SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Costa Mesa Justice Complex 3390 Harbor Boulevard Costa Mesa, CA 92626	
SHORT TITLE: Morgan-Trust	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2014-00726771-PR-TR-CMC**

I certify that I am not a party to this cause. I certify that a true copy of the above Statement of Decision - Probate MH dated 02/20/25 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Costa Mesa, California on 2/20/25. Following standard court practice the mailing will occur at Sacramento, California on 2/21/25.

OLDMAN, SALLUS & GOLD, LLP
16133 VENTURA BOULEVARD PENTHOUSE
ENCINO, CA 90436

Clerk of the Court, by: _____, Deputy

I certify that I am not a party to this cause. I certify that that the following document(s), Statement of Decision - Probate MH dated 02/20/25, was transmitted electronically by an Orange County Superior Court email server on February 20, 2025, at 8:26:17 AM PST. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

GREENBERG TRAURIG LLP
BERTZYKS@GTLAW.COM

GREENBERG TRAURIG LLP
CARMONAA@GTLAW.COM

OLDMAN, COOLEY, SALLUS, BIRNBERG, COLEMAN & GOLD, LLP
JGOLD@OCLSLAW.COM

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
GYAZDCHI@SHEPPARDMULLIN.COM

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
KFLETCHER@SHEPPARDMULLIN.COM

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
NVANBRUNT@SHEPPARDMULLIN.COM

Clerk of the Court, by: _____, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - COSTA MESA JUSTICE COMPLEX

IN RE THE **BEVERLY C. MORGAN FAMILY TRUST** AS AMENDED AND RESTATED ON NOVEMBER 6, 2013	30-2014-00726771 PR - TR - CMC **PROPOSED/TENTATIVE STATEMENT OF DECISION AND JUDGMENT AFTER TRIAL** Hon. Judge Ebrahim Baytieh Dept. CM5

INTRODUCTION

Dr. Beverly C. Morgan ("Beverly")[1] was born on May 19, 1925, and died on January 25, 2014, at the age 88, having lived a full life. After becoming destitute when her father died at a young age, Beverly worked as a flight attendant and a nurse before earning a medical degree from Duke University. After finishing her residency at Stanford and Colombia Universities, she became a trail blazer in the medical field as a pediatric cardiologist, and a successful investor and business executive.

Beverly created the Beverly C. Morgan Family Trust as amended and restated on November 6, 2013, ("Trust"). Beverly's main assets were held in the Trust. Sadly, the Trust-related conflict between

[1] Many of the individuals involved in this case share a surname. For clarity, the court uses first names. The court intends no disrespect. (*Morgan v. Superior Court* (2018) 23 Cal. App. 5th 1026 fn1; *Young v. McCoy* (2007) 147 Cal. App. 4th 1078, 1081 fn.2.)

her three adult children, Nancy Morgan Shurtleff ("Nancy"), Thomas E. Morgan III ("Thomas"),[2] John Morgan ("John"), resulted in this long-lasting litigation. Nancy is the oldest of Beverly's children, Thomas is two years younger than Nancy, and John is the youngest. Nancy's two adult children Kathleen and Jessica Shurtleff ("Nancy's daughters") also became involved in this litigation. Any reference in this statement of decision to "Trust" is a reference to the Beverly C. Morgan Family Trust as amended and restated on November 6, 2013.

When Beverly died in January 2014, Thomas succeeded her as trustee of the Trust. Litigation began almost immediately thereafter. On May 28, 2014, Nancy filed in Washington State a petition to construe the Trust's terms, asking that the Trust be reformed or invalidated on grounds of lack of capacity, undue influence, and fraudulent misrepresentations. On June 5, 2014, Thomas filed in the Superior Court of California, County of Orange, a petition for interpretation relating to the Trust. Nancy filed a motion to dismiss Thomas' petition for interpretation claiming that the California Superior Court lacked subject matter jurisdiction over the Trust, and also asserting that the Trust is situated in the State of Washington. Nancy also subsequently filed a motion to suspend Thomas as Trustee.

The court[3] denied the motion to suspend Thomas but imposed certain conditions, including a requirement that Thomas files an accounting of all Trust assets used to pay his personal litigation expenses and of all loans made by or to the Trust. After Thomas filed the accounting, the court issued an order suspending him finding the accounting was "so inadequate that its filing appears to be for the sole purpose of paying lip service to the Court's Order."

Bruce Hitchman ("Bruce H.")[4] and Lee Ann Hitchman ("Lee Ann") were appointed by the court on March 29, 2017, as the Trust's interim co-trustees. Consistent with the parties' references throughout the trial and in their written briefs, the court will refer to Bruce H. and Lee Ann collectively

---

[2] During the trial, attorneys also referred to Thomas E. Morgan as "Tom". Accordingly, any reference where the name "Tom" is used, that reference is also to Thomas.

[3] This and all subsequent references to "court" refers to the California Superior Court, in and for the County of Orange, unless specifically indicated otherwise.

[4] Since two other witnesses in this case also share the same first name as Bruce Hitchman, the court will refer to Bruce Hitchman as Bruce H. for the sake of clarity. The court intends no disrespect.

as either "the Hitchmans" or as "the interim co-trustees." The Hitchmans' business is named Hitchmans Fiduciaries and is sometimes also referred to in this statement of decision as HF. Similarly, and consistent with the references made by the parties throughout the trial and in their written briefs, the court will refer to the Hitchmans and their attorneys as "Team Hitchman,"[5] Thomas and his attorneys as "Team Thomas," Nancy, John, Nancy's daughters and all their attorneys as "Team Nancy."

On October 27, 2023, the following matters came regularly to trial in Department CM05 of the above listed court before the undersigned Judicial Officer:

1. First and Second Accounts Current and Report of Interim Co-Trustees, Petition for Settlement of Accounts, and for Ratification of Attorneys' Fees and Interim Co-Trustees Fees Paid filed by the Hitchmans on October 17, 2018, also referred to as First Accounting Petition. (ROA 1784.)[6]

2. All relevant supplement(s) and objections to the First Accounting Petition. (ROA 1923 and 1943.)

3. Amended Petition filed by Thomas against the Hitchmans on November 22, 2019, for Instructions, Damages for Failure to Assert Claim (relating to Richard Pech), Disgorgement of Fees for Failure to Disclose Conflict of Interest in Order to Secure and Preserve Appointment (relating to Richard Coombs), and Damages for Breach of Fiduciary Duty, also referred to as Thomas' Petition. (ROA 2590.)

[5] Unless otherwise specifically indicated, the Hitchmans' attorneys referenced by the use of the term "Team Hitchman" do not include the attorneys from Sheppard, Mullin, Richter & Hampton LLP who excellently represented the Hitchmans during this trial, namely, Mr. Nicholas Van Brunt, Ms. Golanz Yazdchi, and Ms. Kendal Fletcher.

[6] All references to ROA numbers in this statement of decision are references to the Register of Actions of this case. The parties stipulated that the court may consider all pleadings filed in this case as reflected in the Register of Actions. In addition, all relevant such pleadings were marked by the parties as trial exhibits and were admitted into evidence by stipulation/judicial notice. In most instances, in this statement of decision the court refers to relevant documents by their ROA number rather than by their trial exhibit number.

4. All relevant supplement(s) and objections to the above listed Amended Petition. (ROA 2569, 2635, and 2681.)

5. Third and Final Account/Report and Petition filed by the Hitchmans on December 13, 2019, for Settlement of Account, for Ratification of Attorneys' Fees Paid and Interim Co-Trustees Fees Paid, for Approval of Currently Outstanding Fees and Costs, and for Exoneration of Bond. (ROA 2598.) This Account/Report and Petition will also be referred to as Final Accounting Petition.

6. All relevant supplement(s) and objections to the above listed Final Account/Report and Petition. (ROA 2677 and 2760.)

The trial started on October 27, 2023, and it consumed 60 separate court sessions on 60 separate court dates, totaling 43 full trial days. The evidence-taking and argument portion of the trial ended on October 28, 2024, therefore spanning a period of one year and one day. During the trial, the parties introduced 1044 exhibits, in addition to dozens of pleadings in the court's file that the parties stipulated the court could consider and rely upon in making findings and ruling. The length of time between the start of the trial and the last day of trial was mostly to accommodate the availability of the parties, the attorneys, and the witnesses.

The Hitchmans were **excellently** represented during the trial by Mr. Nicholas J. Van Brunt, Ms. Golnaz Yazdchi, and Ms. Kendal E. Fletcher with the law firm of Sheppard, Mullin, Richter & Hampton, LLP.

Thomas was **excellently** represented by Mr. Scott D. Bertzyk with the law firm of Greenberg Traurig, LLP, and Mr. Justin B. Gold with the law firm of Oldman, Sallus, & Gold, LLP.

In addition to their oral closing arguments, the parties also submitted written closing briefs. (ROA 3738 and 3741.) The Hitchmans' closing argument brief is 179 pages long, and Thomas' is 108 pages long. In their oral closing arguments, both parties used digital visual aid consisting of PowerPoint

presentations containing video and audio clips. The court, to ensure the completeness of the record, ordered the parties to lodge in the court's file digital copies (on thumb drives) of their respective closing argument PowerPoint presentations.

On October 28, 2024, at the conclusion of the oral closing arguments, the court gave the parties the opportunity to submit points and authorities relating to 4 separate legal questions posed by the court. The court also gave the parties 30 days to file a joint statement relating to the completeness of the record, indicating that the matters will be taken under submission on November 27, 2024. (ROA 3771.)

On October 30, and 31, 2024, the parties lodged with the court the requested thumb drives. (ROA 3763 and 3768.) The Hitchmans PowerPoint presentation consists of 267 slides. Thomas' PowerPoint presentation consists of 734 slides.

On November 26, 2024, the parties filed the joint statement as previously ordered by the court. (ROA 3790.) On November 27, 2024, the parties submitted their respective points and authorities regarding the legal questions posed by the court at the conclusion of closing arguments. (ROA 3795 and 3799.)

On November 27, 2024, the court took the pending matters under submission. Fifty-four court days (eighty-five calendar days) after the matters were taken under submission, the court now issues this Proposed/Tentative Statement of Decision and Judgment/Ruling after trial pursuant to California Rules of Court, Rule 3.1590 (c)(1). The court gives the parties **twenty calendar days** from the date of service of this proposed statement of decision to submit any objections pursuant to California Rules of Court, Rule 3.1590 (g).[7] Objections or requests for clarifications filed in response to this proposed statement of decision should be consistent with the legal authorities that describe the limited purposes of objections at this procedural stage of the case. (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal. App. 4th 1372, 1380; *Yield Dynamics, Inc. v. TEA Sys. Corp.* (2007) 154 Cal. App. 4th 547, 560; *Heaps v. Heaps* (2004) 124 Cal. App. 4th 286, 292 ("The main purpose of an objection to a proposed

[7] The court uses the terms **proposed** statement of decision and **tentative** statement of decision interchangeably as these terms are used in California Rules of Court, Rule 3.1590.

statement of decision is not to reargue the merits, but to bring to the court's attention inconsistencies between the court's ruling and the document that is supposed to embody and explain that ruling").)

LEGAL PRINCIPLES

In this statement of decision, the court provides the "factual and legal basis for its decision as to each of the principal controverted issues at trial." (Code of Civil Procedure section 632; accord Cal. Rules of Court, rule 3.1590(c)(1).) The court does so without exploring every dispute, recounting every fact, or citing every pertinent authority. (*In re Marriage of Balcof* (2006) 141 Cal. App. 4th 1509, 1531; *Muzquiz v. City of Emeryville* (2000) 79 Cal. App. 4th 1106, 1125.) Principal controverted issues are those that are relevant and essential to the judgment and closely related to the ultimate issues in the case. (*Id.*) It is well settled that "a trial court is not required to respond point by point to issues posed in a request for a statement of decision. [ ] The court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case. [citations omitted.] … trial court is not required to make an express finding of fact on every factual matter controverted at trial, where the statement of decision sufficiently disposes of all the basic issues in the case." (*Ermoian v. Desert Hosp.* (2007) 152 Cal. App. 4th 475, 500.)

It is equally well settled that a statement of decision need not include findings on each and every subsidiary matter on which evidence was presented at trial, which are often referred to as "evidentiary facts," although they may be relevant to the ultimate issue(s) of fact. (*Muzquiz, supra,* at p. 1124; *Ermoian, supra,* at pp. 499-500, finding that the trial court was not required to respond "point by point" to every separate issue posed in plaintiffs' request for a statement of decision, which she argued should also be construed as objections to defendant's proposed statement of decision.) In *Bauer v. Bauer* (1996) 46 Cal. App. 4th 1106, 1118, the Court of Appeal ruled that the trial court is not required to make an express finding of fact on every factual matter controverted at trial where the statement of decision sufficiently disposes of all the basic issues in the case.

Legal and factual citations listed in this statement of decision in support of findings are intended to be illustrative of the legal authority and/or evidence upon which the findings are based, not

exhaustive citations of all legal authority and/or evidence supporting those findings. The absence of a citation to legal authority and/or evidence should not be understood to mean that those findings are unsupported by legal authority and/or evidence.

In reaching all the factual and legal conclusions underlying the court's conclusions as listed in this statement of decision, the court has carefully reviewed and considered **all** the evidence and arguments presented during the trial, including testimonial as well as documentary evidence. The court had the opportunity to view the witnesses firsthand seeing their mannerisms, demeanor, body language, and facial expressions, while also hearing their tone of voice. The court paid close attention to how the witnesses answered questions on both direct and cross-examination, and the court gave weight, as appropriate, if a witness' demeanor changed between direct and cross examination.

As to each of the witnesses who testified during this trial, the court has considered and weighed all applicable factors for credibility, including but not limited to the often underestimated *common-sense*, and all the factors listed in Evidence Code section 780.

Evidence Code section 780 indicates that except as otherwise provided by statute, the court may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of the witness' testimony, including but not limited to any of the following: (a) the witness' demeanor while testifying and the manner in which the witness testifies; (b) the character of the witness' testimony; (c) the extent of the witness' capacity to perceive, to recollect, or to communicate any matter about which the witness testifies; (d) the extent of the witness' opportunity to perceive any matter about which the witness testifies; (e) the witness' character for honesty or veracity or their opposites; (f) the existence or nonexistence of a bias, interest, or other motive; (g) a statement previously made by the witness that is consistent with the witness' testimony at the trial; (h) a statement made by the witness that is inconsistent with any part of the witness' testimony at the trial; (i) the existence or nonexistence of any fact testified to by the witness; (j) the witness' attitude toward the action in which the witness testifies or toward the giving of testimony; and/or (k) the witness' admission of untruthfulness.

Paramount Consideration in Trust Litigations

The paramount rule in the construction of testamentary instruments such as a trust, to which all other rules must yield, is that a trust is to be construed according to the lawful intention of the testator as expressed in the trust, and this lawful intention must be given effect as far as possible. (*Estate of Duke* (2015) 61 Cal. 4th 871, 190; *Schwan v. Permann* (2018) 28 Cal. App. 5th 678, 239; *Sefton v. Sefton* (2015) 236 Cal. App. 4th 159, 187).

As early as over a century ago, the California Supreme Court observed that while "it is true that a legacy is presumed to be general unless it clearly appears to be specific, especially where it is of a pecuniary character, the intent of the testator necessarily controls, and where it appears that his intent was to give a particular thing or a given sum of money, not generally, but only from a specified and definitely ascertained source, the court has no choice but to give effect to that intent." (*In re Jepson Estate* (1919) 181 Cal. 745, 747.) Citing this Supreme Court case as authority, the Court of Appeal observed in 1955 that regardless "of statutory definitions, the fundamental and controlling factor is the intent of the testator at the time the will [or trust] was drafted as expressed in the will [or trust] when considered as a whole and in the light of the surrounding circumstances." (*In re Loescher's Estate* (1955) 133 Cal. App. 2nd 589, 594.) In 1963, the Court of Appeal observed in a trust related dispute that the "cardinal rule is that the intent of the testator is the controlling factor." (*In re Patten's Estate* (1963) 217 Cal. App. 2nd 167, 171.)

In this very specific trust case, our own District Court of Appeal reemphasized that in "short, it comes down to the question, what was the intent of the testator as to this matter? H[er] intention, if in accordance with the law, is the all controlling factor. What [s]he intended is to be gathered from a consideration of the whole instrument creating the trust, the nature and object of the trust and all other circumstances which have a bearing on the question." (*Morgan v. Superior Court* (2018) 23 Cal. App. 5th 1026.)

In a more recent case, the Court of Appeal again observed that the "primary rule in construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the trustor or settlor. The intention of the transferor as expressed in the [trust] instrument controls the legal effect of the

dispositions made in the instrument. The centerpiece of interpretation, of course, is the language contained in ... the trust document. One of the axioms is that words are to be taken in their ordinary and grammatical sense, unless a clear intention to the contrary can be ascertained." (*Städel Art Museum v. Mulvihill* (2023) 96 Cal. App. 5th 283, 293; internal citations omitted.)

As discussed in more details in this statement of decision, the Hitchmans' adversarial and harmful conduct towards Thomas was, in most instances, contrary to the expressed wishes of Beverly. Furthermore, the Hitchmans' attempt to rely on certain terms of the Trust to shield themselves from accountability for their repeated breach of fiduciary duty is misplaced, and it is in contravention of Beverly's intent.

Burden of Proof

It is well settled that where the Probate Code does not specifically set forth a standard of review, the rule of practice applicable to civil actions apply. (Probate Code section 1000.) Therefore, whenever the Probate Code and the Welfare and Institutions Code (in connection with the allegations that Thomas committed financial elder abuse against Beverly) do not establish any contrary rule as to any of the issues to be decided by the court in this case, Evidence Code Section 500 governs this proceeding in connection with the burden of proof, except as to those issues where the Trust specifically and lawfully provides otherwise. (*Estate of Della Sala* (1999) 73 Cal. App. 4th 463; *Key v. Tyler* (2019) 34 Cal. App. 5th 505.) Accordingly, each party has the burden of proof as to each fact essential to their claim for relief, unless specifically indicated otherwise pursuant to the lawful terms of the Trust.

Evidence Code section 500 indicates that except "as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." As used in Evidence Code section 500, the burden of proof means the obligation of a party to produce a particular state of conviction in the mind of the trier of fact as to the existence or nonexistence of a fact. As listed in Evidence Code section 115, "burden of proof" means the obligation of a party to establish "by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court."

It is well settled that except "as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evidence Code section 115.) Therefore, if this requisite degree of conviction is not achieved as to the existence of a particular fact, the trier of fact must assume that the fact does not exist. Usually, this burden of proof requires a party to convince the trier of fact that the existence of a particular fact is more probable than its nonexistence - a degree of proof usually described as proof by a preponderance of the evidence. (Evidence Code section 115; Witkin, California Evidence section 59 (1958).)

In connection with Thomas' request for exemplary damages, the law requires that Thomas proves "by clear and convincing evidence that" the Hitchmans acted with "oppression, fraud, or malice." (Civil Code section 3294 (a).) The "standard of proof known as clear and convincing evidence demands a degree of certainty greater than that involved with the preponderance standard, but less than what is required by the standard of proof beyond a reasonable doubt. This intermediate standard requires a finding of high probability." (*Conservatorship of O.B.* (2020) 9 Cal. 5th 989, 998–99; internal quotations omitted.)

Accordingly, the preponderance of the evidence standard of proof simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. On the other hand, the clear and convincing evidence standard of proof requires a finding of high probability.

Capacity

During the trial, the Hitchmans attempted to explain their conduct in litigating against Thomas as their response to evidence showing that Beverly had diminished capacity at certain points in time when Thomas, according to the Hitchmans, committed financial elder abuse against Beverly while she had diminished capacity. The court finds this position to be unpersuasive, both factually and legally. To be clear, the question before the court is not whether Beverly had capacity when she executed the Trust, rather, the question before the court is whether the Hitchmans acted in good faith and based on competent facts available to them, at the time they acted, after a good faith investigation, when they litigated against Thomas by accusing him of undue influence and financial elder abuse of Beverly.

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 holding that a testator lacked testamentary capacity." (*Estate of Selb* (1948) 84 Cal. App. 2nd 46, 49; Probate Code section 6100.5.)

