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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In the Matter of

THE STERLING FAMILY TRUST

CASE NO.: BP152858

DONALD T. STERLING'S TRIAL BRIEF

Trial: July 7, 2014
Time: 8:30 a.m.
Dept: 5
Judge: Michael I. Levanas

INTRODUCTION

DONALD T. STERLING ("Donald") hereby files his Trial Brief and requests that this Court make the following orders:

(1) Find that as a result of the June 9, 2014 revocation by Donald of the Sterling Family Trust, an inter vivos trust which was restated in its entirety on December 18, 2013 (the "Sterling Family Trust"), this Court does not maintain jurisdiction to make any findings concerning the interpretation of the Sterling Family Trust or to confirm, authorize, or instruct the taking of any active acts taken by Rochelle Sterling ("Shelly") as a former co-trustee;

(2) Find that Shelly failed to comply with the terms of the Sterling Family Trust and did not remove Donald as a co-trustee; or in the alternative, find that Donald's removal as co-trustee of the Sterling Family Trust was done by Shelly through fraud, undue influence, and in breach of her fiduciary duties to Donald as a co-trustee, as a co-settlor, and as her husband;

(3) If the Court finds that Donald was removed as co-trustee of the Sterling Family Trust, find that Shelly, as a former trustee of the Sterling Family Trust, does not have the continuing authority to sell the Los Angeles Clippers[1] NBA Franchise (the "Clippers") to Steven Ballmer ("Ballmer") in a fiduciary capacity, but only individually, because (a) all rights and title to the Clippers are held by Shelly and Donald, as community property in their individual capacities, 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, that the sale of the Clippers to Ballmer is not within the scope of Shelly's alleged wind-up authority.

STATEMENT OF FACTS

The Sterling Family Trust was established on August 13, 1998, by Donald and Shelly, as Settlors and as Trustees. The Sterling Family Trust was restated in its entirety on December 18, 2013, by Donald and Shelly. Copies of various relevant provisions of the Sterling Family Trust have been previously filed herein and are uncontested.

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[1] The Clippers are owned by LAC Basketball Club, Inc. ("LAC"), a California corporation whose stock is owned 100% by the Sterling Family Trust.

As a result of an audio recording of a private conversation between Donald and another woman becoming public, Adam Silver ("Silver"), the Commissioner of the National Basketball Association ("NBA"), stated that he would urge the NBA Board of Governors to terminate the current ownership of the Clippers and sell the team to a new owner, in addition to other punishments. In response to the NBA's written charge dated May 19, 2014 (the "Charge") issued by Silver, Shelly "took immediate action" to sell the Clippers and avoid a vote by the NBA Board of Governors which could terminate Donald and Shelly's interests in the team. (Shelly's Ptn., 9:7-8.)

At Shelly's behest, on May 16, 2014, Donald went to Cedars-Sinai and underwent a CAT scan and PET scan of his brain as a diagnostic measure.

At this point, Shelly's attorneys conceived of "Plan B" to find Donald incapacitated and remove him under section 7.5.c of the Sterling Family Trust. If Shelly could not sell the team with Donald's consent and free will, Shelly, with the help of her attorneys, would unilaterally deprive Donald of his voice. This was the first of Shelly's legal maneuvers to take advantage of her husband. As an insurance policy, she knew that if she could not obtain her husband's written consent to sell the Clippers, she could snidely usurp control from him, without him even knowing.

On May 19, 2014, Dr. Meril S. Platzer purportedly examined Donald at his Beverly Hills home[2]. Dr. Platzer never informed Donald of the nature of their meeting. She also never inquired if Donald was aware why she was there. Dr. Platzer never informed Donald that their physician-patient privilege previously created had ended and that she was hired for legal purposes by Shelly.

At some point after the medical evaluation, Dr. Platzer, Donald, Shelly, and at least two other individuals ended up socializing at the Beverly Hills Hotel (which is located near Donald's residence). Dr. Platzer's letter does not specify if she reached any of her purported conclusions based on the exchange between herself and Donald after they left his residence.

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[2] Donald and Shelly do not live at the same residence. Donald lives in Beverly Hills, CA and Shelly lives in Malibu, CA.

She then utilized privileged information and protected material, not waived under the Sterling Family Trust, in connection with her incapacity evaluation, in violation of state and federal law.

