted) and under the "vicarious exclusionary rule" to object to the admission of evidence obtained in violation of another's constitutional rights (citation omitted).

Donald did not consent to the release of his medical information, nor did he waive his privacy rights. Shelly's contention that Donald waived all his privacy rights pursuant to the Removal Provision of the Sterling Family Trust is misplaced.

Dr. Spar and Dr. Platzer's medical examinations of Donald cannot be used to implement the Removal Provision under the Trust because they were not obtained for that purpose. And, even if the Court finds that Dr. Spar's evaluation was for such purposes it most certainly cannot make the same finding with regard to Dr. Platzer's examination without both the the Removal Provision is not triggered.

2. Case Law Exists to Exclude the Illegally Obtained Medical Evidence

New York's supreme courts have addressed the issue of evidentiary exclusion of medical information obtained without the requisite HIPAA authorization and held that the suppression was

appropriate. *Keshecki v. St. Vincent's Medical Center*, 785 N.Y.S.2d 300 (Sup. Ct. 2004) was a medical malpractice case in which the defense counsel discussed the plaintiff's medical condition with her treating physician without first obtaining a HIPAA authorization form. In addressing the HIPAA violation, the court reasoned: "HIPAA protects that privacy of the plaintiff, and this court must protect that right. The only adequate remedy is to preclude any evidence obtained contrary to those safeguards." *Id.* at 545. Moreover, the *Keshecki* court detailed what must be included in a HIPAA authorization in order for an attorney to have private discussions with a party's physician.

Furthermore, in *Matter of Derek*, 821 N.Y.S.2d 387, 390 (Sur. Ct. 2006), the court precluded treating physicians' affirmations from a guardianship proceeding where they failed to observe the physician-patient privilege as well as HIPAA's privacy rule. In *Matter of Miguel M. (Barron)*, 17 N.Y.3d 37, 45 (N.Y. 2011) held that "medical records obtained in violation of HIPAA or the Privacy Rule, and the information contained in those records, are not admissible in" and suppressed the medical records.

Donald respectfully renews his request that this Court exclude the doctors' letters because Donald's medical records were improperly disclosed in violation of HIPAA and CMIA.

D. Estoppel Does Not Assist Shelly's Cause

"One who seeks equity must do equity" is a well-established maxim of equity. Shelly cannot prove the elements of estoppel. Equitable estoppel "requires: (1) the party to be estopped knew the facts; (2) the other party was ignorant of the facts; (3) the party intended his [or her] conduct would be acted upon, or acted in a manner that the party asserting the estoppel had a right to believe it so intended; and (4) the other party relied upon the conduct to his [or her] injury. Where one of the elements is missing, there can be no estoppel." *Dollinger DeAnza Assoc. v. Chi. Title Ins. Co.*, 199 Cal. App. 4th 1132 (2011). Another maxim of jurisprudence states: "He who comes into equity must come with clean hands."

Donald is the longest-tenured owner in the NBA and the owner of a real estate empire. He is well-known for never selling any of his properties. Shelly, his wife of nearly six decades, has always known that Donald never wanted to sell the Clippers (with the accompanying capital gains

tax of $650 million), a unique asset in high demand and appreciating value, and never intended to sell the Clippers in his lifetime.

Indeed, Shelly and her lawyers vowed to fight to keep the Clippers up until their meeting with the NBA on May 13. Shelly knew that Donald did not agree to unilaterally authorize Shelly to sell the Clippers. And Donald most certainly did not agree to the terms to which Shelly attempted to bind the Sterling Family Trust to her self-interested benefit and his detriment. As of May 22, 2014, Shelly and her lawyers knew Donald had been examined by two doctors and deemed incapacitated. Why did they still seek the May 22, 2014 authorization without disclosing that fact? And why did they continue to seek Donald's consent to the sale up until May 29 when they sold it from under him?

Donald's statements, and those made by his lawyers, to Shelly did not authorize Shelly to unilaterally negotiate for and sell the team without his consent, involvement, and approval. Shelly knew that Donald intended only for Shelly to negotiate and bring back a deal for his approval – not to actually sell the team from under him. Shelly knew that Donald's intent was only for her to solicit offers, i.e., conduct an auction and then they would make the final decision together.