In the seminal case of *Greenway*, our own District Court of Appeal held that the "determination of a person's mental capacity is fact specific, and the level of required mental capacity changes depending on the issue at hand. Complicating matters are the multiple, and overlapping, statutes regarding the "capacity" of elders (anyone over the age of 65) found in the Probate Code, the Welfare and Institutions Code, the Civil Code, and the Family Code. After reviewing the relevant case law, we conclude mental capacity can be measured on a sliding scale, with marital capacity requiring the least amount of capacity, followed by testamentary capacity, and on the high end of the scale is the mental capacity required to enter contracts. … there is a presumption in favor of the person seeking to … devise a will, but not so in the context of a person executing a contract." (*In re Marriage of Greenway* (2013) 217 Cal. App. 4th 628, 639.)

Probate Code section 811 defines "unsound mind" deficit criteria, and Probate Code section 812 provides additional criteria to be considered when deciding whether a person lacks capacity to make decisions. "Except where otherwise provided by law, including, but not limited to the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following: (a) The rights, duties, and responsibilities created by, or affected by the decision. (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision. (c) The significant risks, benefits, and reasonable alternatives involved in the decision. Simply stated, the required level of understanding depends entirely on the complexity of the decision being made." (*Greenway, supra,* at pp. 640-641.)

Considering that the Trust in this case is a complex instrument, the court also considered the applicability of the case of *Anderson v. Hunt* (2011) 196 Cal. App. 4th 722 regarding contractual capacity as compared to testamentary capacity. In *Anderson*, the probate trial court held that the

testator's capacity to execute the trust amendments should be evaluated pursuant to sections 810 to 812 (contractual capacity), rather than section 6100.5 (testamentary capacity). The *Anderson* Court of Appeal held that when "determining whether a trustor had capacity to execute a trust amendment that, in its content and complexity, closely resembles a will or codicil, we believe it is appropriate to look to section 6100.5 to determine when a person's mental deficits are sufficient to allow a court to conclude that the person lacks the ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question. (§ 811, subd. (b).) In other words, while section 6100.5 is not directly applicable to determine competency to make or amend a trust, it is made applicable through section 811 to trusts or trust amendments that are analogous to wills or codicils." (*Id.*, at p. 731; internal quotations omitted.)

Financial Elder Abuse

Welfare and Institutions Code section 15610.30 (a) defines financial elder abuse as abuse that occurs when a person does any of the following: (1) takes, secretes, appropriates, obtains or retains, any interest in real or person property, for a wrongful use, or with the intent to defraud or both; or (2) assists in doing any of the above described acts; or (3) does any of the above described acts through "undue influence" as defined in Welfare and Institutions Code section 15610.70.

Welfare and Institutions Code section 15610.30 (b) provides that a person shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person knew or should have known that his conduct is likely to be harmful to the elder.

The required standard of proof for a financial elder abuse claim is proof by a preponderance of the evidence. (Welfare and Institutions Code section 15657.5(a).) Welfare and Institutions Code section 15610.27 defines an "elder" as any person residing in California who is 65 years of age or older. Beverly was an elder residing in California at all relevant points in time.

The term "wrongful use" as used in the financial elder abuse statute means that the abuser knew or should have known that this conduct is likely to be harmful to the elder. (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal. App. 5th 841,856-857.)

Prior to 2009, Welfare and Institutions Code section 15610.30 (b) provided that a "person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith." The "bad faith" requirement was taken out by the Legislator by way of the 2008 Amendment, and it was replaced by "knew of should have known" that the conduct is likely to be harmful. As stated in a recent case, in 2008 the "Legislature passed further legislation enhancing the ability of elders subject to financial abuse to recover their property. Among other things, this 2008 legislation (1) redefined what it means to take property for a "wrongful use," replacing the prior requirement that "bad faith" be shown with a standard based on whether the defendant "knew or should have known" of "likely" harm to the elder." (*Newman v. Casey* (2024) 99 Cal. App. 5th 359, 384–85, 317.) Under both standard, "wrongful use" is required. (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal. App. 4th 522, 528.)

Applicability of Probate Code section 17206 & Equitable Powers

Probate Code section 17206 provides that the "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." It is well established that the powers of the probate court under Probate Code section 17206 in a trust dispute are comprehensive and include the ability to decide all incidental issues necessary to carry out the court's express powers to supervise the administration of a trust. (*Dunlap v. Mayer* (2021) 63 Cal. App. 5th 419; *Schwartz v. Labow* (2008) 164 Cal. App. 4th 417.)

The Court of Appeal observed that our "Supreme Court has recently reminded us that the Probate Code was intended to broaden the jurisdiction of the probate court so as to give that court jurisdiction over practically all controversies which might arise between the trustees and those claiming to be beneficiaries under the trust. … recognizes the probate court's inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust. (*Barefoot v. Jennings* (2020) 8 Cal. 5th 822, 827–828.)" (*Dunlap v. Mayer* (2021) 63 Cal. App. 5th 419, 424; internal citations and quotations omitted.)

Accordingly, it is well settled that to "preserve the trust and to respond to perceived breaches of trust, the probate court has wide, express powers to make any orders and take any other action necessary or proper to dispose of the matters presented by the section 17200 petition. … More important, the probate court has the inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust." (*Estate of Heggstad* (1993) 16 Cal. App. 4th 943, 951; internal quotations omitted.) This inherent equitable power of the probate court has long been recognized to encompass the authority to take remedial action. Under California trust law, a court can intervene to prevent or rectify abuses of a trustee's powers." (*Schwartz v. Labow, supra*, 164 Cal. App. 4th at pp. 427 - 429.)

Therefore, there is no dispute that Probate Court section 17206 grants the probate court the inherent power to take remedial action as necessary. The probate court's general supervisory powers extend to supervising the internal affairs and administration of trusts, which encompasses deciding on incidental issues that arise in the course of managing the trust. This broad jurisdiction is designed to ensure that the probate court can effectively oversee trust administration without needing additional petitions for every action required to manage and protect the trust's interests. Additionally, case law supports the conclusion that the probate court can act on its own initiative, *sua sponte*, in certain circumstances to protect the trust and its beneficiaries. This conclusion aligns with the probate court's inherent powers under section 17206 to supervise trust administration comprehensively and efficiently. (Probate Code section 17206; *Dunlap, supra*, *Schwartz, supra*.)

It is also well settled that this court is authorized to apply equitable principles in resolving the issues presented in this case. As our Supreme Court reminded us, "[w]e have held that although the probate court has no general equity jurisdiction, it does have the power to apply equitable and legal principles in order to assist its function as a probate court. … Using such discretion, the court can preserve trust assets and the rights of all purported beneficiaries while it adjudicates the standing issue." (*Barefoot v. Jennings* (2020) 8 Cal. 5th 822, 828–29.)

Accordingly, the court expressly relies, in part, on Probate Code section 17206 in making the findings listed in this statement of decision, and in issuing the below listed orders.

Fiduciary Duties of a Trustee

The fiduciary duties of a trustee are spelled out in the Probate Code as well as in decisional case law. The court considered all applicable legal guidelines and principles regarding the duties that the Hitchmans owed to the Trust and its beneficiaries, including Thomas. In addition, the court took into account that the Hitchmans were court appointed professional fiduciaries.

In the seminal case of *Moeller*, the Supreme Court teaches us that in "a trust relationship, then, the benefits belong to the beneficiaries and the burdens to the trustee. The office of trustee is thus by nature an onerous one, and the proper discharge of its duties necessitates great circumspection. Liability to beneficiaries for mismanagement of trust assets is merely one of the burdens professional trustees take on—for, presumably, an appropriate fee." (*Moeller v. Superior Court* (1197) 16 Cal. 4th 1124, 1134.) It is also well settled that professional co-trustees, like the Hitchmans, "are held to a higher standard of care in discharging their legal duties than are others." (*Id.*)

Probate Code section 16000 provides that on "acceptance of the trust, the trustee has a **duty** to administer the trust according to the **trust instrument** and, except to the extent the trust instrument provides otherwise, according to this division." (Emphasis added.)

A trustee owes a duty of loyalty to the beneficiaries because the "trustee has a duty to administer the trust solely in the interest of the beneficiaries." (Section 16002 (a).) This duty of loyalty "is the most fundamental duty of a trustee. … Its purpose is to protect the best interests of the beneficiaries. The duty of loyalty requires a trustee to subordinate his or her interests to those of the beneficiaries in every regard. … A trustee's motive in administering the trust is of paramount importance, and ensuring that the trustee will act in the sole interests of the beneficiaries rather than with some other motive is the principal object of the duty of loyalty." (*Uzyel v. Kadisha* (2010) 188 Cal. App. 4th 866, 905.)

Since this Trust had more than one beneficiary, it is well settled that "the trustee has a duty to deal impartially with them and shall act impartially in investing and managing the trust property, taking into account any **differing interests** of the beneficiaries." (Section 16003. Emphasis added.) [8] This duty of impartiality to multiple beneficiaries is important and operative even if the two or more

[8] All statutory references in this statement of decision are to the Probate Code, unless otherwise specifically indicated.

beneficiaries are on good terms and not fighting over the trust. When, like this case, the multiple beneficiaries were locked into a long-standing and contentious fight over the Trust when the Hitchmans were appointed as interim co-trustees, this duty of impartiality became that much more important.

In a situation where the beneficiaries are fighting (figuratively not literally), courts have repeatedly emphasized that when the beneficiaries are interested in the outcome of the litigation over which amendment of the trust should prevail, to the extent the trust counsel advocated for one amendment over another, "the trust counsel was representing the interests of one side of the dispute over the other, not representing the interests of the trust or the trustee." (*Whittlesey v. Aiello* (2002) 104 Cal. App. 4th 1221, 1231.)

Accordingly, the law in California is consistent with American Jurisprudence, which states that trustees "owe a duty to all trust beneficiaries, and must treat all equally. Unless the trust instrument itself provides otherwise, the trustee's duty to each beneficiary precludes it from favoring one party over another. Thus, a trustee must act impartially with respect to all beneficiaries, doing his or her best for the entire trust as a whole. A trustee who **violates** his or her duties to deal impartially with all beneficiaries risks **exposure to liability** for breach of trust. (76 Am.Jur.2d (2005) Trusts, § 359, fns. omitted, italics added.)" (*Hearst v. Ganzi* (2006) 145 Cal. App. 4th 1195, 1208; internal quotations omitted, and emphasis added.)

This duty of impartiality does not necessarily require the trustee to give *blind equal* balancing of the differing interests of the fighting/litigating beneficiaries, however, an impartial trustee is required to always balance these differing interests in a manner that is consistent with the beneficial interests, and the terms and purposes of the trust instrument. (Rest. 3rd of Trusts, section 79, com. (b) and (c).)

When it comes to the obligation to control and preserve trust property, a "trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property." (Section 16006.) This duty includes the obligation to preserve claims that a trust has against one who improperly took trust funds or trust assets.

It is well settled that a "trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee

to another person nor delegate the entire administration of the trust to a cotrustee or other person." Furthermore, in a case where the "trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter." (Section 16012 (a) and (b).)

In a situation where a trust has co-trustees, as is the case here, it is well settled that "each trustee has a duty to … participate in the administration of the trust [and to] take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust." (Section 16013.)

In discharging their responsibilities, a trustee has a "duty to apply the full extent of the trustee's skills." (Section 16014.)

As to the standard of care that a trustee owes to the trust and its beneficiaries, it is well settled that the "trustee shall administer the trust with reasonable care, skill, and caution **under the circumstances then prevailing** that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument." (Section 16040 (a). Emphasis added.) Accordingly, it is imperative that when applying this *prudent person* test, the court must evaluate and judge the trustee's conduct as of the time of the decision, action, or omission in question, and not based on any after-acquired facts.

It is well settled that where "a beneficiary seeks relief for a breach of trust, the beneficiary has the initial burden of proving the existence of a fiduciary duty and the trustee's failure to perform it. The burden then shifts to the trustee to justify its actions." (*Van de Kamp v. Bank of America* (1988) 204 Cal. App. 3rd 819, 853; internal citations omitted.)

Probate Code section 16461 (a) provides in relevant parts that, except as indicated in subdivision (b), "the trustee can be relieved of liability for breach of trust by provisions in the trust instrument." Subdivision (b) provides that a "provision in the trust instrument is not effective to relieve the trustee of liability … for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary. (Section 16461 (b).)

Good Faith Defense to Breach of Trust

Probate Code section 16440 provides that if the trustee commits a breach of a fiduciary duty, but the "trustee has acted reasonably and in good faith under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subdivision (a) if it would be equitable to do so." (Section 16440 (b).)

Advice of Counsel Defense

The advice of counsel defense to breaches of fiduciary duty is an affirmative defense requiring the Hitchmans, as the party seeking to benefit by it, to prove its applicability and all its elements. The "burden of proving this affirmative defense is, of course, on the party seeking to benefit by it." (*State Farm Mutual Auto Insurance Company v. Superior Court* (1991) 228 Cal. App. 3rd 721, 726; *Bertero v. National General Corp.* (1974) 13 Cal. 3rd 43.)

Obligation Relating to Malpractice Claim

In connection with Thomas' claim that the Hitchmans failed to either file a malpractice claim on behalf of the Trust against Pech within the statute of the limitations, or at least preserve such a claim within the statute of limitations, the Hitchmans argue that they did not have sufficient information to decide if the blame rests on Thomas' shoulder or on Pech's shoulder, and that was the reason they did not file or preserve such a claim. This factual basis, or lack of, relating to the Hitchmans' position will be discussed in more details below.

However, as a matter of law, it is well settled that for the statute of limitation to be triggered, suspicion of wrongdoing is sufficient. "The limitations period begins once the plaintiff has notice or information of circumstances to put a reasonable person on inquiry. A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Ignorance of the legal significance of known facts or the identity of wrongdoing will not delay the running of the statute. Because a plaintiff is under a duty to reasonably investigate and because a suspicion of wrongdoing, coupled with knowledge of the harm and its cause, will commence

the limitations period, suits are not likely to be unreasonably delayed, and those failing to act with reasonable dispatch will be barred. … A plaintiff is held to her actual knowledge as well as knowledge that could reasonably be discovered through investigation of sources open to her." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal. 3rd 1103, 1104-1109.)

Exemplary Damages

In connection with Thomas' request for exemplary damages, the law requires that Thomas proves "by clear and convincing evidence that" the Hitchmans acted with "oppression, fraud, or malice." (Civil Code section 3294 (a).) If Thomas succeeds in meeting this burden, then "in addition to the actual damages," Thomas "may recover damages for the sake of example and by way of punishing" the Hitchmans. (*Id.*)

In the context of exemplary damages, the term *malice* means "conduct which is intended … to cause injury … or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civil Code section 3294 (c)(1).) The term malice as used in "Civ. Code, § 3294, has been interpreted as meaning a conscious disregard of the probability the actor's conduct will result in injury to others." (*Dawes v. Superior Court* (1980) 111 Cal. App. 3rd 82, 84.) The term *oppression* means "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (*Id.*, Civil Code section 3294 (c)(2).) The term *fraud* means "an intentional misrepresentation, deceit, **or** concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights **or** otherwise causing injury." (*Id.*, Civil Code section 3294 (c)(3).)

It is a well-settled rule that there can be no award of exemplary damages without a finding of actual damages. (*Contractor's etc. Assn. v. Cal. Comp. Ins. Company* (1957) 48 Cal. 2nd 71, 77; *Kluge v. O'Gara* (1964) 227 Cal. App. 2nd 207, 209.) This legal rule is based on the principle that the defendant must have committed a tortious act before exemplary damages can be assessed. (*Brewer v. Second Baptist Church* (1948) 32 Cal. 2nd 791, 801–802.)

A defendant's financial condition is a required element for awarding exemplary damages. The Supreme Court opined: "In light of our holding that evidence of a defendant's financial condition is **essential** to support an award of punitive damages, Evidence Code section 500 mandates that the plaintiff bear the burden of proof on the issue. A plaintiff seeking punitive damages is **not** seeking a mere declaration by the [trier of fact] that the plaintiff is entitled to punitive damages in the **abstract**. The plaintiff is seeking an award of real money in a specific amount to be set by the [trier of fact]. Because the award, whatever its amount, cannot be sustained absent evidence of the defendant's financial condition, such evidence is essential to the claim for relief." (*Adams v. Murakami* (1991) 54 Cal. 3rd 105, 119; internal quotations omitted, and emphasis added.) The Supreme Court emphasized that the evidence of the defendant's financial condition is mandatory before an award of exemplary damages is rendered by the trier of fact: "The correct rule is that the evidence is **required**." (*Id.* at page 119; emphasis added.)

This requirement is not perfunctory and just merely a formality. It is a condition precedent to assessing any amount of exemplary damages. As the Supreme Court teaches us, exemplary "damages are to be assessed in an amount which, **depending upon** the defendant's financial worth and other factors, will deter him and others from committing similar misdeeds. Because compensatory damages are designed to make the plaintiff "whole," punitive damages are a "windfall" form of recovery." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal. 4th 704, 712, as modified (Nov. 23, 1994); internal citations omitted.)

Defamation *Per Se* and Reputational Damages

There are two types of defamation, libel or slander. (Civil Code section 44.) The elements of a cause of action alleging defamation involves a publication that is false, defamatory, unprivileged, and that has a natural tendency to injure or that causes special damages. (*Taus v. Loftus* (2007) 40 Cal. 4th 683.)

Civil Code section 45 provides, in relevant parts, that "Libel is a false and unprivileged publication by writing … which exposes any person to … contempt … or which has a tendency to

injure him in his occupation." Civil Code section 45a provides, in relevant parts, that a "libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face."

Civil Code section 46 provides, in relevant parts, that "Slander is a false and unprivileged publication, orally uttered … which … Tends directly to injure him in respect to his … profession, trade or business … imputing something with reference to his … profession, trade, or business that has a natural tendency to lessen its profits … or Which, by natural consequence, causes actual damage."

It is "well-settled that in an action for damages based on language **defamatory per se**, damage to plaintiff's reputation is conclusively presumed and he need not introduce any evidence of actual damages in order to obtain or sustain an award of damages." (*Contento v. Mitchell* (1972) 28 Cal. App. 3rd 356, 358; emphasis added.) In another case, the court of appeal observed that the "tactical significance of [plaintiff's] **libel per se** theory is obvious: If [plaintiff] can plead and prove libel per se it **need not** prove special damages … [D]amage to plaintiff's reputation is conclusively presumed and he need not introduce any evidence of actual damages in order to obtain or sustain an award of damages" (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal. App. 3rd 377, 382.)

Courts have long recognized that language may be defamatory "on its face even though it may also be susceptible of an innocent interpretation. The test is whether a defamatory meaning appears from the language itself without the necessity of explanation or the pleading of extrinsic facts. If it does, whether the charge be directly made or merely implied, the publication—without averment, colloquium, or innuendo—will, in itself, constitute a libel. … Perhaps the clearest example of libel per se is an accusation of crime." (*Id.*, at pages 384–385.)

The general rule is that the words constituting an alleged defamation must be specifically identified, if not pleaded verbatim, in the complaint. (*Kahn v. Bower* (1991) 232 Cal. App. 3rd 1599, 1612, rehearing denied and opinion modified (Sept. 6, 1991),) As one Court of Appeal stated it, in "defamation cases California follows a similar pleading rule, under which the words constituting an alleged libel must be specifically identified, if not pleaded verbatim, in the complaint. … description of allegedly defamatory statements was a paradigm of vagueness, and does not even come close to the

specificity required to state an actionable libel claim." (*Glassdoor, Inc. v. Superior Court* (2017) 9 Cal. App. 5th 623, 635; internal citations and quotations omitted.)

Recognizing that it is much easier to plead verbatim defamatory statements made in writing (libel) as compared to those made orally (slander), the Court of Appeal observed that it "is obvious that a plaintiff, attempting to plead and prove an alleged slander which occurred when he was not present, has a far more difficult task than when the defamation alleged is written, where it may be seen. As we have previously pointed out, there is no requirement that, in slander, the pleading and proof must be identical in order for a plaintiff to recover. Certainly, the disparagement set forth in the complaint must be sufficiently close to the actual words proved to acquaint a defendant with what he must defend against." (*Albertini v. Schaefer* (1979) 97 Cal. App. 3rd 822, 832–833.)