All medical information relating to the neurological exam and tests administered on May 16, 2014 was and is protected under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C § 1320d ("HIPAA"). Moreover, such information is protected by the California Confidentiality of Medical Information Act ("CMIA"). *Cal. Civ. Code* § 56 *et seq*. Donald never authorized the dissemination of, or waived any of his rights protecting disclosures of his confidential individual identifiable private medical information under the Sterling Family Trust, HIPAA, or CMIA. Any evidence to support Shelly's position, which is derived from Donald's confidential medical information utilized by Drs. Platzer or Spar, must be excluded by this Court.

But Shelly knew, and she had a duty to disclose this information to her husband and co-trustee. Shelly intentionally failed to disclose the purpose of the examinations of Donald to gain a legal advantage over her husband, in violation of her fiduciary duties owed to him.

Like Dr. Platzer, Dr. James Edward Spar ("Dr. Spar") also failed to inform Donald about the purpose of their meeting which took place on May 22, 2014. Again, Shelly set up the meeting, she was present and she intentionally failed to inform Donald of her true intentions. In fact, as set forth in Dr. Spar's letter, Donald was called out of a "meeting with several attorneys" and "became impatient with the evaluation and wanted to return to a 'room full of six attorneys'. . . ." (Ex.11 to Shelly's Ptn, p. 80-81.) Shelly set up these examinations knowing full well that if Donald did not agree to the sale of the Clippers, then she would force the issue. In doing so, she breached her fiduciary duties to her co-trustee and her husband.

In cooperation with his wife, on May 22, 2014, counsel for Donald sent a letter to Silver stating that Donald agreed to sell his interest in the Clippers and only authorized Shelly to **negotiate** with the NBA "regarding all issues in connection with a sale of the Los Angeles Clippers, owned by LAC Basketball Club, Inc." Donald did not give Shelly any unilateral authority to negotiate for, or to bind, the Sterling Family Trust into an agreement with a

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prospective buyer. Nor did he relinquish any of his rights as Co-Trustee of the Sterling Family Trust to Shelly. Obviously Donald was not aware of Shelly's "Plan B."

By this time, Shelly, together with her lawyers and advisors, began offering the sale of the Clippers and soliciting bids—well before either of the doctor's letters was dated.

One of the managing partners at Shelly's law firm, Greenberg Glusker, created the parameters for the private auction and all formal bids were due by May 28, 2014.

The next day, May 29, 2014, and on the day that Dr. Spar signed his letter parroting Shelly's request that he finds Donald incapacitated, Shelly signed the Binding Term Sheet (the "BTS") accepting Ballmer's offer to buy the Clippers which contains several critical conditions precedent.

On June 9, 2014, Donald gave formal notice to Shelly that he elected to revoke the Sterling Family Trust effective immediately. The revocation included each and every trust purportedly created pursuant to the Sterling Family Trust.[3] Shelly conceded that Donald's revocation was effective, by a stipulation of the parties.

Two days later, on June 11, 2014, Shelly filed an Ex Parte Petition (1) For Confirmation of Trustee's Acts and Instructing Trustee and (2) For Order Directing Trustee Under Probate Code §1310(b) to Prevent Injury or Loss to Trust (the "Petition" or "Shelly's Petition"). On or about June 13, 2014, Ballmer filed a Joinder in Shelly's Petition ("Joinder").

I. The "Big White Elephant in the Room" – This Court Does Not Maintain Jurisdiction over a Revoked Inter Vivos Trust

As result of the June 9, 2014 revocation by Donald of the Sterling Family Trust, *a revocable inter vivos trust*, 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.

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[3] The Court may take judicial notice of the revocation of the Sterling Family Trust that is attached as Exhibit 21, page 123, to Shelly's Petition. This Court no longer maintains jurisdiction over the internal affairs of the Sterling Family Trust as a result of this revocation.

Shelly consistently argues, with emphasis, throughout her pleadings that the Sterling Family Trust is self-executing. *Probate Code* sections 17200 *et seq*. do not require this Court to approve Shelly's Petition, which sets forth her acts and transactions, as the alleged sole trustee of the Sterling Family Trust. *See, e.g., Cal. Code Civ. Proc.* § 1060; Bender, 4-8 MB Prac. Guide: Cal. Trust Litigation, § 8.05[4] ("Until 1995, a person who was interested under a will or trust could seek judicial declaration of his or her rights or duties under the trust. If an actual controversy existed as to the existence of the trust, or as to the rights of two or more persons under terms of the trust, the court could resolve the controversy by granting declaratory relief under CCP § 1060. After January 1, 1995, however, an action for declaratory relief may not be maintained by a person who seeks a declaration of rights or duties under a will or a trust [see Stats. 1994, ch. 806, § 2]. The only remedy is a petition under Prob Code § 17200, which may be pursued only by a trustee or beneficiary [Prob Code § 17200(a)].").