In fact, the record is clear that Shelly and the NBA did not rely on Donald's consent. By the time that Shelly actually entered into the BTS with Mr. Ballmer, she and her lawyers had already shifted to secret Plan B and did not come to final terms with Mr. Ballmer in reliance on Donald's statements. This is made clear by the fact that the BTS contains the condition precedent and a recital of the circumstances. On May 29, 2014, after Donald told Shelly he refused to sell, secret Plan B was immediately implemented, and 30 minutes later, Shelly signed off on Donald's removal as co-trustee. This was the very first time Donald's lawyers learned that Shelly had misusing Donald's protected health information.

As Shelly also knows, Donald only agreed to allow Shelly to solicit bids because Shelly promised and assured him that Shelly would be able to own at least 20% of the team with the new owner; otherwise, she promised she would not sell. Shelly told Donald that she and her attorney had already agreed to that with Commissioner Silver and the NBA. Donald felt guilty that he had brought all this on his wife and she should not be punished and lose her 50% ownership via the

NBA's termination proceedings. When Donald realized that Mr. Ballmer was going to be 100% owner of the Clippers and Shelly was not going to retain any ownership stake (other than the up to 10% interest that would be retained in the form of her charitable foundation out of her portion of the sale proceeds), Donald did not agree to those terms of the sale that were not consistent with Shelly's promise to him.

As such, equitable estoppel does not support Shelly's position and should not be relied upon by this Court.

E. Shelly's "Best Interests" Argument Is Also Futile

If the Court is asked to determine the issue of what is in the best interests of the Sterling Family Trust, it must have already found that Shelly attempted to wrongfully and illegally remove Donald as a co-trustee. It is clear that Shelly's sole motivation was to be able to control the sale of the Clippers. Now she is seeking to continue with the sale even though she has unclean hands. Her wrongful conduct should not be rewarded by the Court. Her request to carry out her unilateral prospective sale of the Clippers over her husband's objection should be denied.

Shelly's "best interests" argument is not founded in law or equity. Shelly asks this Court to find that, even though she fraudulently removed her husband as a co-trustee of the Sterling Family Trust, this Court should still authorize Shelly to unilaterally proceed with the sale of the Clippers to Mr. Ballmer. This is only Shelly's best interests. Such contention is wholly without merit. Shelly's argument ignores the basic underpinnings of Shelly's fiduciary duties, as a co-trustee to the settlors and beneficiaries of the Sterling Family Trust, namely to Donald. *See* Prob. Code §§ 16002 (duty of loyalty), 16003 (duty of impartiality), 16004 (duty to avoid a conflict of interest), and 16013 (duty of co-trustees to one another). It also ignores that if Donald and Shelly hold on to the Clippers and the team passes by succession, there would be a stepped-up basis as to the value of the team, which significantly reduces any capital gains taxes (estimated at plus or minus $650 million) that would be due if the team was sold. Lastly, Shelly's assertion that the sale of the Clippers to Mr. Ballmer is in the best interests of both Shelly and Donald is wholly speculative. Sports franchises are unique trophy assets, akin to a Faberge egg, in high demand such that the loss of the asset cannot be replaced and the harm to Donald is irreparable. No one

can reliably predict the value of a sports franchise in the future. It is equally plausible that the team would be worth more than $2 billion in the future. Would the very successful Mr. Ballmer pay $2 billion for an asset he expected to depreciate?

Shelly's argument considers only her own interests, is speculative, and should be rejected.