Trust Contest

It is well settled that a court appointed professional fiduciary appointed to administer and protect a trust should not initiate litigation to contest the validity of the trust. This well settled and basic legal principle is grounded in Probate Code section 16000 mandating that upon acceptance of the trust, the trustee has a duty to **administer** the trust according to the **trust instrument**. Therefore, it goes without saying that by trying to invalidate the trust instrument a trustee is supposed to administer, such trustee is violating the duty to administer the trust. A century ago, the California Supreme Court held that one "who has assumed the relation and undertaken to act in the capacity of a **trustee** and who has thereby come into the possession and control of the money or property of another cannot be **heard to deny the validity of the trust** under which he has admittedly acted and the benefits of which he has received and holds." (*England v. Winslow* (1925) 196 Cal. 260, 267; emphasis added.)

This basis *hornbook* legal principle does not just prohibit a trustee from filing a pleading with a prayer for relief requesting to invalidate the trust instrument, it also prohibits the filing of a pleading that, for all practical purposes, has the effect of invalidating the trust instrument. Actions that challenge the validity of a trust are actions that "contest the trust." Just like *form* should not be ranked over *substance*, so should *labels* not be given more weight than *content*.

In the *Stoker* case, the Court of Appeal held in 2011 that in "determining whether that constitutes an action to **contest the trust** within the purview of section 16061.8, we look to the **substance** of that petition and its "**practical effect**." We are not bound by its **label**." (*Estate of Stoker* (2011) 193 Cal. App. 4th 236, 241, as modified on denial of reh'g (Apr. 4, 2011). Emphasis added. *Saunders v. Cariss* (1990) 224 Cal. App. 3rd 905, 908.) In 2023, the Court of Appeal re-emphasized this legal principle. (*Hamilton v. Green* (2023) 98 Cal. App. 5th 417, 424.)

Simply stated, and as recognized by our Supreme Court over a century ago, "this states a most equitable rule, and one that is in full accord with the established doctrine in this state that an executor or administrator as such has **no part to play** in contests between heirs, devisees, or legatees disputing regarding the distribution of the estate." (*In re Hite's Estate* (1909) 155 Cal. 448, 456; emphasis added.)

Petitions for Trustee Fees, Cost of Litigation, and Attorney Fees

In connection with accounting petitions relating to trusts in probate matters, when a trustee submits an accounting petition, and a beneficiary objects to such accounting, the Supreme Court in a 1944 case provided the following guidance regarding who must do what.

> "On an accounting for a trust, the trustee does have a burden to establish the correctness of his accounts … This rule goes merely to items in the account. It does not require the trustee to anticipate and defend against charges of dereliction of duty and malfeasance which do not arise from anything on the face of his accounts but are grounded on other matters. It does not remove from a plaintiff who sues a trustee on charges of fraud and malfeasance the burden … of proving his charges. The trustee is entitled to the benefit of the presumptions of regularity and good faith." (*Neel v. Barnard* (1944) 24 Cal. 2nd 406, 420–21.)

Accordingly, the trustee has the burden of providing evidence that the accounting is correct, and the objecting beneficiary has the affirmative burden of proving his specific objections to the accounting. (*Estate of Vance* (1940) 141 Cal. 624.) If a beneficiary is objecting to an accounting submitted by the trustee based on the theory that the trustee breached a fiduciary duty, it is the beneficiary's burden to prove such breaches of fiduciary duty.

It is well settled that the "underlying principle which guides the court in allowing costs and attorneys' fees incidental to litigation out of a trust estate is that such litigation is a benefit and a service to the trust. Consequently, where the trust is not benefited by litigation, or did not stand to be benefited if the trustee had succeeded, there is no basis for the recovery of expenses out of the trust assets." (*Zahnleuter v. Mueller* (2023) 88 Cal. App. 5th 1294, 1305; internal citations and quotations omitted.)

Similarly, it is well settled that trustees may not be reimbursed for their litigation expenses, including the cost of retaining their attorneys, even if they succeed in their position, **if** they litigated without impartiality and for the benefit of one beneficiary against the benefit of another beneficiary. This is especially so if the trustees were motivated by partiality in favor of one beneficiary and bias against another beneficiary. (*Doolittle v. Exchange Bank* (2015) 241 Cal. App. 4th 529; *Terry v. Conlan* (2005) 131 Cal. App. 4th 1445; *Zahnleuter v. Mueller*, supra; *Whittlesey v. Aiello, supra.)*

Furthermore, trustees "are also under the duty to prove every item of their account by "satisfactory evidence"; the burden of proof is on them and not on the beneficiary; and any doubt arising from their failure to keep proper records, or from the nature of the proof they produce, must be resolved against them." (*In re McCabe's Estate* (1950) 98 Cal. App. 2nd 503, 505.) In addition, a trustee has the "burden … to itemize his fees and expenses and show they were reasonable." (*Estate of Moore* (2015) 240 Cal. App. 4th 1101, 1110.)

It has been established for a long time that within the context of probate and trust litigations, the "underlying principle which guides the court in allowing costs and attorneys' fees incidental to litigation out of a trust estate is that such litigation is **a benefit and a service** to the trust." (*Dingwell v. Seymour* (1928) 91 Cal. App. 483, 513.) It is certainly indisputable that it is the "right and duty of a trustee to employ counsel in the prosecution or defense of an action where in the proper administration of the trust **such action is necessary for the preservation of the trust**, and that such trustee may be reimbursed for such expenditures out of the trust fund." (*Id*.)

Probate Code section 17211 (b) provides that if a "beneficiary contests the trustee's account and the court determines that the contest was without reasonable cause and in bad faith, the court may

award against the contestant the compensation and costs of the trustee and other expenses and costs of litigation, including attorney's fees, incurred to defend the account."

Damages due to Breach of Fiduciary Duty Necessitating the Hiring of Attorneys

In connection with Thomas' claim that as a result of the Hitchmans' conduct in breaching their fiduciary duty to the Trust, and to Thomas as a beneficiary of the Trust, damages should be assessed against the Hitchmans for the money Thomas had to pay his attorneys to respond to the Hitchmans' breaches, the court considered the California Supreme Court's holding in the *Oasis West Reality* case. In that case, the Supreme Court opined as follows: "we conclude that Oasis has set forth a prima facie case of actual injury and entitlement to damages. Oasis asserts that because of [the attorney's breach of fiduciary duty] … it was compelled to protect its rights by retaining legal counsel … It is the established rule that attorney fees incurred as a direct result of another's tort are recoverable damages. … In particular, recoverable damages include the expense of retaining another attorney when reasonably necessary to attempt to avoid or minimize the consequences of the former attorney's negligence. (*Oasis W. Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 826; internal quotations omitted.)

This claim by Thomas for attorney fees as damages resulting (according to Thomas) from the Hitchmans' breaches is to be analyzed *differently* than the typical request for post-trial attorney fees by a prevailing party. Simply stated, asking for attorney fees as damages triggers different rules than asking for attorney fees post-trial as costs of suit. The *Mai* case is informative on this topic.

> "For that reason, it is critical to distinguish attorney's fees as damages from attorney's fees *qua* attorney's fees. … Although this fundamental distinction has been described repeatedly … it persists in causing occasional confusion in both trial and appellate courts. But the distinction is far more than academic. It affects the burden that plaintiffs bear to produce evidence in support of their substantive claims, and it differs in significant ways from the requirements for a posttrial motion for fees as costs. … Under established Supreme Court precedent, invoices are admissible to support a plaintiff's testimony that certain amounts were paid and provide a *prima facie* showing that the amounts were reasonable. … Notwithstanding *Copenbarger's* disinclination to decide the issue, case law is quite clear that the court can take judicial notice of documents in the court file. … More importantly, judicial notice of such documents is proper for the specific purpose of establishing the nature and extent of [legal] services." (*Mai v. HKT Cal, Inc.* (2021) 66 Cal. App. 5th 504 – 524.)

Costs of Litigation

It is well settled that the standard for awarding costs in trust litigations is primarily based on whether the litigation benefits the trust, and such fees and costs can be awarded from trust assets if the litigation is deemed to benefit the trust, or it can be paid from other sources. (*Pizarro v. Reynoso* (2017) 10 Cal. App. 5th 172.) Probate Code section 1002 provides that unless "it is otherwise provided by this code or by rules adopted by the Judicial Council, either the superior court or the court on appeal may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require."

Attorney "fees deriving from probate court litigation are subject to concerns sufficiently unique, we believe, to distinguish them from fees generated in ordinary civil litigation. … Moreover, the probate court enjoys broad equitable powers over the trusts within its jurisdiction. … This discretion derives not simply from judicial gloss, but from the Probate Code itself. For example, although Code of Civil Procedure section 1032, subdivision (b) entitles a prevailing party in ordinary civil litigation to costs as a matter of right, the probate court retains discretion to decide not only *whether* costs should be paid, but also, if they are awarded, who will pay and who recover them." (*Hollaway v. Edwards* (1998) 68 Cal. App. 4th 94, 98–99)

The court relied on Probate Code section 1002 and the above listed decisional law, as well as all other applicable legal principles and laws, in ruling on the issue of costs and attorney fees as indicated below. The court notes that in considering and ruling on the request for damages by Thomas based on his allegations as detailed in his Amended Petition, namely, that part of his damages include the money he had to spend on lawyers to defend himself in the face of the Hitchmans' breaches of their fiduciary duties, the court relied on the legal principles applicable to the issue of attorney fees as damages separately from ruling on the issue of post-trial attorney fees as cost of litigation.

///

///

PROCEDURAL BACKGROUND, SUMMARY OF FACTS & FACTUAL FINDINGS[9]

In making its decision, the court considered all the evidence introduced during the trial, as well as matters judicially noticed by the court at the request of the parties. As explained elsewhere in this statement of decision, the court is not listing in this statement of decision all the evidence introduced during the trial that was relied upon by the court in making its decision.

Throughout her life, Beverly successfully invested in commercial real estate, including in mobile home parks. Thomas worked closely with Beverly taking on the responsibility of managing her investments. Morgan Partners Inc. ("MPI") is the business entity incorporated in Washington State through which Thomas managed the Trust's assets. The initial owners of MPI were Beverly and her three children Thomas, Nancy, and John. Subsequently, Thomas bought out his two siblings' interests in MPI. After Beverly's passing, Thomas succeeded to his mother's interest in MPI and became the 100% owner of MPI. Consistent with the terms of the Trust as amended and restated on November 6, 2013, Thomas was appointed as the trustee of the Trust upon the passing of Beverly. (Exhibit 23.)[10]

At all times relevant to this litigation, the Trust had ownership interests in many real estate properties and in many mobile home parks, including a property referred to as Lamplighter Chino. MPI was the manager of many, if not all, of the Trust real estate property, including Lamplighter Chino. In 2017, the Trust held a 51% interest in Lamplighter Chino, Thomas held a 20% interest, and Nancy held a 29% interest. In 2017, Lamplighter Chino was considered as one of the most valuable and higher cash generating assets of the Trust, with an estimated value of around $24 million. At the same time in

[9] The relevant facts and procedural history of this probate proceeding have been derived from the court's file (Evid. Code, § 452, subd. (d)(1)), matters judicially noticed at the request of the parties, testimonial and documentary evidence introduced during the trial, the stipulations of the parties, and the Court of Appeal's published opinion in *Morgan v. Superior Court* (2018) 23 Cal. App. 5th 1026, discussed below in more details. The parties' stipulations include the agreement for the court to consider all pleadings previously filed in this case. In relying on the Court of Appeal's opinion as part of the factual and procedural background of the case, the court is acting pursuant to the doctrine of the law of the case (California Rules of Court, Rule 8.1115 (b) and *Schmier v. Superior Court* (2000) 78 Cal. App. 4th 703, 706).

[10] All references to exhibits in this statement of decision are references to trial exhibits, unless specifically otherwise indicated.

2017, the Trust held a very small interest in a property called Covina Hills that was mostly owned by Thomas and was managed by MPI. Newport Pacific Capital Company ("Newport Pacific") was the property management company that MPI used to manage Lamplighter Chino and Covina Hills. In June of 2017, Lamplighter Chino's Operating Bank Account was with Bank of America and was managed by Thomas through MPI. Thomas had a long-lasting business relationship with Bank of America.

On May 30, 2014, Lamplighter Chino entered into a loan security agreement whereby it borrowed $14,278,000 from PNC Bank ("PNC"). Lamplighter Chino also obtained a $6,000,000 line of credit from PNC. Thomas is the personal guarantor of the PNC loan and line of credit. The PNC loan and line of credit were still operational in June of 2017.

This litigation started on June 5, 2014, when Thomas, then represented by attorney Ricard Pech ("Pech") filed a petition for interpretation of the Trust under Probate Code section 17200. (ROA 2.) On July 8, 2014, Nancy filed a motion to dismiss Thomas's petition for interpretation claiming that the California Superior Court lacked subject matter jurisdiction over the Trust and asserting that the Trust is situated in the State of Washington. (ROA 8.) On July 29, 2014, Thomas filed an objection to Nancy's motion, and on August 4, 2014, Nancy filed objections to Thomas' petition. (ROA 22 and 36.)

On September 26, 2014, Nancy filed a petition for interpretation of the Trust under Probate Code sections 850 and 17200. Nancy requested damages against Thomas and his removal as trustee claiming that the 2013 amendment of the Trust was the result of undue influence, elder abuse, and fraud. Nancy also claimed that Beverly lacked the capacity to execute the 2013 amendment. (ROA 131.) On November 17, 2014, Nancy filed a petition to confirm removal of Thomas as trustee and for an order seeking to suspend his powers and to direct him to immediately turnover Trust assets. (ROA 180.)

On January 12, 2014, Thomas filed his objection to Nancy's petition to confirm his removal as trustee *et sec*. (ROA 240.) Throughout all the relevant times relating to this case, Nancy was represented by a team of attorneys led by Bruce McDermott ("McDermott") and Teresa Byers ("Byers"). Throughout all the relevant times relating to this case, John and Nancy's daughters were represented by a team of attorneys led by Thomas Garrett ("Garrett").

On January 30, 2015, Nancy filed her amended petition for interpretation of the Trust requesting damages against Thomas and his removal as trustee claiming that the 2013 amendment of the Trust was the result of undue influence, elder abuse, and fraud. Nancy continued to claim that Beverly lacked the capacity to execute the 2013 amendment. (ROA 270.) On June 11, 2015, Thomas filed his answer to Nancy's amended petition for interpretation. (ROA 384.) By this time of the litigation, Nancy's brother John, and Nancy's two children Kathleen and Jessica Shurtleff, joined the litigation on the side of Nancy and in opposition of Thomas. John and Nancy's two daughters, in addition to Thomas and Nancy, are beneficiaries of the Trust.

On November 1, 2016, Nancy, John, and Nancy's two daughters, filed a motion to suspend Thomas' powers as trustee. (ROA 1187 and 1191.) On January 5, 2017, Thomas filed a request for an evidentiary hearing in connection with Nancy's request to suspend his powers as trustee. (ROA 1277.)

On January 18, 2017, the court in a ruling issued by the Honorable Judge Kim Hubbard, denied the motion to suspend Thomas as a trustee indicating that the trial on the then pending petitions was scheduled in three months on April 17, 2017, and that the appointment of a temporary successor trustee pending the outcome of the trial "wound not be cost effective."

However, Judge Hubbard issued the following orders relating to Thomas: "1) Thomas is not to use Trust Assets, directly or indirectly, to pay anyone for his personal defense in this or any other legal proceeding without leave of court. "Personal defense" is defined as including but not limited to defense against claims associated with undue influence, elder abuse, disinheritance for elder abuse, fraud or intentional misrepresentation, conversion, recovery of property under Probate Code 850 and it does not include any action wherein Thomas is named in his capacity as trustee solely. 2) Thomas is not to loan trust assets, leverage trust assets, or in any way impair the value of trust through borrowing, loans, transfers of cash, or other means or to cause the Trust to borrow money, without leave of court. 3) Thomas is to file and serve, within 60 days from the date of this order, an accounting of: a) all trust assets spent, incurred or **allocated to the Trust, to defend Thomas in his personal capacity**, again defined to include defense expenses associated with claims of undue influence, elder abuse, disinheritance for elder abuse, fraud or intentional misrepresentation, conversion, and recovery of

property under Probate Code 850 and b) all loans made to or by the Trust since 6/5/2014." (ROA 1279; emphasis added.)

On February 23, 2017, over Thomas' objection, Judge Hubbard granted Nancy's third request for a trial continuance, and the April 17, 2017, trial date was continued to May 15, 2017. (ROA 1307 and 1313.)

On March 22, 2017, at 11:46 AM, Nancy, John, and Nancy's daughters jointly filed an *ex parte* application seeking temporary suspension of Thomas as trustee for his failure to obey the court's order to file an accounting. (ROA 1334.) On that same date (March 22, 2017), and less than 2 hours later (1:30 PM), Thomas' attorney Pech filed an *accounting* in response to Judge Hubbard's January 18, 2017, order. (ROA 1340.) The totality of the information provided by this *so-called accounting* is as follows: "The amount of trust assets spent or incurred by, or allocated to, the Trust, to defend Morgan in his personal capacity is $254,650.00. The loans made to the Trust since June 5, 2014 is $0; however, the loans made to the Beverly C. Morgan Administrative Trust since June 5, 2014 total $2,800,000. The loans made by the Trust and the Beverly C. Morgan Administrative Trust since June 5, 2014 is $1,000,000." (ROA 1340, page 2, lines 2 to 7.) About 30 minutes later (March 22, 2017, at 1:59 PM),[11] the attorneys for John and Nancy's daughters withdrew the above listed jointly filed *ex parte* application. (ROA 1342.)

On Thursday, March 23, 2017, Judge Hubbard issued a minute order indicating as follows: "the accounting that was filed is wholly inadequate and does not conform, in any respect, to the accountings required by the Court. The accounting is, in fact, **so inadequate** that its filing appears to be for the **sole purpose of paying lip service to the Court's order**. Therefore, the Court **intends to suspend** the current Trustee and appoint an interim PPF trustee. Parties are ordered to meet and confer as to who that individual will be. They may present the Court with three options and the Court will choose. If they are unable to agree on three PPF's, the Court will make that decision." (ROA 1343. Emphasis added.) Immediately after Judge Hubbard indicated her intent to suspend Thomas and appoint a private

[11] The references to the exact times certain documents were filed with the court are based on the timestamps on the documents showing the exact time the documents were electronically filed.

professional fiduciary ("PPF") as interim co-trustees, attorneys for Team Nancy contacted the Hitchmans to determine if Team Nancy wanted to nominate the Hitchmans for such appointment.

On Monday March 27, 2017, McDermott and Garrett held a conference call with Bruce H. regarding the Hitchmans potentially being nominated by Team Nancy to act as interim co-trustees in this case. During this conference call, Garrett and McDermott's offices emailed documents to Bruce H. regarding the case. During that first call between Team Nancy's attorneys and Bruce H. on Monday, March 27, 2017, four days after Judge Hubbard indicated her intent to suspend Thomas and appoint a PPF as an interim co-trustees, Garrett and McDermott told Bruce H. that Team Nancy's nominations of three "private professional fiduciaries requested by the court **hinged** on the ability of each to have the time and resources for **quick action** on this matter and **Bruce assured us** [Garrett and McDermott] that this was the case." (Exhibit 71. Emphasis added.)

On March 30, 2017, the very next day after Judge Hubbard appointed the Hitchmans, Garrett emailed attorney John Glowacki ("Glowacki") with carbon copy to attorney Cynthia Roehl ("Roehl"), Bruce H., Lee Ann, McDermott, Byers, as well as other employees of the Roehl & Glowacki's law firm.[12] In this email, Garrett reminded Glowacki of Bruce H.'s assurances of *quick action*. Glowacki responded by again assuring the attorneys for Team Nancy that "Hitchman Fiduciaries and Roehl & Glowacki have the time and resources for **quick action**." (Exhibit 71. Emphasis added.) This March 30, email exchange resulted in the scheduling of more immediate meetings, including a phone meeting involving McDermott, Garrett, Lee Ann, and Roehl on March 30, 2017, and a second in person meeting on April 5, 2017, "for at least several hours," involving McDermott, Garrett, Byers, Bruce H., Lee Ann, Glowacki, and Roehl. (Exhibit 71.)