The Legislature clearly contemplated and expressly stated that the 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." *Cal. Prob. Code* § 17202. Here, the trustees and beneficiaries are Donald and Shelly. There are no other interests under the Sterling Family Trust. 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." *Cal. Prob. Code* § 17209 (emphasis added). Section 17206 of the *Probate Code* clearly grants this Court the authority to dismiss Shelly's Petition, which amounts to a request for declaratory relief, on the grounds that the Sterling Family Trust is self-executing and the acts and transactions requested to be confirmed have already been taken without court involvement. 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. . . ." *Cal. Prob. Code* § 17206.

The Court correctly identified the issue of the "Big White Elephant in the Room" and when pointing out that Shelly is not asking this Court to interpret or construe the terms of the *revoked revocable* trust instrument. Instead, Shelly seeks relief under *Probate Code* section

17200 to do nothing more than "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 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 Ballmer seek under the terms of the BTS. If Ballmer wants 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 asset in such capacity. Probate court does not exist to approve the sale of NBA basketball teams (at least without an appropriate petition for confirmation).

II. Shelly Failed to Comply with the Terms of the Sterling Family Trust and Did Not Remove Donald as a Co-Trustee

The evidence will clearly establish that the specific requirements set forth in the Sterling Family Trust were not followed by Shelly or Drs. Platzer and Spar, and that, therefore, Shelly has not removed her husband from his co-trusteeship.

The requirements to remove a trustee from his or her fiduciary position are controlled by specific provisions of the Sterling Family Trust, specifically Section 7.5.c (the "Removal Provision") and Section 10.24 (the "Procedure Establishing Incapacity Provision" or "PEI Provision").

Donald was not removed as a co-trustee by Shelly because she failed to comply with the strict terms and conditions of the Removal Provision, which relies on the procedural requirements in the PEI Provision.

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.).

Shelly relied on the Removal Provision to effectuate her purported unilateral removal of Donald as co-trustee.

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. . . .

There are three different ways that Shelly could have attempted to remove her husband as co-trustee: (1) obtain a letter from Donald's regular attending physician who examined Donald and certified in writing that Donald lacks capacity under the criteria set forth in *Probate Code* section 810 et seq.; (2) obtain letters from two licensed physicians who, as a regular part of their practice are called upon to determine the capacity of others, who examined Donald and certified in writing that Donald lacks capacity under the criteria set forth in *Probate Code* section 810 et seq.; or (3) seek an order from this Court that finds Donald to lack capacity.

As the Court is aware, Shelly chose option number two, stated above. However, by bringing her Petition and seeking the Court's approval of her acts, she has indirectly 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. If the Court made such a finding it would also be a violation of Donald's right to due process.

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, (2) Shelly fraudulently failed to disclose the purpose of the examinations that she orchestrated, (3) neither of the letters obtained

from the physicians comply with the specific requirements set forth in the Sterling Family Trust, and (4) both of the letters obtained from the physicians are based, in part, upon privileged information and protected material, release or use of which was not waived under the Sterling Family Trust and disclosure of which violated state and federal law. As a result, the doctors' letters offered by Shelly are insufficient, on their face, to remove Donald as a co-trustee of the Sterling Family Trust.

The procedures set forth in the PEI Provision are vague as to the terms "reasonable" and "cooperate" in their interpretation, use, or application. The Removal Provision clearly states that Shelly and Donald must "cooperate" with one another regarding the determination the mental capacity of either of them. 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 Shelly cooperated with Donald in obtaining these medical examinations, let alone the doctors' letters. It was not fully disclosed to Donald by Shelly or the doctors that he was participating or cooperating in an evaluation to be used for legal purposes. The lack of disclosure and lack of notice violate the terms of the trust. Shelly **never** disclosed her true intention behind having Donald meet with either Dr. Platzer or Dr. Spar. Shelly never gave Donald any notice that she intended to use the evaluations or letters for legal purposes. No trustee has unrestricted authority, nor can they dupe their co-settlor, co-trustee, and husband into unauthorized removal. "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). Before the Court can even evaluate the letters obtained by Shelly and determine whether they comply with the PEI Provision, the Court must determine if they were obtained in violation of Donald's rights under the Sterling Family Trust.