III. The Court Should Not Make Orders under Probate Code section 1310(b)

This Court cannot grant Shelly's request for an order under *Probate* Code section 1310(b) because Shelly has not and cannot make an affirmative showing of an extraordinary circumstance involving a potential irreparable injury or loss of the sort contemplated under the code or by the Legislature. Therefore the exception under this section preventing a stay on appeal cannot apply. Generally, an appeal from a probate proceeding is governed by *Probate Code* sections 1300-1312. More specifically, *Probate Code* section 1304 specifies which orders from a trust proceeding are appealable. Any final order issued by this Court on Shelly's Petition under *Probate Code* section 17200 is certainly appealable. *Prob. Code* § 1304(a). Probate Code section 1310 provides:

> 1310. (a) **Except as provided in subdivisions (b)**, (c), (d), and (e), an **appeal** pursuant to Chapter 1 (commencing with Section 1300) **stays the operation and effect of the judgment or order**.
> (b) Notwithstanding that an appeal is taken from the judgment or order, **for the purpose of preventing injury or loss to a person or property**, the trial court **may** direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or a special administrator or temporary trustee, to exercise the powers, from time to time, as if no appeal were pending. All acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision shall not stay these directions.

Prob. Code § 1310(b) (emphasis added).

The general rule is that appeals in probate proceedings automatically stay the operation and effect of the appealed order. *Prob. Code* § 1310(a). Only when it is necessary to take immediate action to prevent imminent "injury or loss to a person or property," or appoint a temporary trustee a probate court may direct a trustee to exercise such powers as if no appeal were pending. *Id.* § 1310(b). Such an order is the exceedingly rare exception to the general rule. Shelly bears the

burden of establishing the imminent injury or loss to person or property. *Gold v. Superior Court*, 3 Cal. 3d 275, 285 (1970).

In *Gold*, the California Supreme Court construed an analogous provision that applies in guardianship and conservatorship proceedings. *Id.* at 279. The *Gold* court reasoned the statutory exception should be narrowly construed and carefully restricted to cases where there is an affirmative showing of extraordinary circumstances.

> By specifically conditioning the application of the statute upon the prevention of injury or loss to person or property the Legislature has determined that the exception should be operative only in a limited class of cases. This language, with its emphasis upon preventive action, imports a sense of urgency. While such situations are not inconceivable, the necessity for immediate action to avert such potential injury or loss is not a common circumstance in the usual conservatorship proceeding. Thus, on its face, the language of the statute indicates (1) that the only instances properly falling within the ambit of the exception are those which present a necessity for preventive action against particular risk contemplated by the statute; and (2) that such instances are probably rare. In sum, the language of this statute strongly suggests that the exception applies only to the exceptional case involving a risk of imminent injury or loss.

Id. at 281; *see also Conservatorship of Hart*, 228 Cal. App. 3d 1244, 1261 (1991) (requiring clear justification with showing of risk of imminent injury or loss).

Similar provisions have been extant for many years. *Gold*, 3 Cal. 3d at 281-85 (discussing provisions of predecessor statute governing exception in conservatorship proceedings under former *Probate Code* § 2102); *Hart*, 228 Cal. App. 3d 1244, 1252-53 (1991) (discussing provisions of predecessor statute governing exceptions in conservatorship proceedings under former *Probate Code* § 2751); *Conservatorship of McElroy*, 104 Cal. App. 4th 536, 556-558 (2002) (discussing provisions of predecessor statute governing exception in conservatorship proceedings under former *Probate Code* § 7241). In part because one effect of such an order is to "abrogate, at least as a practical matter, an appellant's statutory right to review of the earlier order, exercise of the power granted by [*Probate Code* § 1310(b)] must be clearly justified by a showing of ***risk of imminent*** injury or loss." *Hart*, 228 Cal. App. 3d at 1262 (emphasis added); *see also Gold*, 3 Cal. 3d at 281-82.

Here, a direction under Probate Code Section 1310(b) is specifically not appropriate because there is no injury or loss to Sterling Family Trust property. The Sterling Family Trust has been revoked. As discussed above, its assets are now the community property of Donald and Shelly. Finally, the only property at issue are the shares of LAC Basketball Club, Inc., a corporation, which are ***not*** being sold. The BTS pertains to assets of the corporation only, which are not subject to the jurisdiction or order of this Court.

A. The Legislative History Makes Clear that Probate Code Section 1310(b) Does Not Apply to This Case

The current enactment of *Probate Code* section 1310(b) is as amended by the Legislature in July 2010 by Assembly Bill 2271 (Silva) ("AB 2271"). The legislative history establishes the type of risk or injury contemplated. It is not found in this case.