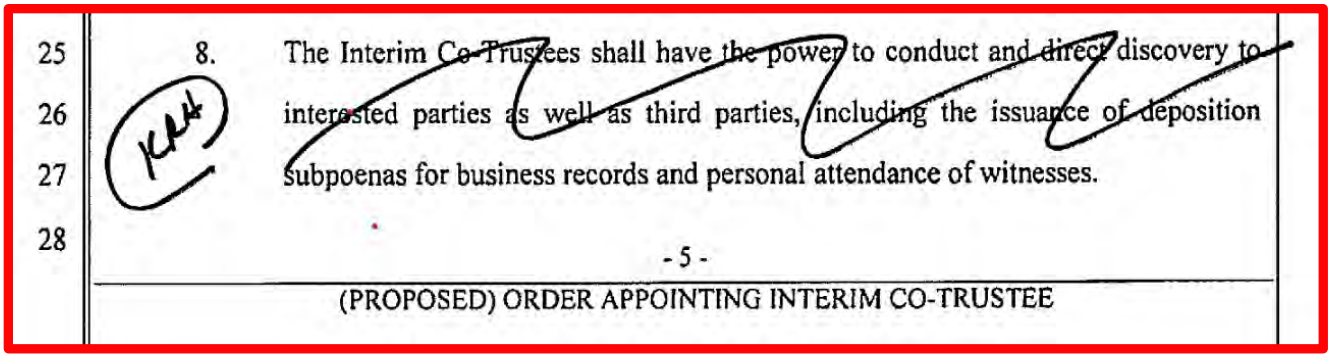
Consistent with the court's meet-and-confer order, attorney Byers on behalf of Nancy contacted Pech and suggested three Private Professional Fiduciaries, including the Hitchmans, to be appointed as interim successor co-trustees of the Trust. (ROA 1363, page 11 of 15.) Pech failed to meet and confer to suggest a Private Professional Fiduciary to be appointed as interim successor trustee.

[12] The Roehl & Glowacki law firm represented the Hitchmans throughout their interim co-trusteeship in this case. Glowacki was the lead Hitchmans attorney from the Roehl & Glowacki law firm.

On March 29, 2017, and in response to an *ex parte* application filed by Nancy to effectuate the court's March 23, 2017, order, the court (Judge Hubbard) granted the *ex parte* application and issued an order suspending Thomas as the trustee of the Trust and appointing the Hitchmans as "co-successor trustees." (ROA 1366 and 1367.)

On April 3, 2017, Nancy, John and Nancy's daughters filed an *ex parte* application in furtherance of Judge Hubbard's March 29, 2017, order appointing the Hitchmans as interim co-trustees. (ROA 1378.) On April 4, 2017, Judge Hubbard granted this latest *ex parte* and signed a **revised** order proposed by Team Nancy. (ROA 1394 and 1401.) The order signed by the court on April 4, 2017, indicates that it is being executed "to provide the necessary **clarity and authority** to allow the Interim Co-Trustees to effectuate the Court's intent and administer the Beverly C. Morgan Trust." (ROA 1401, page 2, lines 23-25. Emphasis added.)

Of significance to the issues currently pending before the court, Judge Hubbard **expressly denied** Team Nancy's request to grant the Hitchmans the "power to conduct and direct discovery to interested parties as well as third parties, including the issuance of deposition subpoenas for business records and personal attendance of witnesses." (ROA 1401, page 5, lines 25-27 as shown below.)



8. The Interim Co-Trustees shall have the power to conduct and direct discovery to interested parties as well as third parties, including the issuance of deposition subpoenas for business records and personal attendance of witnesses.

- 5 -

(PROPOSED) ORDER APPOINTING INTERIM CO-TRUSTEE

At the time the Hitchmans were appointed as interim co-trustees, the Trust held the following: (a) Cash in the amount $104,778.23; (b) 1,000 Microsoft Corporation stocks; (c) 5% interest in MPI; (d) a small equity interest in an entity called Moreno Street Associates, LP, a business that owned and operated a mobile home park called Capri Rialto; (e) 51% interest in two companies that owned and

operated a mobile home park called Lamplighter Chino;[13] (f) 49.6% interest in an entity called Country Hills, LLC, which owned and operated West Valley Business Park in Kent, Washington, (g) 49.5% interest in Ontario Associates, LP, which owned and operated a mobile home park called Lamplighter Ontario; and (h) a condominium on Lido Island in Orange County ("Lido Condo").

At the time the Hitchmans were appointed as interim co-trustees of the Trust, Nancy had already received all her bequest under the Trust ($1 million) as it was amended and restated in 2013. This was the Trust the Hitchmans were appointed to protect and administer.[14] As far as John, at the time of the Hitchmans' appointment he had already received Beverly's interest in Capri Rialto, which was his bequest under the Trust, free of estate tax, with the exception of a small fractional interest that John requested to continue to be held by the Trust.

At the time of the Hitchmans' appointment, Thomas had not yet received his specific bequests under the Trust. Subject to payment of any debts, expenses, and taxes on all assets, Thomas was to receive the following under the Trust: The Lido Condo, Lamplighter Chino, Lamplighter Ontario, West Valley Business Park, on the condition that Thomas offers to purchase Nancy's interest in each of these entities, at the value finally determined for federal estate tax purposes.

Lastly, the Trust provided that should there be any residue, it was to be distributed 50% to Thomas and 50% to Nancy's daughters.

On April 18, 2017, Garrett sent an email to Bruce H. and attorneys from Team Hitchman stating that in connection with a conversation Team Hitchman and Team Nancy had earlier in the day, Team Hitchman "may wish to consider the provisions of California Financial Code section 1450." (Exhibit 121.)

On April 19, 2017, three weeks after their appointment as interim co-trustees, the Hitchmans filed an *ex parte* application seeking instructions from the court and requesting a continuance of the

---

[13] For purposes of this statement of decision, and for clarity, these two companies will just simply be referred to collectively as Lamplighter Chino.

[14] In Nancy's Trust contest that was being litigated between her and Thomas at the time of the Hitchmans' appointment, Nancy was advocating for the 2012 version of the Trust and was working hard in contesting and seeking to invalidate the Trust the Hitchmans were appointed to administer and protect.

May 15, 2017, trial date. This *ex parte* application was submitted by Glowacki on behalf of the Hitchmans. (ROA 1415.) In this *ex parte* application, the Hitchmans requested orders instructing them to "analyze and investigate the causes of action and defenses stated" in the underlying litigation between Nancy, Nancy's daughters, and John on one side and Thomas on the other side. The Hitchmans requested an order authorizing them to "intervene in the pending proceedings or moving to amend a pleading in the pending proceedings, or filing new pleadings." (ROA 1415, page 2, lines 22-23.)

The law firm of Roehl and Glowacki represented the Hitchmans from the start of their interim trusteeship in late March of 2017, until the last day of their interim trusteeship in June of 2019. Attorneys Roehl and Glowacki were the named partners of the firm. Roehl is, by her own admission, not a litigator and she is the expert specializing in the administration aspect of trusts. Glowacki, on the other, is the partner considered the expert litigator in the firm.

By April 18, 2017, two weeks after Judge Hubbard signed the order appointing the Hitchmans as interim co-trustees, the Hitchmans had already brought a second law firm on board to represent them in this case, namely, Carico Johnson Toomey LLP.[15] Attorney Bruce MacDonald ("MacDonald") is one of Carico Johnson Toomey LLP's attorneys who worked on this case. On April 18, 2017, at 4:20 PM, MacDonald sent an email to Roehl, Glowacki, Bruce H., Lee Ann, and another attorney from his firm. In this email, a mere 2 weeks after the Hitchmans were appointed, MacDonald discusses different aspects of different business entities relating to the Trust and the Hitchmans' plans moving forward regarding such entities, including Lamplighter Chino and replacing Thomas as the manager of these entities. MacDonald indicates that he thinks "further discussion is going to be needed on this (with Nancy's counsel/team) … Let me know if you would like to discuss amongst ourselves and/or if you would like us to talk with Nancy's team directly first (**or only after the common interest agreement is in place**)." (Exhibit 129. Emphasis added.)

[15] During the pendency of this case, the law firm of Carico Johnson Toomey LLP changed its name few times when the names of additional partners were added to the firm's name, hence, the use of different versions of the law firm's name in different parts of the statement of decision, as well as in different trial exhibits. William Benz, one of the attorneys at Carico Johnson Toomey LLP, along with Bruce MacDonald, were included on an email from Garrett to Team Hitchman on April 18, 2017, showing that as early as this date the law firm of Carico Johnson Toomey LLP was representing the Hitchmans.

The court finds that this discussion by Team Hitchman about a common interest agreement between Team Hitchman and Team Nancy, less than three weeks after the Hitchmans were appointed as interim co-trustees, when considered in light of all the evidence introduced during the trial, is a clear proof of the Hitchmans' breach of their fiduciary duty of impartiality. The court also finds it to be a clear indication of Team Hitchman delivering on the *quick action* they promised Team Nancy.

At 9:56 PM on that same day of April 18, 2017, Roehl forwarded the above listed email from MacDonald to Bruce H., Lee Ann, and Glowacki and stated the following: "I am fine with Bruce MacDonald reaching out to Nancy's team to discuss their thoughts on the **best strategy** without discussing this further with us first. … We don't need to wait for a common interest agreement because we decided to move forward **without one for now** and have the two teams speak by phone." The next day, Bruce H. responded by stating: "**I agree completely**." (Exhibit 129. Emphasis added.)

At trial, when confronted with this email, Bruce H. admitted that the plan to have attorneys for the Hitchmans talk to Nancy's attorneys by phone was to minimize the paper trail of such discussions between Team Hitchman and Team Nancy. "*Question by Thomas's attorney:* And again I think you agree with me the idea is minimize the paper trail, talk by phone? *Answer by Bruce H.:* That -- yes, I think that is correct." (Testimony of Bruce H. on November 17, 2023.)

On April 20, 2017, Pech filed an objection to the *ex parte*. In his objection, Pech included a copy of an email he sent to Glowacki in which he described the court's action in appointing the Hitchmans as interim co-trustees as "this boondoggle of appointing the Hitchman's [sic] six weeks before trial." (ROA 1421, page 63.)

After considering the pleadings, on April 20, 2017, Judge Hubbard denied the *ex parte* petition in its entirety and indicated that if the Hitchmans, as the interim co-trustees, "have any issue regarding the order of 4/4/17, or the interpretation thereof they may bring an action under that order as the Court has retained jurisdiction to interpret that order and duties thereunder." (ROA 1428.) As discussed below, the Hitchmans never took Judge Hubbard up on her invitation, rather, they decided to proceed as stated in this statement of decision.

Accordingly, the record is perfectly clear, and the court finds, that within the first 22 days after the Hitchmans were appointed as the interim co-trustees of the Trust, Judge Hubbard wisely denied, on two separate occasions, the attempts to give the Hitchmans court authorization to become involved in the underlying then pending litigation between Team Thomas and Team Nancy. The court further finds that had the Hitchmans accepted and followed the clear and express directions of the court early on in their interim co-trusteeship, years of useless litigation and large amount of Trust assets would have been saved and not wasted.

On April 24, 2017, the Hitchmans executed an organizational document relating to Lamplighter Chino. The document is titled *Action by Written Consent of the Members of Chino Holdings GP LLC*. The Hitchmans executed this organizational document "pursuant to the Operating Agreement" of Lamplighter Chino and the "Revised Code of Washington." The purpose behind the Hitchmans executing this document was to remove Thomas, through MPI, as the manager of Lamplighter Chino and to appoint themselves (the Hitchmans) as the managers. Team Nancy was informed by Team Hitchman regarding this organizational document. MPI, Thomas, and Newport Pacific were not informed or given notice regarding this action by written consent.

As discussed below, this organizational document / action by written consent was legally defective. On the same date (April 24, 2017), the Hitchmans, in coordination with Nancy, also executed similar type of documents (organizational documents, namely, action by written consent) relating to Trust related entities called West Valley Partners and Country Hills for the purpose of removing Thomas as the manager of these entities and appoint themselves as managers.[16]

On April 25, 2017, the day after the above listed organizational documents were executed, Bruce H. emailed these organizational documents relating to all three entities (Lamplighter Chino, West Valley Partners, and Country Hills) to Roehl, one of the Hitchmans' attorneys, stating: "Please feel free to use **whichever ones** you find acceptable." (Exhibit 138. Emphasis added.) In executing the legal documents relating to West Valley Partners and Country Hills, the Hitchmans, in their capacity

[16] Nancy actually signed the documents relating to Country Hills because the Hitchmans alone, as interim co-trustees, controlled less than 50% of Country Hills and needed Nancy's agreement since she controlled an 11.359% interest through the Nancy Morgan Shurtleff Children's Trust.

as the interim co-trustees of the Trust, signed legal documents declaring that Thomas, as the manager of these two entities, "has acted in a manner constituting willful misconduct or gross negligence," and that Thomas should be removed as manager "for negligence, incompetence, and/or fraud." (Exhibit 138.) It is an understatement to say that these accusations against Thomas, made by the Hitchmans a mere 3 weeks after the order appointing them was signed, are serious and had the potential for huge consequences in the context of this case with immense detriment to the Trust and to Thomas.

Notwithstanding the magnitude of the Hitchmans' attestation in these legal documents constituting actions by written consent, the court finds, based on the entirety of all the evidence introduced during the trial, that the Hitchmans had **zero** competent factual basis for making such serious allegations, and that they made these allegations without any independent investigation whatsoever.

Based on the entirety of all the evidence introduced during the trial, including the facts as detailed in this statement of decision, the court finds that the Hitchmans' actions in executing the above listed organizational documents and telling their attorney to use **whichever ones** she finds acceptable, constitutes a breach of the Hitchmans' fiduciary duty not to delegate functions reserved for the trustee.

The Hitchmans argue that since they ended up not using the actions by written consent relating to West Valley Partners and Country Hills, *no harm no foul*. The court is not persuaded. The Hitchmans' actions on April 24, 2017, in signing legal documents accusing the main beneficiary of the Trust (Thomas), to whom they owed a fiduciary duty, of serious unsubstantiated misconduct and/or fraud, accusations that are not just harmful to Thomas but also to the Trust because the Trust had related interests in these entities, show the Hitchmans' state of mind from the start in dealing with Thomas, and such action is direct evidence of how the Hitchmans were *all in* from the beginning, as part of their promised *quick action*, to advance Team Nancy's accusations and interest to the detriment of Thomas and the Trust.

On April 28, 2017, the Hitchmans, acting through Glowacki, filed a verified status reports confirming that they clearly understood that the court denied Team Hitchman's request for "time to investigate the claims asserted in the pleadings set for trial on May 15, 2017" involving Team Thomas

and Team Nancy. (ROA 1439, page 4, lines 1-2.) The Hitchmans indicated to the court that Team Nancy and Team Thomas "have diametrically opposed views on the Interim Co-Trustees' proper role in the pending litigation." The Hitchmans indicated that such diametrically opposed views motivated the Hitchmans in seeking the previously denied orders authorizing them to intervene in the underlying litigation. The Hitchmans concluded by indicating that they "will defer to the Court as to their involvement in the matters set for trial on May 15, 2017, and will request further instruction in this regard at the review hearing on May 15, 2017." (ROA 1439, page 4, lines 2-7.)

Based on the totality of all the evidence introduced during the trial and guided by the applicable principles (stated elsewhere in this statement of decision) for assessing and weighing the credibility of witnesses, the court finds that Team Nancy's view on the interim co-trustees' role in the then pending litigation was for the Hitchmans to provide "quick action"[17] for the benefit of Team Nancy. Simply stated, Team Nancy wanted Team Hitchman to do Team Nancy's bidding, while adorned with the hallow of the independent office of trusteeship, and to do so not for the benefit of the Trust but for the exclusive benefit of Team Nancy. On the other hand, Team Thomas' view on the role of the Hitchmans was simple and consistent with Judge Hubbard's directions: the Hitchmans should stay out of the litigation between Team Nancy and Team Thomas.

More importantly, the court finds that from the start of their interim co-trusteeship and until its end, Team Hitchman understood and knew very well the above described "diametrically opposed" views regarding the role of the Hitchmans. One view (Team Nancy's) of such role is contrary to law, and the other view (Team Thomas') is exactly what the law prescribes under the circumstances of this case. Unfortunately, the evidence introduced during the trial clearly establishes that Team Hitchman performed the role that Team Nancy wanted them to perform, to the detriment of the Trust and to the detriment of Thomas.

[17] *Quick action* is the exact term that (1) Team Nancy used as the condition precedent for nominating the Hitchmans to the position of interim co-trustees, and (2) describes what Team Hitchman assured Team Nancy they will be able to deliver to Team Nancy if the Hitchmans were to be appointed as interim co-trustees. As discussed elsewhere in this statement of decision, the totality of all the evidence introduced during the trial showed that Team Hitchman proceeded on a course of action to deliver the promised *quick action*, to the benefit of Team Nancy and the detriment of the Trust, resulting in numerous and continuous breaches of the fiduciary duty owed by the Hitchmans to the Trust and to Thomas as a beneficiary of the Trust.

On May 1, 2017, after hearing arguments from all the attorneys, including the Hitchmans' attorneys, the court (Judge Hubbard) indicated that the May 15, 2017, trial date is going to be continued as requested by Team Nancy and Team Hitchman. (ROA 1444.) During the May 1, 2017, hearing, Glowacki indicated that in addition to his law firm of Glowacki & Roehl, the Hitchmans have already retained a second law firm, namely, Carico Johnson Toomey LLP, to "deal with 706 [IRS tax related] and Audit issues." (Exhibit 1040, page 5, lines 1-3.)[18] During the May 1, 2017, hearing, Glowacki again told the court relating to Team Nancy's claims, that in the "minds" of the members of Team Hitchman, it is consistent with Team Hitchman's "duties to be involved in those claims."

Emphasizing Team Hitchman's request to be allowed to be part of the underlying litigation between the family members,[19] and somewhat inconsistent with Glowacki's trial testimony, he emphasized to the court that "there's nothing that we [Team Hitchman] can see that abrogates or eliminates that duty here." (Exhibit 1040, page 6, lines 17 – 22.) At the conclusion of the hearing, and after McDermott (Nancy's attorney) argued in favor of allowing the Hitchmans to join in the underlying litigation between the family members, Judge Hubbard told Glowacki that he could renew the Hitchman's previously denied request for authorization to join in the underlying litigation. (Exhibit 1040, page 27, lines 5-7 and 17-18.)

During the May 1, 2017, hearing, Glowacki indicated to the court that the Hitchmans were having some resistance/problems marshaling a Bank of America account, and that "Lee Ann Hitchman was down at Bank of America dealing with someone as late as last Thursday with that second bank account. That resistance, I understand, is coming from Bank of America as opposed to from the suspended trustee." (Exhibit 1014, page 7, lines 16 – 21.)

On May 5, 2017, the Hitchmans filed their second status report in which Glowacki concluded that there "is no satisfactory alternative to the interim co-trustees being involved in the pending litigation," and requesting that the trial be continued for "four to six months" to allow the Hitchmans

[18] The Hitchmans filed an Association of Counsel pleading on June 12, 2017, adding the law firm of Carico Johnson Toomey LLP as their co-counsel. (ROA 1501 and 1503.)

[19] Any reference in this statement of decision to "family members" and/or "beneficiaries" is a reference to Nancy, John, Nancy's daughters Kathleen and Jessica Shurtleff, and Thomas, collectively.

to "investigate, file any complaint in Intervention, and prepare for trial, … ." (ROA 1452, page 15, lines 1-2, and page 17, lines 1-2.)

On May 30, 2017, and for the very first time ever, one of the Hitchmans actually read the most important document in this case relating to the Hitchmans' fiduciary obligations, namely, the Trust documents. On that day, May 30, 2017, Bruce H. wrote the following in his invoices: "Received Amendment and Complete Restatement of Trust dated 11/6/2013. Perform initial review." (Exhibit 792, page 36, entry number four on May 30, 2017.)