III. Shelly's Efforts to Remove Donald as Co-Trustee Were Through Fraud, Undue Influence, and in Breach of Her Fiduciary Duties

The evidence will show that the doctors' letters obtained by Shelly were induced by fraud, undue influence, and a breach of Shelly's fiduciary duties owed to Donald.

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A. The Doctors' Letters Were Obtained Through Fraud and Undue Influence

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 other purposes. The doctors also failed to fully disclose the purpose, nature, and consequences of the mental examinations.[4]

As soon as Shelly's lawyers decided to pursue their "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 couple of corners" in the process. The short cuts by the doctors chosen by Shelly's attorneys are apparent from reading the doctors' letters.

Shelly's Petition must be denied due to her unclean hands. The 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 (4th Dist. 1997); *Crosstalk Prods. v. Jacobson*, 65 Cal. App. 4th 631, 647 (2d Dist. 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). Finally, California courts apply the doctrine of unclean hands to legal as well as equitable claims and to both tort and contract remedies. *Id.*

With regard to fraud, not all fraudulent behavior precludes a plaintiff from obtaining relief. *Camp v. Jeffer, Mangels, Butler & Marmaro*, 35 Cal. App. 4th 620, 638 (2d Dist. 1995). However, the fraudulent 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." *Id.* at

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[4] No reference is made to the letter, dated June 10, 2014, of Dr. Stephen L. Read attached to the Petition as Exhibit 14, since Dr. Read has no percipient knowledge, having made no interview or examination of Donald, and merely comments on the letters of other doctors.

639. 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." As such, to prove fraud, a party is required to prove five elements: "'(1) a *false representation* or concealment of a material fact (or, in some cases, an opinion) susceptible of knowledge, (2) made with *knowledge* of its falsity or without sufficient knowledge on the subject to warrant a representation, (3) with the *intent* to induce the person to whom it is made to act upon it; and such person must (4) act in *reliance* upon the representation (5) to his *damage*.'" *South Tahoe Gas Co. v. Hofmann Land Improvement Co.*, 25 Cal. App. 3d 750, 765 (1st Dist. 1972) (citations omitted) (emphasis in original).

Admittedly, there was no disclosure to Donald by Shelly or either doctor that the alleged tests and examinations of Donald were in any way related to the Sterling Family Trust, or done for any legal purpose. Nor was there any disclosure by Shelly that Donald's supposed incapacity was at issue. To the contrary, Shelly told Donald that the "exam" is a continuation of and done as a result of the tests Donald underwent earlier at Cedars-Sinai.

Moreover, the letter from Dr. Spar specifically states that Donald was yanked out of his business meeting and tried to leave "the exam" on several occasions to go back to the meeting only to be stopped and prevented from leaving by Shelly.

All of these admissions come from Shelly and the two doctors and support Donald's position that the two doctors' letters were improperly and/or illegally obtained. As set forth above, in violation of both state and federal law, both doctors utilized privileged information and protected materials, not waived under the Sterling Family Trust, including the PET scan and the CAT scan done on May 16, 2014 and any information gathered by Dr. Platzer prior to May 19, 2014 when she abdicated her position as a treating physician to Donald and became a consultant and/or expert witness for Shelly, without Donald's knowledge, approval, or consent.

On May 19, 2014, Dr. Meril S. Platzer examined Donald at his Beverly Hills home. Dr. Platzer never inquired if Donald understood the nature of their meeting. She never inquired if Donald was aware why she was there. She also never informed Donald of her change of status, that is from treating physician for Donald to consultant/expert witness for Shelly. But Shelly

knew, and she had a duty to disclose this information to her husband and co-trustee. Shelly intentionally failed to disclose the information to Donald to gain a legal advantage over her husband, in violation of her fiduciary duties owed to Donald. At some point, Dr. Platzer, Donald, Shelly, and at least two other individuals end up at the Beverly Hills Hotel (which is located near Donald's residence). It is unclear at what point the purported medical examination ceased and at what point a social interaction began. Dr. Platzer's letter does not specify if she reached any of her purported conclusions based on the exchange at the Beverly Hills Hotel.