> The touchstone of statutory interpretation is the probable intent of the Legislature. When interpreting a statute, we must ascertain legislative intent so as to effectuate the purpose of a particular law. Of course our first step in determining that intent is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.

Quarterman v. Kefauver, 55 Cal. App. 4th 1366, 1371 (1997), *citing Cal. Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.*, 14 Cal. 4th 627, 632-33 (1997). "When the words are clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history." *Quarterman*, 55 Cal. App. 4th at 1371, citing *Cal. Fed. Savings & Loan Assn. v. City of Los Angeles*, 11 Cal. 4th 342, 349 (1995). "But language that appears unambiguous on its face may be shown to have a latent ambiguity; if so, a court may turn to customary rules of statutory construction or legislative history for guidance." *Quarterman*, 55 Cal. App. 4th at 1371, citing *Stanton v. Panish*, 28 Cal. 3d 107, 115 (1980).

If the meaning of the statutory language is not clear, the Court may enlist extrinsic aids, including the legislative history of the statute, to divine the legislative intent. But if neither the words of the statute nor its history expose a clear meaning, the Court must "apply reason and practicality, and interpret the statute in accord with common sense and justice, and to avoid an absurd result." *In re Marriage of Campbell*, 136 Cal. App. 4th 502, 506 (2006). Thus, the Court

cannot sacrifice the legislative purpose to a literal construction of a statute. *Slatkin v. White*, 102 Cal. App. 4th 963, 970 (2002). The interpretation and application of a statutory scheme presents a pure question of law. *Robertson v. Health Net of Cal., Inc.*, 132 Cal. App. 4th 1419 (2005); *In re Marriage of Campbell*, 136 Cal. App. 4th at 506.

A court may take judicial notice of legislative analyses of bills prior to passage as an aid to the interpretation of a statute. *Evid. Code* §§ 452(c), 455, 459; *McDowell v. Watson,* 59 Cal. App. 4th 1155, 1161-62, n.3. (1997).

Here, the Court is asked to interpret what is the "injury or loss to a person or property" contemplated by the Legislature because these words are not clear or unambiguous. *Prob. Code* § 1310(b). This Court must determine what constitutes such an injury or loss that triggers the exception to the stay of an appeal. A review of the legislative history and case law interpreting predecessor statutes make it clear that this exception can only be applied in a limited class of cases where there is a showing that a stay of the appeal has a ***direct effect on life or death decisions***. Neither the Legislature nor any reported cases have interpreted the "injury or loss to a person or property" to mean whether a party would receive some dollar amount more or less if a transaction is approved or disapproved by the Court. Such a finding would have a chilling effect on litigants' rights to appellate jurisdiction.

Because "injury or loss to a person or property" in *Probate Code* section 1310(b) could be subject to multiple interpretations, it is critical that the Court review the legislative history. In AB 2271, for the first time, the Legislature contemplates the addition of the terms "trust" and "trustee." None of the previous incarnations of this subsection of the statute (former *Probate Code* §§ 1631, 1632, 2102, 2751, 2752, 7241, former *Code of Civil Procedure* §§ 966, 1765, and former *Guardianship Act of 1850* § 14) reference a trust or a trustee. AB 2271 was introduced to the Assembly Committee on Judiciary on February 18, 2010. 2009 Bill Tracking CA A.B. 2271. The key issue before the Assembly Committee on Judiciary was the following question: "In order to protect a trust's assets and beneficiaries, should a court be permitted to appoint a temporary trustee to protect a trust while an order is on appeal?" 2009 Legis. Bill Hist. CA A.B. 2271 (March 10, 2010).

The synopsis of AB 2271, as stated before the Assembly Committee on Judiciary, is as follows:

> This non-controversial bill, sponsored by the Conference of California Bar Associations, seeks to protect a trust and its beneficiaries from harm, pending appeal of a court order concerning the trust. As a general rule, an appeal of an order in probate court stays the order. This bill allows a court to appoint a temporary trustee during appeal of an order regarding the trust, such as an order removing the original trustee for dishonesty. There is no known opposition to this bill.