On June 1, 2017, at 3:18 PM, Pech sent an email to Glowacki clearly expressing frustration and a sense of urgency regarding "this urgent matter" of Thomas and Pech learning that the Hitchmans "have taken control of the Bank of America accounts for Lamplighter Chino that are not in the name of the Beverly C. Morgan Family Trust. The seriousness of this conduct and its ramifications for triggering other defaults exposes the Hitchmans to substantial personal liability." Pech told Glowacki to "please" call him back "**no matter what time today or tonight given this urgent matter**." (Exhibit 172, page 8; emphasis added.)

June 1, 2017, was a Thursday. At 3:49 PM, Glowacki responded to Pech, with a carbon copy to Roehl, as follows: "I am out of the office this afternoon and tomorrow morning. More importantly for our purposes, the attorney who has been involved most closely with the marshaling of entity assets is in a meeting right now and I do not have access to his calendar. I suggest we schedule a call for tomorrow afternoon, perhaps at 3:00 pm? I will obtain his availability and get back to you. In the meantime, please elaborate on what you mean by saying the "seriousness of this conduct and its ramifications for triggering other defaults exposes the Hitchmans to substantial personal liability."" (Exhibit 172, pages 7-8.) The evidence introduced during the trial clearly establishes that when Glowacki received this email from Pech, Team Hitchman knew very well what Pech was talking about when he was talking about the matter being urgent and that it triggers defaults.

At 5:04 PM on June 1, 2017, Pech responded to Glowacki, with a carbon copy to Roehl, by saying: "Glad you were able to respond to my email while out of the office within 30 minutes about discussing the conduct of your clients that you have concealed from me and Mr. Morgan, but certainly

have shared with Bruce McDermott and Tom Garrett. Interesting how you ask me to elaborate on the seriousness of the Hitchmans' surreptitious conduct since I am certain that you considered the potential consequences to them personally before seizing bank accounts and taking other actions concerning Lamplighter Chino." (Exhibit 172, page 7.)

Certainly, and to the extent written words can have a *tone*, Pech's response could reasonably be viewed as having a condescending, sarcastic, and patronizing *tone*. Nonetheless, the evidence proved he was correct regarding the potential impact of defaults as well as the fact that Team Nancy's attorneys were certainly fully aware of the Hitchmans' secret actions in trying to take over Lamplighter Chino.

On June 1, 2017, by 10:16 PM, still no one from Team Hitchman picked up the phone and called Pech or Thomas. Not Bruce H., not Lee Ann, not Glowacki, not Roehl, not Carico, not MacDonald, not Benz. More than 7 hours after Pech sent his first email ringing the bells and saying please call at any time, Glowacki sent another email, at 10:17 PM, saying the following: "I was being responsive to your inquiry, and of course I am interested in what you have to say about it. You did not tell me when you are available tomorrow afternoon, however. We are available between 3:00 p.m. and 5:00 p.m., and since you placed some urgency on the issue I would like to accommodate your request for a call." (Exhibit 172, page 6.) So, Team Hitchman's response to the attorney for the main beneficiary of the Trust they were charged with administering and protecting, as unprofessional as this attorney may be, was to tell him *we will talk to you in 24 hours*. Pech picked the earliest time Glowacki suggested, namely, June 2, 2017, at 3:00 PM. (*Id.*)

The next day, June 2, 2017, at 8:41 AM, Glowacki for the first time forwarded the exchange between Glowacki and Pech to Benz, and told Benz that he (Glowacki) will conference him (Benz) in on the call with Pech. (*Id.* at page 5.) Then at 11:43 AM on June 2, 2017, and in preparation for the conference call with Pech, Glowacki drew a plan that he shared with Team Hitchman, including all the other four Hitchman's attorneys as well as Bruce H. and Lee Ann. The plan included telling Benz that, if necessary, Team Hitchman will invoke the "common-interest doctrine" if Pech asked questions regarding discussions between Team Hitchman and Team Nancy. (*Id.* at page 4.)

The court finds the above listed evidence, when viewed in light of all the evidence introduced during the trial, **especially exhibits 981, 984, and 984A in connection with a *bone to pick* phone call from Team Nancy to Team Hitchman,** that will be discussed in more details below, to be exceptionally and substantially relevant, and exceptionally and substantially probative and demonstrative of the extent of the Hitchmans' breach of the duty of impartiality when dealing with Team Nancy versus when dealing with Thomas and his attorney. Most certainly, Thomas as the main beneficiary of the Trust was harmed and injured as a result of this breach. However, the court finds that the bigger harm and more substantial damage resulting from this breach was inflicted by the Hitchmans on the Trust itself.

On June 12, 2017, Bruce H. executed and personally delivered/submitted to Bank of America two Affidavits of Adverse Claim by Fiduciary. (Exhibits 218 and 219.) In these declarations, Bruce H. indicated that he has "personal knowledge" causing him to believe that Thomas "misappropriated $450,000 of [T]rust assets" from Lamplighter Chino's Bank of America account by transferring the money to a Covina Hills bank of America Account controlled by Thomas. Relying on Financial Code section 1450, as Team Nancy had suggested on April 18, 2017, (exhibit 121), Bruce H. directed Bank of America to freeze for 3 days the above-mentioned Covina Hills Bank of America account as well as a Lamplighter Chino Certificate of Deposit held in Bank of America Account # X-1371 with a balance of $6,006,250.63.[20] In doing so, Bruce H. gave Bank of America notice of his claim for the accounts and the Certificate of Deposit.

On June 13, 2017, the Hitchmans filed an *ex parte* application seeking orders (1) confirming the Hitchmans' control of certain bank accounts, (2) denying Thomas and MPI access to certain bank accounts, and (3) directing Thomas and MPI to return to the interim co-trustees "misappropriated funds." (ROA 1493.) In this *ex parte* application, the Hitchmans alleged that on June 2, 2017, Thomas "was in the process of misappropriating money [$450,000]" held with Bank of America and owned by

[20] References in this statement of decision to the $6 million Lamplighter Chino CD are to the same $6,006,250.63 Lamplighter Chino CD. There is only one Lamplighter Chino CD.

Lamplighter Chino. (ROA 1493, page 5, lines 1-2.)[21] This accusation made by the Hitchmans against Thomas was in part due to the Hitchmans' belief that starting on April 24, 2017, the Hitchmans were the lawful managers of Lamplighter Chino as a result of the organizational documents they executed on April 24, 2017. The references in this statement of decision to *organizational documents* in connection with Lamplighter Chino are references to the documents executed by the Hitchmans and others to effectuate an Action by Written Consent under Washington law to replace MPI, as the manager of Lamplighter Chino, with the Hitchmans.

However, and as the evidence undisputedly proved, the organizational documents executed by the Hitchmans on April 24, 2017, were not executed as required by the governing law,[22] and it was not until June 8, 2017, that the Hitchmans properly executed the required organizational documents transferring the management of Lamplighter Chino from MPI to the Hitchmans. This fact became known to Team Hitchman on June 2, 2017, **eleven days before they filed their *ex parte* accusing Thomas of misappropriating funds**, because Pech informed them of such during a June 2, 2017, conference call. This conference call included Pech, Bruce H., Glowacki, William Benz ("Benz"),[23] and attorneys representing Bank of America.[24]

As the Hitchmans informed the court in their June 13, 2017, *ex parte*, Team Hitchman didn't just take Pech's word for it, and they are not being faulted at all for not taking Pech's word for it. Rather, Team Hitchman "confirmed with Washington counsel that the Hitchmans would need the additional signature of Nancy Shurtleff to **perfect the transaction**, which signature was obtained and

---

[21] This accusation by the Hitchmans against Thomas centers around four checks totaling $450,000 that Thomas wrote on June 1, and June 2, 2017, from the Operating Account of Lamplighter Chino payable to Covina Hills. The circumstances and reasons for Thomas writing these checks will be discussed further below.

[22] Lamplighter Chino was organized in the State of Washington, accordingly, organizational documents had to be executed consistent with the laws of the State of Washington.

[23] Benz was one of the Hitchmans' attorneys.

[24] On June 2, 2017, and after Pech told Team Hitchman that the April 24, 2017, organizational document executed by the Hitchmans was defective under Washington's law because the action by written consent requires the consent not just of the majority owner of Lamplighter Chino, but also the majority of the Members of the holding company, it was then that Team Hitchman obtained the signature of Nancy and offered Thomas the option of signing the action by written consent removing him and MPI as the manager of Lamplighter Chino. (ROA 1516, page 168.)

submitted on June 8, 2017." (ROA 1493, page 4, lines 24-27, and page 5, lines 1-5. Emphasis added.) This information is of exceptional significance to the court for two reasons.

Reason One: This information clearly establishes that at the time the Hitchmans accused Thomas of misappropriating funds by transferring $450,000 from a Lamplighter Chino account, Thomas actually had the right to make such a transfer because at the time the Hitchmans were not the lawful managers of Lamplighter Chino, and Thomas was such lawful manager through MPI. By June 13, 2017, Team Hitchman had actual knowledge that on June 1, and June 2, 2017, Thomas was legally authorized to transfer money out of the Operational Account of Lamplighter Chono.

It was probably reasonable for Team Hitchman to believe that the Hitchmans were the lawful managers of Lamplighter Chino as soon as they executed the organizational documents on April 24, 2017, not knowing at the time that such organizational documents were defective and not executed according to Washington's law. However, as soon as they were able to confirm with "Washington counsel" that the April 24, 2017, organizational documents were defective, it was no longer reasonable nor proper for Team Hitchman to assume that such defective legal documents are operative to retroactively eliminate Thomas/MPI's legitimate position as the lawful manager of Lamplighter Chino. Team Hitchaman's use of the term "perfect the transaction" is certainly clever and creative, however, it does not give retroactive legal weight to the April 24, 2017, defective documents so as to render Thomas' actions as either inappropriate or unauthorized.[25]

Until the correct organizational documents were properly executed and submitted on June 8, 2017, Thomas (through MPI) remained the lawful and proper manager of Lamplighter Chino. In his June 13, 2017, declaration submitted under penalty of perjury in support of the *ex parte* application, Bruce H. all but conceded this point: "I spoke with Washington corporate counsel and was informed that the removal of Tom and his management company Morgan Partners, Inc. (MPI) from control of the various entities and as a signer to the entities the [sic] bank accounts **could not be completed without** first obtaining the signature of another partner in the various entities, Nancy M. Shurtleff. I

[25] This legal principle was explained to the Hitchmans by one of their attorneys, Benz, in a July 7, 2017, 3:58 PM email. (Exhibit 291, page 2.)

obtained Nancy's signature on **June 8, 2017** and caused all the necessary paperwork to be delivered to Bank of America that date." (ROA 1496, page 3, lines 26-27 and page 4, lines 1-4. Emphasis added.)

Accordingly, the court finds that Team Hitchman knew on June 13, 2017, that until June 8, 2017, Thomas correctly believed himself (through MPI) to be the lawful manager of Lamplighter Chino. Accordingly, his action in transferring the $450,000 on June 1, and June 2, 2017, from the Bank of America account was not any type of wrongdoing or misappropriation of funds. Nonetheless, such knowledge did not stop Team Hitchman from accusing Thomas of wrongdoing and misappropriation.

In reaching this conclusion, the court finds unpersuasive the trial testimony of members of Team Hitchman asserting that they assumed the signature of Nancy Shurtleff obtained on June 8, 2017, on the new and valid organizational documents satisfying the requirements of Washington law, had the effect of retroactively validating the defective April 24, 2017, organizational documents. Such an assertion has no grounding in law, and it flies in the face of common sense, especially when used as the basis for accusing Thomas of committing wrongdoing and misappropriation of funds when he had no idea on June 1, 2017, and June 2, 2017, that any such April 24, 2017, defective documents existed.

Reason Two: A judicial officer reviewing the June 13, 2017, *ex parte* application would reasonably interpret the Hitchmans' reference to obtaining a confirmation from a "Washington counsel" as a reference to an independent attorney from Washington advising Team Hitchman about the correctness of Pech's assertion regarding the legal requirements in Washington when it comes to Lamplighter Chino's organizational documents. As indicated above, the court does not fault Team Hitchman for not taking Pech's word for the legal requirements under Washington law, because among other reasons, Pech represents an interested party in the underlying litigation. However, for the same reason, the court would expect that the Hitchmans will equally not simply take the word of Nancy's attorney on such an issue. However, that's exactly what the Hitchmans did.

As the trial testimony uncovered, the reference in the *ex parte* application to "Washington counsel" was a disguised reference to Nancy's counsel. The court finds that the above cited portion of Bruce H.'s declaration where he states that he "spoke with Washington corporate counsel …" was not an inadvertent failure to tell the court that he actually spoke to Nancy's counsel, rather, it was an attempt

to hide what has become undeniable after the trial: Team Hitchman and Team Nancy were one singular team with joint efforts and joint objectives, to the detriment of the Trust and to the detriment of Thomas as a beneficiary of the Trust. This is just one of many pieces of circumstantial evidence showing that from day one the Hitchmans treated Team Nancy differently and more favorably than how they treated Team Thomas, and that Team Hitchman considered themselves as an extension of Team Nancy with common defenses, common goals, common objectives, and common interests. All this pervasive commonality was to the detriment of the Trust and the detriment of Thomas in his capacity as a beneficiary of the Trust. It was also a breach of the Hitchmans' fiduciary duties.

As indicated above, Bruce H. submitted a declaration in support of the June 13, 2017, *ex parte* application. In his declaration, Bruce H. attested to many of the above listed facts relating to the *ex parte* application. (ROA 1496.) In addition, Bruce H. declared under penalty of perjury that on June 12, 2017, he spoke with Newport Pacific,[26] the property manager for Lamplighter Chino, and that Newport Pacific explained to him that Thomas instructed them to open a new account because Thomas "was concerned his sister was going to remove a large sum and distribute it." Bruce H. proceeded to declare under penalty of perjury that Newport Pacific told him that Thomas asked Newport Pacific to move the money [$450,000] from Lamplighter Chino's Bank of America account and Newport pacific refused to do so. Bruce H. declared that he then told Newport Pacific that Thomas moved the $450,000 himself, and "the Newport representative sounded shocked and upset since Tom had told the Newport representative that he would leave the funds in the Lamplighter account." (ROA 1496, page 4 line 21 to page 5, line 13. Exhibit 225)

On June 13, 2017, Glowacki submitted a declaration in support of the above listed June 13, 2017, *ex parte* application. In it, Glowacki declares under penalty of perjury that on June 2, 2017, Thomas "was in the process of absconding with $450,000 of partnership funds." (ROA 1494, page 2, lines 26-27.)[27]

[26] In his declaration, Bruce H. does not provide the name of the representative of Newport Pacific that he spoke with, rather, Bruce H. indicates that it was a man: "he refused … ." During the trial, the evidence established that Bruce H. spoke to Newport Pacific Executive Vice President Paul Prentice.

On June 14, 2017, Thomas submitted an objection to the Hitchmans' June 13, 2017, *ex parte* application. (ROA 1505 and 1506.) In his declaration opposing the *ex parte* application, Thomas stated the following under penalty of perjury:

- During the evening of May 30, 2017, he noticed that MPI no longer had online access to four of Lamplighter Chino's Bank of America accounts totaling approximately $530,000, and he thought maybe the bank "had been hacked" but he could not get any information since it was after banking hours.
- On the morning of May 31, 2017, he contacted Bank of America and was instructed to have his attorneys contact the bank's attorneys. On that same morning, he found out that Newport Pacific, Lamplighter Chino's property manager, also no longer had online access to the bank accounts.
- The monthly payments on the PNC loan to Lamplighter Chino was going to be automatically withdrawn on June 5, 2017, from the Bank of America account that the Hitchmans took over.
- In order to make sure that Lamplighter Chino will be able to meet its loan payment obligations, he wrote on June 1, 2017, a total of 3 checks totaling $300,000 drawn against Lamplighter Chino's Bank of America account and to be "deposited into an intermediary account (Covina Hills) so that the funds would clear immediately for transfer to Newport Pacific's Wells Fargo account." (ROA 1506, page 14, lines 4-6.) Thomas wrote a letter to Newport Pacific on June 1, 2017, detailing what he did, and he attached a copy of the letter to his declaration.
- On June 2, 2017, Thomas wrote a fourth check for $150,000 drawn from Lamplighter Chino's Bank of America Account and then transferred the total of $450,000 from the Covina Hills intermediate account to the Wells Fargo account "to which only Newport Pacific has access" and for the sole purpose of protecting Lamplighter Chino. The Wells

[27] The terms "absconding" or "absconded," when used by attorneys in court filings, are very close to the terms "stealing" or "fleeing," and are usually used in the context of embezzlement. Absconding also refers to fleeing or hiding to avoid legal prosecution or obligation. For example, in the context of parole, absconding from supervision is a legal term widely used.

Fargo Account was in the name of Lamplighter Chino, and Thomas attached to his declaration Wells Fargo Account Details confirming his attestation. (ROA 1506, page 14, lines 12-17.)

- All his actions relating to the transfer of the $450,000 out of the Lamplighter Chino Bank of America Account to the Wells Fargo Lamplighter Chino Account were done in consultation with, and the approval of, Newport Pacific, the property manager of Lamplighter Chino.

In Support of his opposition to the Hitchmans' June 13, 2017, *ex parte* application, Thomas submitted a June 14, 2017, declaration by Paul Prentice. (ROA 1509.) Paul Prentice ("Prentice") is the Executive Vice-President of Operations for Newport Pacific and was the individual who spoke with Bruce H. regarding Lamplighter Chino as Bruce H. indicated in his declaration in support of the *ex parte* application. In his declaration, Prentice states under penalty of perjury that he is submitting his declaration to "clarify certain statements, attributable to the representatives of NPCC [Newport Pacific], made in documentation filed with the Court, by the Attorneys for the Hitchmans, in support" of the Hitchmans' June 13, 2017, *ex parte* application. (ROA 1509, page 2, lines 20-22.) Prentice confirmed that he was the one who spoke to Bruce H. and that it was on June 8, 2017, and not June 12, 2017, as declared by Bruce H. (ROA 1509, page 3, line 20.)[28]

Prentice's declaration supports the facts as stated by Thomas regarding the circumstances surrounding the transfer of the $450,000 out of Lamplighter Chino's Bank of America account to Lamplighter Chino's Wells Fargo account, confirming that it was done with the agreement of Newport Pacific, and that the $450,000 were always under the control of Newport Pacific for the benefit of Lamplighter Chino. Specifically, Prentice declared under penalty of perjury that during his conversations with Bruce H., "there were no discussions regarding" Thomas' concerns that "his sister was going to remove a large sum and distribute it." Furthermore, Prentice clarified that at "no time"

[28] The page numbering as listed on the bottom of this declaration is inaccurate. The court considers the first page of the pleading as page 1 even though the actual declaration starts on page 2 of the pleading.

did Thomas "refuse to transfer funds" and that Prentice advised Bruce H. "of the circumstances in numerous telephone conversations." (ROA 1509, page 2, line 26 to page 3, line 3.)

In weighing the facts and the evidence relating to the June 13, 2017, *ex parte* application and the vast discrepancy between the testimony of Bruce H. and the declaration of Prentice, the court considered the specific stipulation entered between the parties regarding Prentice which was filed on September 11, 2024. (ROA 3699.) In this stipulation, the parties agree that Prentice's declaration as contained in ROA 1509 (exhibit 244), may be considered by the court as "if it were Prentice's direct testimony at trial, and the Hitchmans waive the right to cross examine Prentice."