Like Dr. Platzer, Dr. Spar also failed to inform Donald about the purpose of their meeting. And again, Shelly was present and intentionally failed to inform Donald of her true intentions. In fact, as set forth in Dr. Spar's letter, Donald was called out of a "meeting with several attorneys" and "became impatient with the evaluation and wanted to return to a 'room full of six attorneys'. . . ." (Ex.11 to Shelly's Ptn, p. 80-81.)

Before the Court can even consider whether the doctors' letters were properly obtained (or that they fail to comply with the PEI Provision), the Court must hear evidence about when and how Shelly fraudulently orchestrated the medical examinations.

Even if Shelly had disclosed and given notice to Donald about the evaluations, which she most certainly did not, the doctors' letters fail to comply with the requirements of the PEI Provisions and are based upon illegally obtained material. Shelly makes conclusory statements about Donald's alleged deficits in mental function throughout her pleadings – none which amount to or show that Donald lacked contractual or testamentary 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 and 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. Nor do they make any findings under *Probate Code* sections 810 and 811. The letters are insufficient on their face.

The examinations and letters are defective and are incomplete. For example, Dr. Spar only asked Donald twenty-nine of thirty questions from the Folstein Mini-Mental Examination, neglecting to inquire "Where are we? (Floor)."

When Dr. Platzer conducted the Folstein Mini-Mental Examination, she appears to make changes to her opinion and determination of Donald's score by crossing out certain scores and then lowering the scores – resulting in a total score of twenty-three points. Of course, she then used this reduced number to justify her conclusion that Donald purportedly performed poorly on the Folstein Mini-Mental Examination.

Lastly, Shelly has used her Petition as a backdoor to rubberstamp her ouster of Donald as a co-trustee. This is not permissible. Shelly is in effect 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.

B. The Doctors' Letters and Medical Information Therein Were Obtained in Violation of the California Confidential Medical Information Act

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. National Collegiate Athletic Assn.*, 7 Cal. 4th 1 (1994). 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. Codified under California *Civil Code* section 56 et seq., CMIA specifically states that "a provider of health care[5] . . . 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)." *Cal. Civ. Code* § 56.10(a). None of the exceptions provided for under either subdivision (b) or (c) are applicable in this case.

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

[5] As defined in *Civil Code* section 56.05(m).

Removal Provision of the Sterling Family Trust is misplaced. The Removal Provision of the Sterling Family Trust merely implicates the federal law commonly known as the Health Insurance Portability and Accountability Act ("HIPAA") and the regulations thereunder. Thus, by its 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 supercede 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.

CMIA is intended to protect the confidentiality of individually identifiable medical information obtained from a patient by a health care provider while at the same time setting forth limited circumstances in which the release of such information to specified entities or individuals is permissible. *Loder v. City of Glendale*, 14 Cal. 4th 846 (1997). The basic scheme of CMIA is that a provider of health care must not disclose medical information without a written authorization from the patient. *Pettus v. Cole*, 49 Cal. App. 4th 402 (1996). Thus, to violate CMIA, a provider of health care must make an unauthorized, unexcused disclosure of privileged medical information. *Heller v. Norcal Mutual Ins. Co.*, 8 Cal. 4th 38 (1994). This is precisely what occurred in this case. At no time did Donald authorize, in writing or otherwise, Drs. Platzer and Spar to release his private medical information to Shelly, her attorneys, or any other third party for that matter. Yet, quite incredulously, and in direct contravention and violation of CMIA, that is precisely what happened – Donald's doctors released *his* private medical information without his written consent or authorization. CMIA is clear at Section 56.11 of the *Civil Code* 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. No valid authorization was given by Donald to Shelly, Shelly's lawyers, or

Donald's physicians with regard to the release of his medical records. 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.

C. Shelly Breached Her Fiduciaries Duties Toward Donald

It is obvious that Shelly sacrificed her fiduciary obligations to her husband for her gain and benefit. The Family Code prohibits this behavior between spouses.

Family Code § 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.

Cal. Fam. Code § 721 (emphasis added).

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.

As seen from the quoted statutes, California law imposes "the highest good faith and fair dealing on each spouse." *Fam. Code* § 721. Additionally, 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.

Additionally, as co-trustees, Donald and Shelly each owed fiduciary duties to each other as trustees and beneficiaries of their Family Trust.[6]

As explained above, the doctors' letters that Shelly obtained to remove Donald as a co-trustee were fraudulently obtained. In addition, the procedures in the Removal Provision of the Sterling Family Trust to remove a co-trustee are vague. Also vague in their interpretation, use, or application are the terms "reasonable" and "cooperate" in the Removal Provision.