Id. AB 2271 was summarized as follows: "Expands a court's ability to protect a trust against loss when an order is on appeal. Specifically, this bill allows a court to appoint a temporary trustee when an appeal is pending in order to prevent injury or loss to a person or property." *Id.* As part of the Legislative Comments, the following hypothetical was posed to illustrate the purpose of the amendment:

> The need for this provision is best demonstrated by the following example:
>
> Suppose a trustee is stealing funds from a trust and one of the trust's beneficiaries, learning of the theft, brings an action to remove the trustee. The court rules in the beneficiary's favor and orders the removal of the trustee, but the trustee appeals. Under existing law, the removed trustee would continue to serve as trustee pending the appeal, potentially raiding the trust before the appeal is considered. The bill allows the court to appoint a temporary trustee to protect the trust estate pending the appeal.

Id.; 2009 Legis. Bill Hist. CA A.B. 2271 (June 28, 2010) (as also discussed on the Assembly Floor and stating that AB 2271 "[e]xpands a court's ability to protect a trust against loss when an order is on appeal. Specifically, this bill allows a court to appoint a temporary trustee when an appeal is pending in order to prevent injury or loss to a person or property.").

The legislative history on July 17, 2010 from the California Senate Floor further sheds light on the legislative intent:

> AB 1172 (Kaloogian), Chapter 724, Statutes of 1997, consolidated the various appeal provisions under the Probate Code and provided the circumstances under which an appeal stays an order during the pendency of the appeal. Under the provisions of AB 1172, the court could appoint a temporary guardian or conservator of the person or estate, or a special administrator to exercise fiduciary powers for the purpose of preventing injury or loss to a person or property. AB 1669 (Committee on Judiciary), Chapter 688,

> Statutes of 2000, added bond requirements to these appeal provisions. This bill authorizes a court to appoint a temporary trustee to exercise fiduciary powers to prevent loss to the trust property during an appeal.

2009 Legis. Bill Hist. CA A.B. 2271 (June 17, 2010). According to Assembly Member Silva's office the argument in support of AB 2271 was that:

> Current law does not permit a court to appoint a temporary trustee to manage an estate in probate after the court has ordered the trustee removed and the trustee has appealed the court's decision. In most cases, the court's decision to remove the trustee is because of a need to protect the trust estate and beneficiaries from the trustee's incompetence, dishonesty, or both. Yet existing law permits the incompetent or dishonest trustee to remain in authority until the appeal has run its course, threatening to compound the damage already done to the trust estate.

Id. Here, the legislative history makes clear that the sort of limited situation contemplated by the Legislature relating to a trust and a removed trustee is one where the "fox is guarding the hen house" or that there is a Court determination of incompetence, dishonesty, or both. Here, neither issue is before this Court. Shelly's requested relief is that she be conferred authority to take a specific action. If any beneficiaries' interest needs to be protected from the fox, it is most certainly *Donald*, who needs protection from Shelly and her attorneys who have shown that they will go to any measures to deprive Donald of his right to defend himself against the NBA's threats of seizing the Clippers. This is clear from Shelly's and her attorneys' implementation of secret Plan B.

B. No Case Law Supports Shelly's Claim that the Revoked Sterling Family Trust Will Suffer Irreparable Injury to Person or Property

The Legislature's intent to limit the application of the exception to the automatic appellate stay is further illustrated by the fact that there are no published decisions which relate to a trust proceeding and *Probate Code* section 1310(b) or its predecessors. The exception to the automatic appellate stay must be narrowly construed. *Gold*, 3 Cal. 3d at 282. "By specifically conditioning the application of the statute upon the prevention of injury or loss to person or property the Legislature has determined that the exception should be operative only in limited class of cases." *Id.* at 281.

Furthermore, the exception requires an affirmative showing in the trial court of extraordinary circumstances involving potential injury or loss of the sort contemplated by the statute before the exception applies. *Gold*, 3 Cal. 3d at 282 (discussing former *Probate Code* § 2102). Its application "must be clearly justified by a showing of risk of imminent injury or loss." *Hart*, 228 Cal. App. 3d at 1261.