Accordingly, and based on the totality of all the evidence introduced during the trial, the court hereby finds that Prentice's recitation of the facts is credible and consistent with the totality of all the evidence introduced during the trial, including the Hitchmans' invoices and billing records. The court hereby finds Bruce H.'s version of events to be not credible regarding his communication with Newport Pacific and Prentice. In reaching this conclusion, the court gave appropriate (but not dispositive) weight to the fact that in writing his declaration on June 13, 2017, Bruce H. in detailing, under penalty of perjury, very important facts and revelations that he allegedly obtained from Newport Pacific a mere **one day** before executing the declaration, he either could not or decided that it was not important, to name the individual who gave him within the last 24 hours such very important and significant facts favorable to Bruce H.'s position and damaging to Thomas.[29]

This significance becomes even more palpable when considering that it resulted in the Hitchmans leveling very serious accusations of significant misconduct against the main beneficiary of the Trust the Hitchmans were charged with administering. The court finds this glaring intentional omission, similar to Bruce H.'s failure to disclose that Nancy's counsel was the "Washington counsel" with whom Bruce H. consulted, to be probative regarding the Hitchmans' state of mind and conduct in administering the Trust.

In reaching the above listed conclusion regarding the court accepting Prentice's recitation of fact as credible and rejecting Bruce H.'s version for lack of credibility, the court considered the totality

[29] Bruce H. executed his declaration on June 13, 2017, claiming that on June 12, 2017, he spoke with "Newport Pacific."

of all the evidence, including Bruce H.'s own billing records as reflected in his invoices. Exhibit 792, which will be discussed in more details below, confirms that Bruce H. had a conference call with Prentice and others on June **8**, 2017, "regarding Mobile Home Park, and recent correspondence from former manager and his attorney." (Exhibit 792, page 41.) Clearly this is a reference to the discussion Prentice *testified* about regarding his discussion with Bruce H. regarding Lamplighter Chino and Thomas. Interestingly, there is no entry in the Hitchmans' detailed invoices and billing records about a discussion between Bruce H. and Prentice on June 12, 2017, as Bruce testified. More interestingly, Bruce H. listed the name of Prentice in his billing records and invoices, but when it came to his declaration to the court, and as stated above, Prentice's name was not listed, rather, the declaration refers to Bruce H. speaking with Newport Pacific.

When confronted by the fact his own invoices and billing records confirm the accuracy of Prentice's version of the facts and impeaches Bruce H.'s version, Bruce H. testified that references to "correspondence" in his billing records also include a "phone call." The court does not find this explanation by Bruce H. to be persuasive in light of the totality of all the evidence introduced during the trial, including the court's review of exhibit 792 showing different and distinct uses by Bruce H. of the term "correspondence" versus "phone call." As a matter of fact, there are five references to Prentice in the Hitchmans' invoices and billing records, and all five of the references relate to phone calls between Bruce H. and Prentice as well as others also being on some of the calls: "conference call with … Paul Prentice" on June 8, 2017; "conference call with … Paul Prentice of NPCC" on June 21, 2017; "telephone call to Paul Prentice at NPCC" on June 22, 2017; "telephone call from Paul Prentice" on June 30, 2017; and "telephone call from Paul Prentice" again on June 30, 2017. (Exhibit 792, pages 41, 51, 52, and 57.)

As part of the June 13, 2017, *ex parte* application, the Hitchmans asked the court to confirm that the Hitchmans have "exclusive and sole control of and access to" a Lamplighter Chino Certificate of Deposit held in Bank of America Account # X-1371 with a balance of $6,006,250.63.

Also on June 13, 2017, Benz sent a letter to Pech notifying him that the Hitchmans, in their capacity as the interim co-trustees of the Trust, and now having "full and sole authority for

management" of Lamplighter Chino, are terminating, effective immediately, Pech and Pech's law firm's representation of the Trust and of Lamplighter Chino. (ROA 1696, page 89.)

On June 14, 2017, the court (Judge Hubbard) granted the Hitchmans' above listed June 13, 2017, *ex parte* application "but only to the extent that assets and accounts are trust assets." (ROA 1510 and 1511.)

On June 19, 2017, at around 1:24 PM, while Team Hitchman was preparing to file their status report with the court, Roehl told members of Team Hitchman that included Glowacki, Carico, Benz, Bruce H., and Lee Ann, in addition to others, that the Hitchmans, in their status report, "should ask the court if [Team Hitchman] should charge [Thomas] fair market value for the [Lido] condo. The Shurtleff handlers asked about this so I think we should add a request for instruction about payment of rent, while disclosing that [Thomas] is the beneficiary of the condo under **both versions** of the estate plan."[30] (Exhibit 256. Emphasis added.) Team Hitchman ended up adding this request to their status report, as asked for by Team Nancy. (Exhibit 255, also ROA 1516.)

However, when the status report was filed with the court a few hours later at 4:03 PM, signed by Glowacki and verified by Bruce H., contrary to Roehl's wise advice, Team Hitchman only disclosed to the court that Thomas is the beneficiary of the Lido Condo under the 2013 Trust amendment, but failed to disclose in the pleadings that he is also the beneficiary of the Lido Condo under the 2012 Trust amendment. The reason why Roehl's rejected advice was wise was because Team Nancy's request to require Thomas to pay rent for using a property that he is going to receive regardless of who prevails in the underlying litigation between the beneficiaries is somewhat of an unreasonable request.

In their June 19, 2017, third status report, the Hitchmans indicated that the Trust liquid assets they "have marshaled for which they might reasonably be required to post bond" are valued at around $4,438,580.59, and that Lamplighter Chino's yearly net income for the period ending April 30, 2017, was $422,387.35. The Hitchmans also indicated that they marshaled as a Trust asset what they described as the Bank of America Certificate of Deposit with a balance of $6,006,250.63 which they

[30] Based on the testimony of different witnesses during the trial, it is uncontested that "Shurtleff handlers" is a reference to Nancy's lawyers. The *two versions of the Trust* are references to the 2012 amendment that Nancy was advocating for and the 2013 amendment that Thomas was advocating for and was operative upon the Hitchmans' appointment.

described as: “Illiquid – pledged as security for line of credit.” Accordingly, the Hitchmans informed the court that a $5 million bond will be appropriate. (ROA 1516, page 12-14.)

In their prayer for relief as listed in the third status report, the Hitchmans again asked the court to instruct the Hitchmans to investigate the relief that Nancy was seeking in different parts of her claims against Thomas, but not all of them. Again, the Hitchmans asked the court to instruct them, if their investigation warrants doing so, to file a “Complaint in Intervention” in connection with the pending litigation between the family members. (ROA 1516, pages 17 and 18.) On June 22, 2017, the Hitchmans filed a supplement to their third status report. (ROA 1525.)

On June 26, 2017, Judge Hubbard presided over a trial setting conference (TSC) and a review hearing. Thomas, Nancy, Nancy’s daughters, John, and the Hitchmans were all represented during this TSC. Also, attorneys for Bank of America appeared telephonically and participated in the hearing. The transcript of this TSC and review hearing was admitted into evidence in this trial by way of a stipulation and judicial notice. (Exhibit 833.) During the hearing, the Hitchmans’ attorneys argued, as they did in their third status report, that Thomas was engaging in efforts to obstruct the implementation of the April 4, 2017, order appointing the Hitchmans as interim co-trustees, specifically with regard to Lamplighter Chino.

During the hearing, and without any objection by any of the parties but somewhat contrary to the initial recommendation of the Hitchmans, the court directed the Hitchmans to allow Thomas to continue to live in the Lido Condo, a $2 million condominium owned by the Trust with Thomas as the listed beneficiary of it under the Trust. Thomas was directed to pay the expenses related to the Lido Condo, and the Hitchmans were to execute a month-to-month lease agreement with Thomas, and to keep track of, but not collect, a monthly fair market rent to be assessed against Thomas’ share of the Trust if he did not prevail after the trial. The court indicated that if Thomas prevails after the trial, the rent he owes to the Trust will not need to be paid because he would have been the one entitled to such rent as the beneficial owner of the Lido Condo.

In response to the Hitchmans correctly asserting that Thomas failed to turn over Trust related documents, including backup documents relating to prior Trust accountings from 2014 to 2016, the

court ordered Thomas to turn over to the Hitchmans all such documents relating to the Trust, and any entity identified as an asset of the Trust at the end of the most recent accounting period. Thomas's attorneys objected by claiming a privilege under section 10.11 of the Trust.[31] Judge Hubbard made it clear that Thomas was ordered to turn over to the Hitchmans all invoices, billing statements, and fee agreement but declined to order Thomas to turn over letters, emails, facsimile transitions, and text messages. (ROA 1539 & exhibit 833, pages 37-40.)

During the hearing, the court denied the Hitchmans' request to have Thomas deposit in a Trust account the $254,650 for attorney fees that according to Pech's March 22, 2017, *lip service* accounting, the Trust paid for Thomas' personal defense. During the discussion regarding this issue, Glowacki expressly stated that Team Hitchman actually suspects the amount of attorney fees Pech received from the Trust for his representation of Thomas, as an individual and not as a trustee, is much higher than a quarter million dollars: "There are approximately a million and a half dollars in attorney's fees and costs incurred on approximately nine causes of action, depending on how you slice and dice,[32] many of which are personal to the individual [Thomas] and not related to the Trust. … So out of a million and a half dollars, only $250,000 was admitted to be incurred individually. That seems out of whack with the claims that were actually raised in the case." (Exhibit 833, pages 33 – 34.)

This accurate observation by Glowacki is very probative and relevant to the court's fact-finding function regarding one of the claims currently pending before the court, namely, the allegation by Thomas that the Hitchmans breached their fiduciary duty to the Trust by not bringing a malpractice action against Pech, or at a minimum preserving this claim against the jaws of the statute of limitations.

---

[31]Section 10.11 of the Trust regarding consultation with legal counsel, provides in relevant part that the "time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustee and legal counsel, and all work product of legal counsel shall be **privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustee** or any beneficiary and any duty to account.: (Exhibit 23, page 15. Emphasis added.)

[32] No need to do much *slicing and dicing* because on January 18, 2017, the court specifically indicated that **out of the nine** causes of action alleged by Nancy against Thomas, **six** of them were causes of action against Thomas in his **personal and individual capacity**: Undue Influence, Elder Abuse, Disinheritance for Elder Abuse per Probate Code section 259, Fraud-Intentional Misrepresentation, Conversion, and Recovery of Property per Probate Code section 850. (ROA 1279.) Reason and common-sense dictate that based on the specific facts of this case, the vast majority of the attorney fees and costs charged by Pech to the Trust were for services Pech was providing to Thomas in his personal and individual capacity, and not to Thomas in his capacity as trustee of the Trust. Glowacki and the Hitchmans clearly knew that.

The court hereby finds that based on all the available relevant facts as shown during the trial, Glowacki was absolutely correct on June 26, 2017, when he asserted that Pech received from the Trust way more than $250,000 for representing Thomas in his personal capacity. Accordingly, the court further finds that Team Hitchman was on clear notice, as early as June 2017, that the Trust had viable, reasonable, and provable claims against Pech for legal malpractice and for potentially defrauding the Trust.

During the June 26, 2017, TSC/Review Hearing, Morgan was represented by Pech, one of Pech's associates (Thang Le), and attorney Justin Gold ("Gold") who had newly associated as an attorney representing Thomas. When the issue of the appropriate amount of bond was discussed and the court was inclined to follow the Hitchmans' recommendation to set bond at $5 million, Gold requested that bond be set at $12 million because the Hitchmans "have gone beyond the April 4th order and taken over entities which were not wholly owned by the Trust and have inserted themselves as managers and there are some potential catastrophic consequences as a result of their takeover." (Exhibit 833, page 26, line 23, to page 27, line 3.)[33]

Garrett, the attorney representing John and Nancy's daughters, objected to any bond being set. Gold responded by stating: "If there is liability by the [Hitchmans] and they cannot pay the surcharge at the end of the day, then the bond is exactly what my client will have to go after. And because the amounts of the liability could far exceed $5 million, we would like a bond that will adequately protect my client, who at the end of the day may be the sole beneficiary remaining due to the actions of the Hitchmans." (Exhibit 833, pages 27-28.) Eight years later, and after a trial spanning a year and consuming forty-three court trial days, Gold's words proved to be prophetic both as to the catastrophic consequences of the Hitchmans' conduct, **and** as to Thomas needing a tangible and concrete measure of protection. Judge Hubbard ended up agreeing with Gold's recommendation, and the Hitchmans were ordered to post a bond in the amount of $12 million.

[33] Notwithstanding that Gold accused the Hitchmans, in open court, of going beyond the April 4, 2017, order, and notwithstanding Judge Hubbard previously inviting the Hitchmans to seek clarification from the court regarding the effect of the April 4, 2017, order, the Hitchmans never took Judge Hubbard up on her invitation.

During the discussion regarding the appropriate amount of the bond, Gold expressly stated, on the record and in the presence of the Hitchmans' attorneys, that as a result of the Hitchmans' takeover of assets partially owned by the Trust, "there are loans that are about to be called, defaults that are going to occur because my client needs to be the one who – he's guaranteed the loans, and there are covenants with those loans that require him to be the manager. And there are actions that they [Nancy and the Hitchmans] have jointly taken, for reasons which we can't quite understand from a practical perspective, that are really going to harm my client." (Exhibit 833, pages 29-30.)[34]

Also, during the June 26, 2017, TSC/Review Hearing, Judge Hubbard discussed with the attorneys the Hitchmans' request to investigate some of the claims Team Nancy had previously filed against Thomas that were pending trial in the underlying legal dispute between the family members. In explaining the Hitchmans' position, and in providing the rational for the Hitchmans not seeking to investigate/intervene in some of Team Nancy's claims, Glowacki confirmed what is undeniable and legally correct: "Those are claims by which Nancy Shurtleff and other beneficiaries are seeking to **contest** the very instrument that my clients are administering. And as a result of that, we [Team Hitchman] don't think it is appropriate to assert a **contest to the Trust** of which we are the Trustees." (Exhibit 833, page 42, lines 6-11. Emphasis added.)

When the court gave Pech an opportunity to respond, he started his answer by telling Judge Hubbard the following: "unfortunately, the court has not read what we filed on Friday regarding this. And I might suggest the court do it so we don't have to deal with another court." Judge Hubbard, understandably, interrupted Pech and asked: "I'm sorry, what? So you don't have to deal with another court? What are you --." Pech, interrupted Judge Hubbard and stated: "Your Honor, I would like to get everything resolved in this courtroom without going to the Fourth DCA." (Exhibit 833, page 42.)[35]

---

[34] Notwithstanding this ominous declaration by Gold on the record in open court, Team Hitchman never took any genuine affirmative steps to give Thomas and his attorneys an opportunity to expand on these concerns, and more importantly, never asked Thomas and his attorneys if there is a way for the Hitchmans to alleviate any of these concerns. The Hitchmans did not like Thomas as the *suspended trustee*, but they owed him a duty as the *beneficiary* of the Trust. By not acting in response to Gold's concerns, the Hitchmans breached their fiduciary duty to the Trust and one of its beneficiaries.

[35] This is just one example of the way Pech practiced law in connection with this case. Pech's condescending, unprofessional, and disrespectful manner of communicating with the Hitchmans' attorneys was reflected in many of the evidence introduced during the trial.

Pech proceeded to argue that Judge Hubbard previously denied the Hitchmans' request to investigate and join in the underlying litigation, telling Judge Hubbard: "This case here, your Honor, is beneficiaries competing against each other. There is no third parties out there. There are only the beneficiaries. And under California law, we cited Supreme Court cases. We invite the court's attention to that … that where you have them fighting each other, the trustee doesn't take sides one way or the other. The trustee doesn't need to investigate anything as to whether they want go ahead and sue Tom Morgan or join, which obviously they do. … We filed that when you only have beneficiaries challenging each other as to who's entitled to what from the trust, the trustee does not get in the middle of that and take sides one way or the other and spend trust funds." (Exhibit 833, pages 43-44.)

As to the request by the Hitchmans for authorization to investigate some of Team Nancy's claims, and to potentially file a joinder, as well as some other issues relating to the Hitchmans' complaints against Thomas relating to Bank of America and Lamplighter Chino, Judge Hubbard trailed the case to Wednesday, June 28, 2017. (Exhibit 833, page 49, lines 1-4.)

On June 28, 2017, the court, Judge Hubbard presiding, reconvened the TSC/Review Hearing to address the remaining issues. Glowacki and Benz were present in person in court on behalf of the Hitchmans, in addition to attorneys representing the family members. Exhibits 834 and 835 are the transcripts of the June 28, 2017, hearing. At the start of the hearing, Judge Hubbard made the following observation: "the Hitchmans, in this as the interim successor trustees, go in to protect the Trust assets and avoid waste and hold the place until these beneficiaries battle it out and decide what's going to happen. … An interim trustee in my opinion does preserve the estate assets, make sure they are not wasted, try to marshal whatever assets they can obviously that are out there. If they have to operate a business owned by the Trust … then they must operate that business. But in terms of investigating, in terms of proceeding to file actions on their own or being necessary parties, I think that's where we have the confusion because essentially it seems to me that it's the parties who have to do that. Ms. Shurtleff and the children and her brother [John] need to do their investigation as to what they say Tom Morgan [Thomas] has done in terms of not acting correctly as trustee. … I don't think the interim trustees

[Hitchmans] need to get involved in that because they essentially are up here holding everything study until we get the litigation worked out." (Exhibit 834, pages 5-6.)

As to the Hitchmans' action in taking over Lamplighter Chino, Judge Hubbard observed that "if there is an action that needs to be brought there, it's brought by the Trust against Tom Morgan in his capacity as manager if there's any breaches there or if he's devalued the business, but I am not sure why – I'm getting the impression that the Hitchmans were taking over that operation, but I'm not sure why they would."[36]

Judge Hubbard proceeded by stating the following to Glowacki: "So Mr. Glowacki, talk to me. Tell me why, or if that's actually what happened here. Did I read it right?" Glowacki confirmed to Judge Hubbard that she did read it correctly. (Exhibit 834, page 7.) Nonetheless, and after being given ample opportunity to address the court's inquiry, Glowacki did not provide any information that the Hitchmans had regarding any "breaches" by MPI/Thomas in the management of Lamplighter Chino, nor did Glowacki provide any information regarding any action by MPI/Thomas that "devalued" Lamplighter Chino.

Not satisfied with Glowacki's non-answer, Judge Hubbard expressly and specifically asked if Team Hitchman "have any indication of mismanagement of the Park [Lamplighter Chino]," Glowacki answered by stating: "And so indication of mismanagement include the fact that distributions from Lamplighter and the Chino Entities to the Trust essentially ceased some time ago." (Exhibit 834, page 10-11.) Based on the totality of all the evidence introduced during the trial, including documentary evidence and testimonial evidence, as well as the admissions by members of Team Hitchman who testified during the trial, the court hereby finds that the above listed answer by Glowacki on behalf of the Hitchmans was factually inaccurate.

///

[36] As the evidence established during this trial, and as Bruce H. admitted, the **only** reason the Hitchmans took over Lamplighter Chino is because that's where the money was.

Furthermore, the court finds that at the time Glowacki gave the above answer to Judge Hubbard, Team Hitchman was in constructive as well as actual possession of documentation and accounting records expressly and clearly showing that Glowacki's answer to the court was factually inaccurate.[37]

The facts established during the trial clearly shows that distributions from Lamplighter Chino were made during Thomas' trusteeship, the distributions were reported, and the distributions did not cease. More importantly, the court finds based on the evidence introduced during the trial that when Team Hitchman represented to the court on June 28, 2017, that MPI/Thomas mismanaged Lamplighter Chino by not making distributions, such representation by Team Hitchman was not the result of any independent investigation by Team Hatchman, rather, it was the result of nothing more than Team Hitchman parroting and simply repeating, without any investigation, what Team Nancy was claiming.