Here, it was not fully disclosed to Donald by Shelly or the doctors 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.

Additionally, Shelly negotiated terms within the BTS for her own benefit, including the rights to tickets, parking, VIP passes, rings, and titles – all of these rights carrying significant monetary and intangible benefits. (*See* Petition Ex. 1 [BTS, p. 9-10 Lifetime Rights].) Shelly's assignment of these rights to The Sterling Family Trust as "community property" (*see* Petition Ex. 1) 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* Petition Ex. 2, p. 1-2.) If exercised, this would deprive Donald of up to $100,000,000 from his share of the community property interest.

The "benefits" retained by Shelly are a breach of her fiduciary duty under *Probate Code*

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[6] Perhaps the most famous quote defining the level of fiduciary duty is that of the Honorable Benjamin Cardozo in *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928), which states: "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. (*Wendt v. Fischer*, 243 N. Y. 439, 444). Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court."

section 16003.

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.

D. The Doctrine of Equitable Estoppel Does Not Assist Shelly's Cause

"One who seeks equity must do equity" is a well-established maxim of equity. 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. Another maxim of jurisprudence states: "He who comes into equity must come with clean hands." Her request to carry out her unilateral prospective sale of the Clippers should be denied.

When the Court finds that Donald's removal by Shelly was improper, the sale of the Clippers to Ballmer is not saved by the principals of "equitable estoppel" or "best interests." Both parties agreed at the hearing on June 30, 2014 that the briefing on these issues would be held. Donald respectfully reserves the right to further brief these issues, if necessary.

Concisely, under California law, Shelly cannot prove all of 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. Chicago Title Ins. Co.*, 199 Cal. App. 4th 1132 (6th Dist. 2011).

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 more than half a century, has always known that Donald never wanted to sell the Clippers, a unique asset in high demand and appreciating value, and never intended to sell the Clippers in his lifetime. 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.

Here, the statements made by, and on behalf of, Donald to Shelly, did not authorize Shelly to unilaterally sell the team without his consent and involvement. Donald intended only to allow 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, Shelly and the NBA did not rely on Donald's consent. By the time that Shelly actually entered into the BTS with Ballmer, she and her lawyers had already shifted to "Plan B" and did not come to final terms with 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.

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 20% to 30% of the team with the new owner. Shelly told Donald that she and her attorney had already agreed to that with 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 in the NBA's termination proceedings. When Donald realized that 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, the principals of equitable estoppel do not support Shelly's position and should not be relied upon by this Court.

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

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 that this Court should still authorize Shelly to unilaterally proceed with the sale of the Clippers to 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 beneficiaries of the Sterling Family Trust, namely to Donald. *See Cal. 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 $650,000,000) that would be due if the team was sold. Lastly, Shelly's assertion that the sale of the Clippers to Ballmer is in the best interests of both Shelly and Donald is wholly speculative. Sports franchises are unique assets in high demand such that the loss of the asset cannot be replaced and the harm to Donald is irreparable. No one can 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 Ballmer pay $2 billion for an asset he expected to decline in value?

Shelly's argument considers only her own interests, is speculative, and should be rejected. If necessary, Donald will further brief this issue prior to presentation before the Court.

IV. If the Court Finds that Donald Was Removed as a Co-Trustee, the Sale of the Clippers Does Not Fall Within Shelly's Limited Continuing Authority to Take Passive Acts in Winding Up the Sterling Family Trust

In the alternative, even if the Court decides that Shelly did remove Donald, the revocation of the Sterling Family Trust precludes Shelly from relying on her 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 Ballmer because (a) all rights and title to the Clippers are held by Shelly and Donald, as community property in their individual capacities, and not by Shelly as the former trustee, 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.

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

As averred by Shelly (and stipulated through counsel on June 30, 2014 at the Pre-Trial Conference), Donald exercised his unilateral right to revoke the Sterling Family Trust on June 9, 2014. This was prior to the Petition herein being executed or filed on June 11, 2014.

A. 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 the winding up of the trust. California law does not authorize a former trustee of a revocable inter vivos trust to take acts that are active.