Here, Shelly does not make the requisite factual showing of potential irreparable and extraordinary loss to person or property as contemplated by the Legislature. Most definitely if the Court did not grant Shelly's request under *Probate Code* section 1310(b), the Sterling Family Trust would **not** suffer an **irreparable** loss. Shelly claims that if the sale of the Clippers is not blessed by this Court, the Sterling Family Trust may *potentially* lose $400 million because another buyer would *potentially* offer less, and that outstanding loans (on real properties not owned by LAC Basketball Club, Inc.) would need to be paid off or renegotiated. Shelly also argues that if Donald remains an owner of the Clippers, the team will go into a "death spiral."

Not only are these arguments wholly speculative, they do not relate to the type of irreparable loss that the Legislature contemplated as discussed in limited case law interpreting Probate Code § 1310(b) and predecessor statutes. Shelly's desire to obtain the most money for the sale of the Clippers does not justify an end run around the statutory requirements, which are intended to protect appellate jurisdiction. In short, the injury prevention exception does not apply here.

First, any loss suffered by Shelly would only be monetary. In the context of a monetary loss, this Court must determine what would be the actual and irreparable loss that would occur if this Court allowed Donald to appeal a disfavorable judgment. Again, Shelly receiving less money for the Clippers is not the type of loss contemplated by the Legislature. If the Court made such a finding, it would set an untenable precedent. The request in Shelly's Petition to sell the assets of LAC Basketball Club, Inc. to Mr. Ballmer is nothing more than a "vanilla" petition under *Probate Code* § 17200 and akin to a sale of real property. A ruling in Shelly's favor would invite trustees or beneficiaries to seek relief under this section if a piece of real property sold for some amount

less than that trustee or beneficiary thought it should or could sell for. This certainly was not intended by the Legislature.

In *Conservatorship of McElroy*, 104 Cal. App. 4th at 556-557, the appellate court found that, in light of the conservatee's age and failing health, it was appropriate to not allow a stay on appeal where the "potential harm to the estate was the potential tax liability if the conservatee were to die" before the appeal concluded. The conservator filed a petition for substituted judgment to amend the terms of the conservatee's trust, create a new revocable trust, and transfer assets between the trusts. *Id.* at 543. The conservator argued that the substituted judgment should be granted because, in part, it created tax advantages that could only be taken during the conservatee's lifetime because on a conservatee's death the conservator would be prevented from executing a new estate plan *Id.* Over the conservatee's long-term girlfriend's objection, the trial court granted the petition for substituted judgment. *Id.* In determining if the exception under *Probate Code* section 1310(b) should apply, the *McElroy* court contemplated the risk of harm to the girlfriend in allowing the conservator to take such steps.

> [T]he risk of harm to [the girlfriend] in allowing the conservator to take the requested actions was insignificant in relation to the risk of harm to the estate if the action were not taken. The potential harm to the estate was the potential tax liability if the conservatee were to die before the actions were taken.

Id. at 556-57; s*ee In Conservatorship of Hart*, 228 Cal. App. 3d 1244, 1250 (1991) (discussing provisions of predecessor statute governing exception in conservatorship proceedings under former *Probate Code* section 2751(b), where the appellate court was presented with the question of whether it should authorize a petition for substituted judgment to make inter vivos gifts to the conservatee's family members to take advantage of tax laws). Here, the risk of harm to Donald is substantial. He will lose a trophy asset that cannot be replaced and be forced to pay capital gain taxes that will otherwise be avoided if Shelly does first.