Lamplighter Chino was a complex and thriving business valued at approximately $24 million and generating substantial income on a yearly basis. By all credible accounts, MPI had been successfully managing Lamplighter Chino for decades benefiting the Trust. The Hitchmans, with close to zero relevant and tangible experience relating to the management of mobile home parks, started the process of taking over Lamplighter Chino by just accepting what Team Nancy told them. [38] This action

---

[37] As a matter of fact, during that very same June 28, 2017, hearing, Glowacki states on the record that he had in his actual possession and in his hands the relevant accounting as he was addressing Judge Hubbard: "And **I do have here today** a copy of the January 25th, 2014, through December 31st, 2016, accounting that was prepared by Mr. Morris. We received it I believe yesterday. I've not had a chance to review it in detail … ." (Exhibit 834, pages 11-12. Emphasis added.) During the trial, witnesses from Team Hitchman admitted and confirmed that the accountings clearly and expressly show that MPI/Thomas made distributions from Lamplighter Chino to the members, and that the claims of *ceasing* the distributions and *choking off* were simply false. Glowacki testified that at the time he was addressing Judge Hubbard, he had in his hands exhibits 54 showing that Thomas did in fact make distributions from Lamplighter Chino. When Glowacki was confronted with the fact that he told Judge Hubbard something that was inaccurate, he agreed. "*Question by Thomas' attorney:* So your representation to judge Hubbard was incorrect? Answer by Glowacki: I didn't have any context for this in terms of what distributions would have been expected in the normal course from the Chino entities. So to say that distributions had essentially ceased was **not accurate**. **I would agree with that**." (Glowacki's testimony on April 9, 2024. Emphasis added.) Also, when confronted with the fact he told Judge Hubbard that Thomas had been squeezing the other owners by "saddling them with taxes without offsetting distributions" to pay the taxes, Glowacki admitted that part of this statement he made to Judge Hubbard "seem to be incorrect." (*Id.*)

[38] During the June 28, 2017, hearing, when asked if the Hitchmans had any experience in managing mobile home parks, Glowacki told Judge Hubbard that they did have such an experience in a Texas case. Based on the evidence introduced during the trial, specifically when Bruce H. was asked about his experience in managing mobile home parks, the court finds that the Hitchmans **did not** have any tangible or positive experience in managing mobile home parks that would be relevant to justify in any way their conduct in doing all they could to take control of Lamplighter Chino.

was harmful to the Trust, harmful to MPI, and harmful to the beneficiaries of the Trust, including Thomas.

If the above egregious conduct was not enough, what happened next is equally alarming and probative to the court in deciding if the Hitchmans breached their fiduciary duties. Failure to make distributions from an entity to its members is not necessarily, by itself, an indication of mismanagement of the entity. As soon as Glowacki finished giving the court the *ceased some time ago* inaccurate answer, Judge Hubbard stated the following: "All right. Wait a minute. Wait a minute. That's not mismanagement of the Park [Lamplighter Chino]. That's a trust claim for distributions they have not received. That doesn't mean he was mismanaging the Park." Rather than accepting the court's correct observation of a legal and common-sense principle, Glowacki doubled down and his answer is very probative to the court regarding the pending issues because, again, his answer mirrors almost verbatim the language used by Team Nancy in their claims against Thomas.

Glowacki told the court: "In our estimation, you Honor, we understood it to be mismanagement of the entities that operate the park. It seemed the goal for Mr. Morgan [Thomas] was to **choke off** those distributions to not only the interim co-trustees but to the other owners which include Mr. McDermott's client in a significant part, I think more than 20 percent. So there's that." (Exhibit 834, pages 10-11. Emphasis added.)

The evidence introduced during the trial, both documentary and testimonial, establishes that Team Nancy repeatedly used the term "choke off" when describing their false claim against Thomas for failure to make distributions out of Lamplighter Chino. As listed elsewhere in this statement of decision, the court finds that this is again another of many examples showing that from the earliest stages of their trusteeship, the Hitchmans were almost blindly accepting at face value Team Nancy's positions, in breach of the Hitchmans' fiduciary duties to the Trust and to Thomas in his capacity as a beneficiary of the Trust.

Furthermore, Glowacki's answer to Judge Hubbard exhibits an additional alarming condition as it relates to the Hitchmans state of mind regarding the main beneficiary of the Trust they were appointed to administer: the Hitchmans did not just accept at face value Team Nancy's assertions

regarding Thomas' conduct, rather, by June 28, 2017, without conducting any reasonable, independent, or good faith investigation into MPI/Thomas' conduct in managing Lamplighter Chino, Team Hitchman had already reached a conclusion regarding Thomas' state of mind and motivation. This is exhibited by Glowacki telling Judge Hubbard that Thomas' "goal … was to **choke off** those distributions."

When Judge Hubbard did not accept at face value Glowacki's assertions of mismanagement by MPI/Thomas, and Judge Hubbard continued to push back and question Glowacki regarding the Hitchmans' assertions that they took over Lamplighter Chino because of mismanagement by MPI/Thomas causing harm to the Trust, Glowacki ended up saying "as I sit here, I don't know" impliedly (and almost directly) admitting that Team Hitchman had not done any independent investigation before leveling such serious and substantial accusations against the main beneficiary of the Trust (Thomas).[39] What Glowacki said next is very probative to the issues pending before the court. Glowacki, on the record, somewhat subtlety but clearly, asked for a lifeline from Team Nancy: "There may be other counsel here who have thoughts on that subject." (Exhibit 834, page 13, lines 20-25.)

The court finds that the above on-the-record request for assistance by Team Hitchman from the attorneys for Team Nancy, considered in light of all the evidence introduced during the 43-day trial, is emblematic of how the Hitchmans carried out their co-trusteeship from day one to the last day. It shows that Team Hitchman made claims and assertions against Thomas, and took positions harmful to Thomas and the Trust, without conducting any investigation and based only on the claims and positions of Team Nancy. More importantly, by asking one group of beneficiaries (Nancy, John, and Nancy's daughters) to help the interim co-trustees advance claims against a different beneficiary (Thomas), the interim co-trustees showed their hand: they accept at face value what Team Nancy asserts and they never give Thomas the benefit of the doubt. If the conflict between the family members (beneficiaries) was a 100-meter race, Team Hitchman at every step did all it can to make sure that Thomas had to start this race at least a mile behind the starting line. The Hitchmans did not give Thomas, the beneficiary,

[39] After Judge Hubbard pushed back against Glowacki's assertions and asked for the evidence supporting his assertions, he told the court: "I don't have as I sit here **evidence** that ongoing control by MPI cased damage." (Exhibit 834, page 13. Emphasis added.)

a fair shake and that is not allowed under the law when the Hitchmans owed a fiduciary duty to Thomas and to the Trust. This is true even if Thomas' attorney at the time (Pech) treated the Hitchmans and their attorneys unprofessionally and with an unearned sense of entitlement and condescension. The Hitchmans' attorneys certainly deserved better from Pech. But so did Thomas from the Hitchmans.

The court finds the above listed evidence to be evidence showing that the Hitchmans breached their fiduciary duty to the Truist, and to Thomas as a beneficiary of the Trust, including the duty of impartiality.

The June 28, 2017, hearing, as well as all the evidence introduced during the trial, paint an image in conflict with Glowacki's trial testimony when he indicated that during the early part of the June 28, 2017, hearing he was feeling relieved that Judge Hubbard was not going to allow Team Hitchman to continue to take control over Lamplighter Chino, or get involved in the litigation to only be disappointed at the end of the hearing when, in his opinion, he concluded that Judge Hubbard changed her mind. One who is relieved that a door is closed does not repeatedly continue knocking on it and asking the person on the other side to open it.

The record of the June 28, 2017, hearing, as well as all the evidence introduced during the trial, established to the satisfaction of this court that Team Hitchman continued to push back to be allowed to be part of the underlying litigation, exactly what Team Nancy wanted them to do.

One of the many substantial number of examples of this conduct by Team Hitchman can be seen when Glowacki, after having already told Judge Hubbard, without any evidentiary support, that MPI/Thomas were mismanaging Lamplighter Chino, told Judge Hubbard regarding Lamplighter Chino: "We can't know whether they're being managed properly without marshaling them," and Judge Hubbard responded: "I don't think marshaling them includes though taking control. That's a different situation. You can marshal those assets … but I don't know that that means you go in and start managing the mobile home park." (Exhibit 834, page 14, lines 1-11.) Unfortunately, Judge Hubbard on June 28, 2017, did not have the benefit of the information that the court received during the trial showing, as clear as a blue sky on a sunny summer day in Southern California, the real reason for the Hitchmans wanting to take control over Lamplighter Chino. As will be discussed elsewhere in this

statement of decision, the reason had a lot to do with "*Willie Sutton*" and "*where the money is*." (Exhibit 424.)

During the June 28, 2017, hearing, Pech told Judge Hubbard what had become very obvious, namely, that Pech did not understand nor appreciate the legal requirements relating to probate law and probate litigations, as exhibited by many examples throughout the litigation in this case, not the least of which *the lip service accounting* he filed that resulted in Judge Hubbard suspending Thomas as stated above: "The court has come up with an issue really that I didn't think about – **I'm not really a probate lawyer**." (Exhibit 834, page 22, lines 7-9. Emphasis added.) Again, as Pech continued to try to articulate his point, he told Judge Hubbard: "Because I am not a probate lawyer." (Exhibit 834, page 23, line 23.)

During the June 28, 2017, hearing, Pech continued to argue that Lamplighter Chino is not a Trust asset, rather he asserted that it is an asset in which the Trust owns a 51% interest and that the Hitchmans have no business controlling it or managing it. In making his point, and in the presence of Glowacki and Benz, Pech stated the following: "So this insanity is even going to get worse because there **is litigation involving Chino**." ("Exhibit 834, page 31. Lines 9-10. Emphasis added.) Pech subsequently said, "I've got litigation in October. Do they know about that? Okay. I've got a huge trial involving $30 million. Are they going to, what, take that over too? Put Bill Benz in charge of that? Are you kidding me? They have no idea what they've gotten into. They've gotten into the fact they don't know. And they did have the asset management agreement between MPI, Morgan Partners, Inc., and the Lamplighter Chino and that's breached, okay. I mean, all these things that they just go, oh, well, I'm just going to go into the foray here and take over everything. Well, there's consequences if you don't know about what you're doing and that's what has happened, okay." (Exhibit 834, page 36, line 18 to page 37, line 4.)

Without a doubt, the record is clear that both Glowacki and Benz were present in court during Pech's argument, and Glowacki actually told Judge Hubbard, as soon as Pech finished, "may I respond to a few of those points, you Honor, that Mr. Pech just made?" (Exhibit 834, page 40, lines 14-15.)

Pech ended his argument by asking the court for an evidentiary hearing regarding the claims Team Hitchman and Team Nancy were making regarding Lamplighter Chino, and the Hitchmans' action in taking control over it: "That the court to have an evidentiary hearing to where it puts Mr. Morgan [Thomas] in the box and whoever else it wants to … the court can ask him any questions they want to. These gentlemen here [attorneys for Hitchmans, Nancy, John, and Nancy's daughters] can go have **batting practice** on him if they want to and the court could be satisfied that we don't start another **world war three** with Lamplighter Ontario or West Valley or someplace else because we've already gotten one with Chino, your Honor, as the court knows." (Exhibit 834, page 37, lines 12-23. Emphasis added.)

Responding further to Team Hitchman and Team Nancy raising concerns with the court about Thomas' management of some of the entities relating to a pending and unrelated $1.5 million draw from a line of credit, Pech told the court that such draw was being done by MPI and not by Thomas, as Team Hitchman and Team Nancy alleged, and then Pech stated: "saying something about, well, Mr. Morgan [Thomas] -- of course it's not Mr. Morgan. It's Morgan Partners, Inc., that's signatory on accounts, not a party in this case. … Do they, in God's world, know what a million and a half dollars would do or why it might be needed? Do they have any idea? **They are clueless**, okay. But if you put Mr. Morgan in the box, he'll tell you exactly why, okay, because you got loans coming up, you've got things – mobile homes you have to move into a Park, you have all kinds of things that have to be done. What's he going to do? Take a million and a half dollars and flee to, what, Buenos Aires or something? I mean, **it's idiotic**, okay. … A million and a half dollars – and that's on Lamp – that's on Ontario Associates, LP. It has nothing to do with Chino. It's Ontario Associates, LP. … Because they are ignorant about it." (Exhibit 834, pages 38-39. Emphasis added.)

At the conclusion of the June 28, 2017, hearing, Judge Hubbard indicated that she is permitting the Hitchmans to continue managing Lamplighter Chino but that she is rejecting Team Nancy and Team Hitchman's assertions that Thomas was in violation of her prior court order relating to Lamplighter Chino. The court ordered Thomas not to interfere with the Hitchmans' conduct in operating Lamplighter Chino. (Exhibit 834, page 56, lines 5-16, and page 67, lines 2-6.)

As to Thomas' then pending request to remove the Hitchmans as interim co-trustees, Judge Hubbard stated the following: "As to the request to remove them at this point, I will not remove them. I think there has been confusion caused by this issue between interim and successor. I think that they have proceeded in good faith. I don't think that they're trying to align themselves. Counsel is correct. If **they see** that there has been something that looks like it's a breach of one of – by a **former trustee** and it's affecting **one of the beneficiaries**, they can't – they have a duty to the beneficiaries and to the Trust to protect it. They can't ignore it. You can't say that, oh, they're not going to be impartial. If they're impartial, they ignore it. They can't ignore it. They have duties. I'm not going to remove them at this point in time." (Exhibit 834, page 67, lines 2-15. Emphasis added.)

As a starting point, when Judge Hubbard stated that if the Hitchmans "see" a breach of duty by Thomas in his capacity as former Trustee, the Hitchmans have a duty to protect the Trust, it is not reasonable to interpret this statement by Judge Hubbard as a permission for the Hitchmans to just take Team Nancy's word for it. It is not reasonable to interpret "if they see" as used by Judge Hubbard to mean *if Team Nancy tells them*, or *if Team Nancy alleges*. The reasonable interpretation of what Judge Hubbard stated is what the Probate Code and case law clearly provides: if Team Hitchman genuinely becomes aware of competent real facts establishing the basis for them to conclude that Thomas breached a fiduciary duty in his capacity as former Trustee, then the Hitchmans will have an obligation to protect the Trust.

The evidence introduced during the trial clearly establishes that no such reasonably or competent facts ever came to the Hitchmans' knowledge to justify the Hitchmans' conduct in so badly wanting to participate in the underlying litigation, and the dispute between the family members.

During his testimony in this trial, Glowacki testified that he interpreted this language as the court giving the Hitchmans authorization to investigate and litigate against Thomas. Glowacki further testified that he was disappointed because deep down inside he was hoping the court will direct the Hitchmans to stay out of the litigation between the family members, which is what he thought the court had indicated at the start of the June 28, 2017, hearing. The court does not find this testimony to be

persuasive, nor does the court find this testimony to be consistent with Team Hitchman's conduct from the start to the end of the Hitchmans' interim trusteeship.

The evidence introduced during the trial establishes by overwhelming competent evidence that the Hitchmans wanted to do what Team Nancy wanted them to do, namely, intervene in the underlying litigation.

The court does not find persuasive the testimony that at the start of the June 28, 2017, hearing Team Hitchman really wanted to be told by the court to stay out of the litigation, and they were relieved at the start of the June 28, 2017, hearing when Judge Hubbard was leaning that way, only to be disappointed by what Judge Hubbard said at the end of the hearing. When asked during the trial why did Team Hitchman then not ask the court to order them to stay on the sidelines and out of the litigation between the family members, Glowacki testified that making such a request would not have been a viable option because the court would not look favorably on such a request. The court does not find this testimony reasonable or persuasive. Certainly, Team Nancy who were promised *quick action* by the Hitchmans would not find such an option a good one, but that does not mean Team Hitchman should not have pursued it if they were really disappointed by the direction they felt Judge Hubbard gave them at the end of the June 28, 2017, hearing.

The court finds based on the evidence introduced during the trial that Team Hitchman's negative views of Thomas were set in stone within days after the Hitchmans were appointed as interim co-trustees, that these negative views never changed, that the Hitchmans never gave Thomas, nor his attorneys, a meaningful opportunity to counter such views, and that by carrying out their interim co-trusteeship based on such views, the Hitchmans breached fiduciary duties they owed to the Trust and to all its beneficiaries, mainly Thomas. As discussed elsewhere in this statement of decision, undoubtedly the conduct of Pech contributed the Team Hitchman's views of Thomas, and therefore, it contributed to Team Hitchman's harmful actions towards Thomas and the Trust.

Throughout the June 26, and June 28, 2017, hearings and all other hearings before Judge Hubbard, members of Team Hitchman continuously referred to Thomas as the ***suspended trustee***. The same is true when it came to most, if not all, of Team Hitchman's written communications and court

pleadings. For Team Hitchman, Thomas was at all times the suspended trustee. It is absolutely true that Thomas was the suspended trustee throughout all the co-trusteeship of the Hitchmans but that's not all he was. Thomas was also at all relevant times the main and major beneficiary of the Trust that the Hitchmans were appointed to administer. Therefore, when it came to the Hitchmans' fiduciaries duties, the evidence introduced during the trial completely established that Team Hitchman treated Thomas as the suspended trustee, and rarely if ever, did the Hitchmans treat Thomas as the beneficiary to whom they owed fiduciary duties. In addition, the evidence introduced during the trial proved that Team Hitchman happily and eagerly adopted team Nancy's view of Thomas, namely, as an adversary.

The Hitchmans argue that as the interim co-trustees, they had a duty to investigate allegations of misconduct by the suspended trustee, and to go after the suspended trustee **if their investigation** reasonably uncovered any such misconduct. The court agrees with this conditional general legal principle. However, in this specific case the court finds, based on the totality of all the evidence, that the Hitchmans conducted no such reasonable investigation, rather, they took at face value and adopted *hook, line, and sinker* specific claims made by Team Nancy against Thomas and proceeded accordingly.

Over and over again, Thomas proved during the trial that Team Hitchman reached conclusions, and took positions, that were devastating to Thomas in his capacity as a beneficiary but with no factual basis other than such conclusions and positions were what Team Nancy claimed. And then when the Hitchmans reached such conclusions, and took such positions, they gave Nancy and her attorneys, literally and figuratively, editorial privileges and control: Team Hitchman sent to Team Nancy's attorneys the Hitchmans' proposed draft court pleadings for Team Nancy's attorneys to review and revise, which they did.

The court hereby finds that the evidence introduced during the trial proved that Team Hitchman performed their duties as interim co-trustees *lock, stock, and barrel* consistent with the expressed desires of Team Nancy's attorneys. Exhibits 984 and 984A, which will be discussed in more details below, show just one of the many examples of how Team Nancy's attorneys were driving the Hitchmans' interim co-trusteeship bus.

In connection with Team Hitchman's objection to Thomas drawing from a line of credit the above described $1.5 million, On July 6, 2017, Judge Hubbard overruled the objection finding that the court does not have jurisdiction over MPI, hence, no jurisdiction over the line of credit in question. (ROA 1568.)

On July 10, 2017, the Hitchmans submitted the surety bond for $12 million as previously ordered by the court. (ROA 1569.)

On July 27, 2017, Thomas filed an objection to the proposed order submitted by the Hitchmans regarding the turn-over of documents previously discussed on the record. As to the invoices, billing statements, fee agreements, and documents evidencing payment for attorney fees, Thomas objected on the grounds (1) the proposed order was contrary to the law, and (2) "there is no jurisdictional basis for this part of the Proposed Order." (ROA 1572 and *Morgan v. Superior Court*, supra, 23 Cal. App. 5th at p. 1034.)

On August 2, 2017, the court (Judge Hubbard) held a further review hearing/ TSC. Christopher Carico ("Carico") joined Glowacki and Benz in representing the Hitchmans during this hearing. Thomas was also represented by three attorneys during this hearing. At the start of the hearing, Judge Hubbard expressed a surprise that three attorneys for each side were needed to make the appearance for a TSC: "Really? People needed three attorneys to come on these? Is that really necessary?" Mr. Carico responded: "I think it's trial setting day, you Honor, so I think some of us just want to be here to participate in the trial." (Exhibit 837, page 3, line 24 to page 4, line 2.)

The court finds that Carico's above listed response is just one piece of circumstantial evidence showing that from the earliest stages of their interim trusteeship, Team Hitchman had already made up their mind about wanting to participate in the trial to litigate against Thomas and on Team Nancy's side.

Carico's additional initial statements during this hearing, when Judge Hubbard asked about a suggested trial date, are also very informative and enlightening: "Your Honor, I think the first thing maybe we want to cover is how far out because I believe the – the Hitchmans are still in a position where we're just trying to get into discovery and get documents from Mr. Morgan [Thomas]. And we

don't have the digital assets yet, which would be relevant to the financial elder abuse, conversion, and **fraud** claims that relate to Beverly. … So we're – we're still months away from really being able to give a complete **trial estimate**, your Honor." (Exhibit 837, page 4, line 21 to page 5, line 5. Emphasis added.)