Here, the terms of the Sterling Family Trust require immediate distribution. The Sterling Family Trust provides that upon revocation assets "shall promptly be distributed to the settlors as their community property." Shelly's reliance on the second sentence which states "the Trustee may retain sufficient assets to secure payment of liabilities lawfully incurred by the Trustee" (*see* Ex. 4 to Shelly's Ptn., p. 36, ¶ 2.5.a.) is unavailing because (1) until all conditions precedent are satisfied under the BTS, the Sterling Family Trust has incurred no liability to 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.

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 beneficiaries to afford them the opportunity to attribute liability to the trustee for their improper acts and transactions.

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. And 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. *Cal. 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 (1st Dist. 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 (1st Dist. 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. Subdivision (a) of *Probate Code* section 2631 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 Clippers is by no means the satisfaction of an outstanding liability.

Shelly's argument that she may continue to sell the Clippers to Ballmer, even though the Trust Instrument was revoked, is without merit. Shelly relies upon *Probate Code* section 15407(b), which states that on the termination of a trust, the trustee continues to have "powers reasonably necessary under the circumstances to wind up the affairs of the trust." However, an attempt to sell the Clippers, worth in excess of two billion dollars, is not a passive act and does not wind up the affairs of the Sterling Family Trust.

Shelly notes that 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." However, this reliance on a secondary source does not authorize her to unilaterally sell a two billion dollar asset.

Shelly's citation to *Botsford v. Haskins & Sells*, 81 Cal. App. 3d 780 (1st Dist. 1978) does not support her position that she may consummate the sale of the Clippers to Ballmer and instead supports Donald's position.

Botsford looks at *cases*[7] 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.

No case cited within *Botsford* permits a trustee to sell trust assets. Nor does the Restatement (Third) of Trusts § 89, also cited by Shelly, support her position. Shelly notes that the comments to Restatement (Third) of Trusts, Section 89 state that:

> 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.

However, the Restatement (Third) deals only with unsaleable interests.

Here, the terms of the Sterling Family Trust do not require or permit any additional time. The Sterling Family Trust assets "shall promptly be distributed to the settlors as their community property." (Sterling Family Trust, ¶ 2.5a.)

The Sterling Family Trust property, especially the Clippers, is readily saleable. Shelly affirmatively alleges in her Petition that, "[b]etween May 23, 2014, and May 29, 2014, [generally before the doctors' letters of May 27th and May 29th were available], Shelly and her advisors were in contact with at least twelve parties in connection with the sale of the Los Angeles

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[7] 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.***

Clippers, four of whom submitted formal bids . . . rang[ing] in value from $1.2 Billion to $2 Billion . . ." (Shelly's Ptn, 9:16-19.) The $2 billion bid was submitted by Ballmer and accepted by Shelly, as the purported sole trustee of the Sterling Family Trust.

In the alternative, 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 trust assets, which have reverted back to Donald and Shelly by operation of law and she cannot proceed with the sale of the Clippers to Ballmer.

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

In *Ball v. Mann*, 88 Cal. App. 2d 695, 699 (2d Dist. 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 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.*

Like in *Ball*, 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, Donald and Shelly.

Shelly incorrectly concludes that if she cannot consummate the sale of the Clippers to Ballmer, then Ballmer's rights under the BTS are extinguished. Shelly, without citing any legal authority, states that "[a] revocable trust cannot escape its binding contractual obligations by the

mere act of revocation after the contract has been formed." (Shelly Opp. 1:22-23.) She goes on to assume that Donald takes a wholly contradictory position. This is far from the case. Donald asserts that (1) as the former trustee of the Sterling Family Trust, Shelly cannot take any additional active role in the sale of the Clippers, and (2) any further action in the sale of the Clippers must be done by Shelly and Donald in their individual capacities.

Donald's revocation of the Sterling Family Trust in no way impedes Shelly and Donald from selling the Clippers to Ballmer if Donald agreed to do so. But, that is a big "if" since Donald certainly has not and does not agree to sell the Clippers to Ballmer under the present circumstances. 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.

In essence, the sale is now properly in the hands of Donald and Shelly, as individuals. Ballmer has claimed that he may maintain the right to commence an action against Shelly, or Shelly and Donald, for specific performance. The Legislature made it very clear through the enactment of *Probate Code* sections 18200 and 19001 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 (4th Dist. 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. Notwithstanding the foregoing, even if it is later determined that Ballmer had a valid contract, he still would not be able to sue for specific performance because a condition precedent was never met (namely, Shelly does not have Donald's consent, nor can she obtain a court order "blessing" the transaction) unless he waives the same.