In reaching its holding in *McElroy* regarding the application of *Probate Code* section 1310(b), the court relied almost entirely on the depublished opinion, *Kane v. Superior Court*, 37 Cal. App. 4th 1577 (1995) (*depublished),* breathing life back into this case. *McElroy*, 104 Cal. App. 4th at 556-57. In *Kane*, the court denied the writ of a decedent's children seeking to vacate

an order under the predecessor statute, former *Probate Code* section 7241(b). *Kane*, 37 Cal. App. 4th at 1587, *depub*. The trial court specifically directed the fiduciary to turn over three vials of the decedent's sperm to decedent's girlfriend to prevent girlfriend from suffering "imminent injury or loss" because she was in her 40s and her ability to conceive continued to decrease and could have been eliminated before the appeal concluded. *Kane*, 37 Cal. App. 4th at 1587, *depub*. *McElroy* relied on *Kane*'s interpretation of former *Probate Code* section 7241(b):

> Although the order may be appealed, 'the language the Legislature used in enacting this subdivision clearly empowers a trial court to direct such order to be immediately carried out unaffected by any subsequent appeal of the order, and without regard to the possible outcome on appeal.' (*Ibid.*) The court emphasized 'the Legislature's express recognition [that] some situations present such an extraordinary risk of injury or loss that they require immediate intervention by the probate court to make orders which can be implemented immediately despite the filing of an appeal, and regardless of the result on appeal.' (*Id.* at 1586)."

McElroy, 104 Cal. App. 4th at 556. *Kane* further held that:

> only a narrow interpretation of the exception could be consistent with the apparent legislative intent such orders would not be subject to appellate review . . . *Where, as in the instant case, the trial court's order directs the very act which constitutes the subject matter of the appeal, the exception operates to effectively deprive the appellant of his appeal.*

Kane, 37 Cal. App. 4th at 1585, *depub* (emphasis in original). *Kane* concluded that case was a very narrow situation where the exception to the automatic appellate stay could apply. *Id.*

In *Gold*, the California Supreme Court (discussing provisions of predecessor statute governing exception in conservatorship proceedings under former *Probate Code* section 2102) held that an order to the conservator's former attorney for attorney's fees did not rise to the level of "extraordinary circumstances involving potential injury or loss of the sort contemplated by the statute before the exception applies." 3 Cal. 3d at 282. Because the application of the exception to the appellate stay must be "carefully restricted," the California Supreme Court held that any monetary damages owed to the former attorney or losses therefrom were not of the sort contemplated by the Legislature. *Id.* at 281. *Gold* further stated that to rule otherwise would

> undermine the general purpose of the conservatorship provisions of the Probate Code, namely, to encourage persons in need of assistance to avail themselves of the protection of the law . . . but it

> would also defeat the specific purpose of [former *Probate Code*] *section* 2102.

Id. at 286.

In *Guardianship of Walters*, 93 Cal. App. 2d 208 (1949), the court held that it was inappropriate for the trial court to apply the exception to the stay provision under former *Probate Code* section 1631 because the evidence was insufficient to support a finding of loss or injury to the estate pending appeal. *Id.* at 211. In *Walters*, the trial court appointed a temporary guardian of Allie Walters Sacks over her objection.[8] *Id.* at 210. The trial court ordered that the temporary guardian could take immediate possession of all of Mrs. Sacks' real and personal property pending the appeal. On appeal, the court held that "[n]o evidence was produced that [Mrs. Sacks'] personal estate [was] in danger of being wasted or dissipated." *Id.* at 212. It further stated that "[i]t was clear to [them] that there was no showing of reasonable necessity for an order directing the guardian to take possession of the property" and that "[i]n short, the uncontradicted showing was that Mrs. Sacks' real properties are, and for almost two years last past, have been under first-class management." *Id.* at 213. The *Walters* court based its ruling on the fact that Mrs. Sacks had hired a management team to assist her, and preserve and protect her assets. *Id.* at 213-14. Because Mrs. Sacks had a management team in place to assist her manage her assets, the court held that there was insufficient evidence to support a finding of probable loss or injury to the estate pending the appeal. *Id.* at 214.

All of the cases applying the exception have one common theme: If the appeal was stayed, the party seeking to apply the stay exception would suffer a readily known and ascertainable harm if they had to wait out the appellate processes. In *Kane*, the girlfriend's ability to conceive may have been eliminated. *Kane*, 37 Cal. App. 4th at 1585, *depub*. In *McElroy*, the conservatee was old, frail, and ill, and it was unclear if he would survive the appeal so to allow his conservator to execute a new estate plan. *McElroy*, 104 Cal. App. 4th at 556-57. This case is akin to *Walters*, 93

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[8] This case was decided before the enactment of the modern day conservatorship provisions in the *Probate Code*.

Cal. App. 2d at 214, where the court found that, where there was proper management parameters in place during the pendency of an appeal, the estate would not suffer any harm.

Here, as in *Walters*, there is a system in place to manage the day-to-day operations of LAC Basketball Club, Inc. Richard Parsons, the supremely well-qualified interim CEO, testified that he has been able to stabilize the organization. Season ticket sales, which comprise of 85% the team's largest revenue stream , are on par and revenue is actually up from last year (as a result of an increase in ticket prices). T.T. 7/22/14, 22:18-21. The installation of Mr. Parsons is roughly equivalent to this Court appointing a temporary trustee of the asset in question to ensure its preservation during an appeal.

All parties agree that Donald, as a result of the revocation of the Sterling Family Trust, owns the stock in LAC Basketball Club, Inc. as the community property of Donald and Shelly, which in turn still owns the Clippers. Because Donald was the sole shareholder of LAC Basketball Club, Inc. when the stock was funded into the Sterling Family Trust, the stock is returned to Donald in his name alone. The refusal of this Court to apply this extraordinary remedy would not deprive the Sterlings of their asset. To the contrary, it would allow Donald to continue to fight the NBA in federal court in its attempt to seize the Clippers from the Sterlings (if in fact the NBA takes such action, which is still speculative). As stated above, Shelly's concern about obtaining the most money for the sale of the Clippers does not justify an end run around the statutory requirements, which are intended to protect appellate jurisdiction. Because there is no irreparable harm that will come to Shelly or Donald if the sale is subject to an appeal, the injury prevention exception does not apply.

CONCLUSION

For these reasons and as further briefed, argued, and presented by Donald throughout these proceedings, this Court must deny Shelly's Petition. In conclusion, Donald requests that this Court deny Shelly's Petition and:

1. Find that as a result of the June 9, 2014 revocation by Donald of the Sterling Family Trust and the fact that the only sale is of ***assets*** of LAC Basketball, Inc., a corporation, this Court does not maintain jurisdiction to make any findings concerning the

interpretation of the Sterling Family Trust or confirm, authorize, or instruct the taking of any active acts taken by Shelly as a former co-trustee; and/or find that Shelly, as a former trustee of the Sterling Family Trust, does not have the continuing authority to sell the Clippers to Mr. Ballmer because (a) all rights and title to the assets being sold are held by LAC Basketball Club, Inc., the shares of which are held by Donald as the sole shareholder, as community property of Donald and Shelly, and not by Shelly as the former trustee, and (b) to the extent that life is breathed into the Sterling Family Trust, after its revocation on June 9, 2014, the sale of the Clippers to Mr. Ballmer is not within the scope of Shelly's alleged wind-up authority.

2. Find that Shelly failed to comply with the terms of the Sterling Family Trust and did not remove Donald as a co-trustee of the Sterling Family Trust; or in the alternative, find that Shelly's attempted removal of Donald as co-trustee of the Sterling Family Trust was the result of false pretenses, undue influence, unclean hands, a violation of the covenant of good faith and fair dealing, or a breach of her fiduciary duties to Donald as a co-trustee, as a co-settlor, and as her husband.

3. Find that the Court should not make an order under Probate Code section 1310(b) because the Clippers are a unique, irreplaceable asset and the sale is not necessary to prevent injury or loss of property of the Sterling Family Trust.

Dated: July 24, 2014

BLECHER COLLINS PEPPERMAN & JOYE, P.C.

By: _____
Maxwell M. Blecher
Attorneys for Respondent
DONALD T. STERLING

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 515 South Figueroa Street, Suite 1750, Los Angeles, CA 90071-3334.

On July 24, 2014, I served true copies of the following document(s) described as **DONALD T. STERLING'S POST-TRIAL BRIEF**

on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent to the persons at the e-mail addresses listed above.

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

Executed on July 24, 2014, at Los Angeles, California.

Lorelei L. Gerdine

Blecher Collins Pepperman & Joye BC PJ