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B. The BTS Requires Additional Acts and Is Contingent on Conditions

Precedent in Order for the Sale to Be Completed

Lastly, Shelly's argument that the BTS is fully enforceable at the present moment without any additional acts is unavailing. The BTS unequivocally contains a condition precedent, which requires either (1) Donald irrevocably consenting, in writing, to the sale of the Clippers to Ballmer, which consent includes the cessation/termination of any and all lawsuits that are then-pending against Ballmer or with respect to the sale, or (2) a court of competent jurisdiction over the Sterling Family Trust issuing a final and non-appealable order confirming Shelly's authority to unilaterally bind the Sterling Family Trust and sell the Clippers to Ballmer. (*See* Ex. 1 to Shelly's Ptn., p. 26); *Cal. Civil Code* § 1436. "A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." *Cal. Civ. Code* § 1436. Furthermore, "[b]efore any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party . . . ." *Cal. Civ. Code* § 1439. As such, because the BTS contains conditions precedent, Shelly has not irrevocably bound herself or the Sterling Family Trust to the BTS without the fulfillment of the above-mentioned conditions.

V. Relief Under Probate Code Section 1310(b) Is Inappropriate

For all of the reasons set forth herein and the unique nature of the asset in issue, the Clippers, relief under *Probate Code* section 1310(b) is inappropriate. To authorize and direct the sale of the Clippers without allowing the decision of this Court to be reviewed by the District Court of Appeals is improper.

CONCLUSION

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, 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

///

2. 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 fraud, false pretenses, undue influence, or in breach of her fiduciary duties to Donald as a co-trustee, as a co-settlor, and as her husband; and/or

3. If the Court finds that Donald was removed as co-trustee of the Sterling Family Trust, find that Shelly, as a former trustee of the Sterling Family Trust, does not have the continuing authority to sell the Clippers to Ballmer because (a) all rights and title to the Clippers are held by Shelly and Donald as community property in their individual capacities, 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, that the sale of the Clippers to Ballmer is not within the scope of Shelly's alleged wind-up authority.

Respectfully submitted,

DATED: July 3, 2014

BLOOM & RUTTENBERG

By: _____
GARY M. RUTTENBERG, ESQ.

Respectfully submitted,

DATED: July 3, 2014

GINZBURG & BRONSHTEYN, LLP

By: _____
ALEXANDER R. GINZBURG, ESQ.

Proof of Service

I, the undersigned, declare and say as follows:

I am 18 years of age or older, employed at the business noted above my signature which is in the county where any mailing herein states occurred, and not a party to the within actions.

On July 3, 2014, I caused to be served the documents(s) listed below my signature under the heading "Document(s) Served" by placing a copy of the document(s) (or the original, if so noted below) in individual envelope for each of the parties listed below my signature under the heading "Parties Served" (except for fax-only service), addressed to them at their last known addresses in this action exactly as shown (excepting parenthetical referenced to their capacity), there being U.S. Mail deliver service to those addresses used for service by mail, and by sealing said envelopes, and on the same day, as marked with "X" by –.

[X] **placing each envelope for collection and processing for mailing** following my firms ordinary business practice with which I am readily familiar and under which on the same day correspondence is so placed for mailing it is deposited in the ordinary course of business with the U.S. Postal Service at my business address, 1st-class postage fully prepaid.

[ ] **depositing** each envelope into the U.S. Mail with 1st-class postage fully prepaid at a mail box or collection facility in the city and state of my business address. "Parties Served" lists all parties and counsel served in the within matter, and their respective capacities. [required for federal cases, **including bankruptcy**, among others].

[ ] **faxing** each page of each document and this proof of service to the parties served at their last known fax numbers as listed below from a fax machine located at my business address which reported no errors and which produced a transmission confirmation report, a true copy [**X**] **email** each page of each document and this proof of service to the parties served at their last known email address and which produced a transmission confirmation report, a true copy.

[ ] **depositing** each envelope at a drop box or other facility in the city and state of my business address within the time and pursuant to procedures readily familiar to me necessary for delivery [ ] **by Federal Express** on the morning of the next business day or [ ] **by courier** on the same day, (use only if overnight or courier services authorized or as a supplement.).

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on July 3, 2014, at my business address, 11111 Santa Monica Blvd., Suite 1840, Los Angeles, California 90025-3352, in the County of Los Angeles.

BRENDA PAREDES

Document(s) Served (exact title)

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