This statement by Carico supports Thomas' position during the trial, namely, that from the early days of their co-trusteeship around May of 2017 when the Hitchmans added the law firm of Carico Johnson Toomey LLP to represent them, along with the Roehl & Glowacki law firm, the Hitchmans had already made the decision to join in the underlying trial involving the dispute between the family members.

The court finds that based on the entirety of all the evidence introduced during the trial, this decision to join in the litigation between the family members was planned and decided as part of the Hitchmans' pre-appointment promise to Team Nancy of "quick action." Equally important to the court is the fact that on August 2, 2017, Carico, the trial attorney brought on the case to represent the Hitchmans, was already talking, and planning, and strategizing, and thinking about Team Nancy's **fraud** cause of action against Thomas. Again during the hearing, Carico confirmed the claims that the Hitchmans wanted to join and litigate: "The claims that the Hitchmans are involved in are financial elder abuse, **fraud**, and conversion claims that happened while Beverly was still alive, which was in that 2010 to 2014 period."

Using this clear indication as to what the Hitchmans wanted to do, Carico proceeded to tell Judge Hubbard that in order for Team Hitchman to continue getting involved in these claims, Team Hitchman needed to get more discovery related documents, and "the only way for us to really get them easily and smoothly is for the Hitchmans to be appointed **immediately** as special administrators." (Exhibit 837, page 17, lines 12-24. Emphasis added.) When Judge Hubbard told Carico that what he was asking for was not before the court and he answered that he understood, Judge Hubbard disagreed: "No, you're talking about things the court hasn't ordered." (Exhibit 837, page 17, line to page 18, line 2.)

Later in the hearing, and once again, Carico clear announced the Hitchmans' plans: "So realistically your Honor, we need 11 months before we will be ready to try it from the Hitchmans' point of view on the **financial elder abuse, fraud, and conversion claims**." (Exhibit 837, page 23, lines 23-26.) The Hitchmans did not ask for more time to investigate so that they can determine if Thomas actually committed financial elder abuse, fraud, and conversion. Rather, they wanted the 11 months to be prepared and ready to litigate what they already had decided from the start: Thomas committed all these specific causes of actions that Team Nancy previously filed against him. *Why did Team Hitchman decide that?* Because Team Nancy said so.

As will be discussed elsewhere in this statement of decision, Team Hitchman's decision to litigate a cause of action that would have the legal effect of contesting and invalidating the Trust instrument they were appointed to administer, is inappropriate at the least, as Glowacki previously told Judge Hubbard: "don't think it is appropriate to assert a **contest to the Trust** of which we are the Trustees." (Exhibit 833, page 42, lines 6-11. Emphasis added.)

After being notified by Gold that Pech[40] is planning to file a "petition for writ of mandate" in connection with the court's prior turn over order of documents made verbally on the record, and since such verbal order had not yet been issued in a signed format by the court, Pech did not comply with the verbal order and was waiting for the signed written order before seeking appellate review. Judge Hubbard responded as follows: "Once again, the court finds that to be disingenuous at best. It was Mr. Pech who confirmed to this court as an officer of the court that he would be providing the documents by a date certain. So no formal written order in? As I say, that's disingenuous at best." (Exhibit 837, page 6.)

After McDermott told Judge Hubbard that Pech's behavior in giving commitments regarding discovery in open court only to fail to live up to such commitments, Judge Hubbard indicated that she will be setting an Order to Show Cause (OSC) re contempt regarding Pech and Thomas's failure to obey her prior court order. "As far as the court's concerned, that's close to contempt, so we're going to set it and prove it. Mr. Pech is not going to be happy. And this contempt, by the way, will be a

[40] Pech did not appear at this August 2, 2017, hearing.

hearing for both Mr. Pech and his client. … We're going to have an OSC re contempt as to why Mr. Pech and why his client should not be held in contempt of court for their continued refusal to obey this court's orders after affirmatively stating on the record and as an officer of the court by Mr. Pech that he would do so." (Exhibit 837, page 22, lines 8-12, page 28, line 23 to page 29, line 2.)

Judge Hubbard scheduled the OSC re contempt for September 29, 2017, and indicated that she will issue a written formal order relating to her prior verbal orders for turnover of documents, bond, Lido Condo, and other requests. The court's formal written order was issued on August 2, 2017, "impliedly overruling Thomas's objections." (ROA 1579 and *Morgan v. Superior Court*, 23 Cal. App. 5th at p. 1034.)

In August of 2017, the Hitchmans liquidated the $6,006,250.63. Lamplighter Chino Certificate of Deposit. However, before the Hitchmans liquidated this CD, one of their attorneys, MacDonald, brought to their attention that there is a chance this large amount is a "pooled fund" and there may "be a claim that some of the money in it actually belongs to different entities." Notwithstanding this accurate cautionary advice from MacDonald, the Hitchmans proceeded with liquidating the CD without inquiring more about the "pooled fund" issue. In addition, Bruce H. admitted during his testimony that records regarding Lamplighter Chino's financial transactions were in his possession before the Hitchman liquidated the CD, and that prior to liquidated the CD, he reviewed these records and did not miss the entry from December 19, 2014, showing the $250,000 loan from Thomas' Children Trust to fund Lamplighter Chino's CD. (Exhibit 45.)

Furthermore, based on Bruce H.'s trial admission, along with the totality of all the evidence introduced during the trial, including Lamplighter Chino's Bank of America Statements that Bruce H. had in his possession (exhibit 40), the court finds that the Hitchmans knew before they liquidated the CD that $250,000 out of the $6 million was lent from the Thomas E. Morgan Children Trust to Lamplighter Chino to fund the $6 million CD. When the Hitchmans liquidated the CD, they distributed approximately $2 million, some of it went to Nancy, some of it to Thomas, and around $1 million of it to the Trust so that the Hitchmans can use the money to pay for litigation expenses. (Exhibit 303.) The

rest was used by the Hitchmans to pay off Lamplighter Chino's line of credit that was secured by the CD.

On August 15, 2017, Team Hitchman was continuing to work hard to get involved in the underlying litigation between the beneficiaries. The court finds based on the totality of all the evidence introduced during the trial that this was Team Hitchman's frame of mind, even though they had no good reason to enter the fray of a litigation between the family members, and had no basis for doing so, let alone a sound basis. Exhibit 338 is an email exchange between members of Team Hitchman that the court finds substantially probative in connection with the issues pending before the court. On August 15, 2017, Benz wrote an email to Glowacki, Roehl, Carico, Bruce H., Lee Ann, and a Lilian Walden, who is presumably a member of the Hitchmans' legal team. The *subject line* of the email is a telling one: **Bringing HF into Lawsuit**.

Benz starts the email by stating, "I did some research on the best way to bring HF into the lawsuit." Not I did some research to see **if** HF should join the lawsuit - that train left the station most likely immediately after the Hitchmans were initially contacted by attorneys for Nancy and promised them *quick action*. After Benz proceeds with providing the result of his legal research regarding filing an intervention versus filing a joinder, he ends his email with the following: "At this point, however, I'm **not sure of the specific facts we have** to allege breach of fiduciary duty and elder abuse. **Hopefully** our meeting with the **Shurtleff** group will help us **develop a sounder basis**." (Exhibit 338, emphasis added.)

As the facts proved during the trial, the Hitchmans did not have any specific facts to allege the claims they wanted to allege against Thomas, and never had any such facts when they did file their 17200 Petition. *Why would a genuinely independent, impartial, and fair minded private professional fiduciary who owes a duty to all the beneficiaries **hope** to develop facts from a meeting with one beneficiary to sue another beneficiary?* There is no reasonably good answer to this question. The court finds that this email is an exceptionally relevant and probative, but not dispositive, piece of evidence supporting all the findings the court is making in this statement of decision regarding the Hitchmans' performance and breach of fiduciary duties. The court also find this exhibit to be relevant in assessing

and weighing the credibility of some of the testimonies provided by Bruce H., Lee Ann, Benz, Glowacki, Carico, and Roehl.

On August 29, 2017, Thomas filed a writ of mandate and requested an immediate stay. On August 31, 2017, Nancy, as the real party in interest, filed an opposition to the writ. On September 5, 2017, the Hitchmans filed their opposition to the writ. On September 28, 2017, the Forth District Court of Appeal, Division Three ("DCA"), issued an order denying the writ for mandate and request for immediate stay. (DCA Case G055377. ROA 1593.) On that same day, the court continued Judge Hubbard's OSC re contempt to December 1, 2017. (ROA 1606.)[41]

Thomas filed a petition in the Supreme Court seeking review regarding the DCA's denial of the writ of mandate. On October 13, 2017, the Supreme Court granted the petition for review with directions to the DCA. (Supreme Court case S244603.) On October 18, 2017, the DCA issued a new order vacating its September 28, 2017, order that summarily denied Thomas' petition for a writ of mandate and request for a stay. The DCA's new order provided a briefing schedule. (ROA 1594.)

On November 1, 2017, Glowacki sent an email to Team Nancy's lawyers, namely, McDermott, Byers, and Garrett, with a *carbon copy* to Carico, Benz, Roehl, and Lilian Walden. The email had an attachment containing the draft of the petition the Hitchmans were getting ready to file against Thomas. Glowacki told Team Nancy's lawyers the following: "we are delivering this **draft trust petition** for your **review and comment**. … Please let us know if you would like to discuss." (Exhibit 401. Emphasis added.)[42] No similar courtesy by Team Hitchman was extended to Thomas and his attorneys.

The court finds, based on all the evidence introduced during the trial, that further discussion took place between the attorneys for Team Nancy and the attorneys for Team Hitchman, and that Team Nancy's attorneys provided input with directions for changes and revisions to the Hitchmans' draft petition.

[41] The court file does not reflect that a hearing on Judge Hubbard's OSC re contempt ever took place and it appears that it was subsequently continued a few times and then it was taken off calendar after Pech substituted out of the case as Thomas' attorney. (ROA 1609 and 1657.)

[42] Exhibit 401 contains both the email and its attachment.

The court finds that the actions by Team Hitchman in fully coordinating with Team Nancy in their pursuit of a claim against Thomas to be a breach of fiduciary duty owed by the Hitchmans to the Trust, and to Thomas as a beneficiary of the Trust. Not surprisingly based on all the evidence introduced during the trial, Team Nancy reviewed the Hitchmans' draft and responded with their proposed revisions and additions. (Exhibit 405.)

On November 14, 2017, the Hitchmans filed a petition under Probate Code section 17200 alleging eleven causes of action against Thomas and other entities. The eleven causes of action are: (1) Conversion - against Thomas in all capacities, (2) Breach of Trust during Beverly's Lifetime – against Thomas in his capacity as trustee, (3) Breach of Fiduciary Duty during Beverly's Lifetime – against Thomas in his capacity as agent under Beverly's durable power of attorney, (4) Financial Elder Abuse – against Thomas in all capacities, (5) Breach of Trust following Beverly's Death – against Thomas in his capacity as trustee, (6) Fraud – against Thomas in all capacities, (7) Instructing Thomas to Turn Over Books and Records of the Trust – against Thomas in his capacity as suspended trustee, (8) Denying Thomas' Attorneys' Fees and Costs - against Thomas in his capacity as suspended trustee, (9) Denying Thomas Compensation - against Thomas in his capacity as suspended trustee, (10) Accounting – against Thomas and others, and (11) Constructive Fraud – against Thomas. (ROA 1601 / exhibit 840.)[43]

In their H-17200 Petition, the Hitchmans declared that they filed the petition "[b]ased on their investigation, which is still ongoing." Specifically as to cause of action number six, namely, fraud, the Hitchmans alleged that Thomas engaged in fraudulent activities including, but not limited to, making false representations to Beverly's estate planning attorneys, concealing critical information from Beverly, including concealing "his true motivation for participating in Beverly's estate planning meetings, and the true effect of the estate planning documents that he encouraged Beverly to execute," falsely promising "Beverly that the 2013 Trust terms[44] would financially benefit Nancy" knowing that it "was not true and he did not intend that it ever would be true."

[43] This November 14, 2017, petition filed by the Hitchmans will be referred to in this statement of decision as the "H-17200 Petition."

As part of this sixth cause of action, the Hitchmans declared and verified, based on information and belief, that Thomas engaged in these fraudulent activities "in order to induce Beverly to make certain estate planning decisions to his [Thomas'] benefit," namely, the 2113 Trust terms the Hitchmans were appointed to administer. The Hitchmans further alleged, declared, and verified that Beverly was "ignorant of the true facts and the concealed facts, and relied upon the misrepresentation and concealments" in executing the Trust. In this sixth cause of action, the Hitchmans alleged and verified that Beverly "would not have executed the 2013 Trust **but for** these matters presented to her by Thomas E. Morgan." (Emphasis added.)

Simply stated, the Hitchmans alleged in their H-17200 Petition that the Trust they were appointed to administer was the result of the fraud committed by Thomas, and that **but for this fraud committed by Thomas**, the Trust would not have been executed by Beverly. Therefore, the court finds that the substance and practical effect of the H-17200 Petition, especially the fraud cause of action, makes it clearly and undeniably a petition and cause of action that challenged the validity of the Trust, otherwise known as *trust contest*. Bruce H., under oath, reached the same conclusion.

On January 6, 2023, during his deposition, Bruce H. testified, under oath, as follows. "*Question by Thomas' attorney:* Okay. And, in fact, asserting a claim that a testamentary instrument was procured through **fraud** is a quintessential **trust contest**, right? *Answer by Bruce H.*: Yeah, I don't know about quintessential, but it's – it **seems to be a trust contest, yes**." (Bruce H.'s January 6, 2024, deposition, page 272, line 24 to page 273, line 7. Emphasis added. The transcript was lodged with the court in ROA 3598, pages 111-112. The video of this portion of Bruce H's deposition was played in open court during Bruce H's testimony on November 30, 2023.)

However, when asked a similar question during the trial, Bruce H. gave a somewhat different answer: "*Question by Thomas' attorney:* Your sixth cause of action from your perspective was a trust contest correct, sir? *Answer by Bruce H.:* No, I don't believe so. *Question by Thomas' attorney:* That's what you just said. Is it your deposition testimony we should believe or your trial testimony? *Answer*

[44] The 2013 Trust Terms is a reference to the Trust that the Hitchmans were appointed to administer.

by Bruce H.: I saw them as two different -- two different questions." (Bruce H.'s testimony on November 30, 2023.)

The court does not find credible Bruce H.'s trial testimony regarding the above listed question, and the court finds Bruce H. admitted under oath that filing a claim that a testamentary instrument was procured through fraud, as the Hitchmans claimed in their sixth cause of action in the H-17200 Petition, is a **trust contest.**

The court finds, based on the totality of all the evidence introduced during the trial, that the sixth cause of action in the H-17200 Petition, if found to be true, would have reasonably resulted in a court of law invalidating the 2013 Trust amendment because a true finding on this sixth cause of action would mean that the Trust was a fraud-induced document and should be invalidated. The fact that the Hitchmans' H-17200 did not include a prayer for relief seeking to invalidate the Trust is of no consequence to this finding. *Not even close.*

Accordingly, the court finds that in filing the H-17200 Petition, the Hitchmans did what Glowacki said was improper, but more importantly what the law prohibits: filing a trust contest to invalidate the very same Trust instrument the Hitchmans were appointed to administer.

In the fourth cause of that the Hitchmans filed in their H-17200 Petition, they allege that Thomas committed financial elder abuse against Beverly. In support of this cause of action, on "information and belief," the Hitchmans alleged that Thomas "intended to cause injury [to Beverly], and his conduct was **despicable** and done with a willful and knowing disregard of the rights of others," and that reasonable "people would **look down upon and despise** Thomas E. Morgan's conduct due to its nature." (ROA 1601, page 22, lines 4-8.) Based on the totality of all the evidence introduced during the trial, the court finds that the Hitchmans did not conduct an independent, fair, or reasonable investigation to reach this conclusion, and that it was based on nothing more than a parroting of what Team Nancy was saying about Thomas' conduct.

On December 29, 2017, Pech was substituted out as Thomas' attorney, and Scott Bertzyk of the law firm Greenberg Traurig LLP was substituted in to join Gold as Thomas' attorneys. (ROA 1616 and 1625.)

Not surprisingly, on January 2, 2018, Team Nancy filed a joinder in the Hitchmans' H-17200 Petition. (ROA 1618 and 1620.)

On May 29, 2018, the DCA issued a published opinion denying Thomas' writ petition seeking to overrule Judge Hubbard's turn over order. (ROA 1653. *Morgan v. Superior Court* (2018) 23 Cal. App. 5th 1026.) In the opinion written by the late Justice Fybel, the DCA held that a trust may not allow a former trustee to withhold from a successor trustee all communications between that former trustee and the trust's legal counsel. In so holding, the DCA ruled that the attorney-client privilege vests in the office of the trustee, not in any particular person. Accordingly, the DCA found that the Trust provision (section 10.11) permitting a trustee to withhold documents from a successor trustee violates public policy and is unenforceable. The DCA held that allowing a former trustee to withhold from a successor trustee communication with the trust's former legal counsel would permit a trustee to intentionally (or with gross negligence or reckless indifference) violate duties with no check on his or her conduct. (*Morgan v. Superior Court, supra,* 23 Cal. App. 5th at p. 1029.)

The following finding by the DCA is relevant to one of the issues litigated during the trial: "There is no contention in this case that Thomas retained separate counsel for advice regarding his separate interests or took any other action in that regard." (*Morgan v. Superior Court, supra*, 23 Cal. App. 5th 1026, 1038.) The Hitchmans participated in the litigation of the appeal and certainly by May 29, 2018, they became aware that the DCA found that Pech's representation of Thomas may have crossed legal lines because Pech was the sole attorney providing services to Thomas both in his private capacity, as well as his capacity as trustee, and that Pech was billing the Trust for all these services combined. Even without the DCA's opinion, the court finds based on all the evidence introduced during the trial that the Hitchmans had both actual and constructive possession, from the start of their interim trusteeship, of substantial evidence showing that Pech was billing the Trust for services he was providing to Thomas in his private capacity.

The DCA concluded that in Trust related litigations, "it comes down to the question, what was the intent of the testator as to this matter? H[er] intention, if in accordance with the law, is the all controlling factor. What [s]he intended is to be gathered from a consideration of the whole instrument

creating the trust, the nature and object of the trust and all other circumstances which have a bearing on the question. [Citations] Consistent with public policy, Beverly drafted the Trust to **protect the beneficiaries from malfeasance on the part of a trustee**." (*Morgan v. Superior Court, supra*, 23 Cal. App. 5th at p. 1039. Emphasis added.)

On June 21, 2018, the Hitchmans reached a settlement agreement in the Lamplighter Chino litigation against the City of Chino (*taking lawsuit*). On that same day of June 21, 2018, Benz sent a copy of the unsigned agreement to Thomas' attorneys. The settlement agreement contains a general release of claims. All the owners of Lamplighter Chino, including the Trust, Thomas, and Nancy approved the settlement agreement. The term of the settlement required the City of Chino to pay Lamplighter Chino $1.15 million within 30-days of the settlement agreement taking effect.

On July 6, 2018, the Hitchmans filed a petition seeking a court order approving a settlement agreement involving the *taking lawsuit*. (ROA 1661.) This lawsuit between Lamplighter Chino and the City of Chino was the subject matter of Pech's above listed reference to the "huge trial involving $30 million" during the June 28, 2017, hearing. In this petition to approve the settlement, the Hitchmans, in a pleading signed by Benz under the names of both Glowacki and Benz and their respective law firms, stated that it was on "December 28, 2017," that the Hitchmans "learned that" Lamplighter Chino was in a "years-long litigation with" the City of Chino. (ROA 1661, page 1, page 3, lines 6-8, and page 6, lines 25-28.)

The Hitchmans, Glowacki, and Benz took the position that they did not learn about the *taking lawsuit* between Lamplighter Chino and the City of Chino until December 28, 2017, notwithstanding the fact that over 6 months earlier (specifically 184 days earlier), in the presence of Glowacki and Benz, and on the record in a significant and important hearing, Pech stated in objecting to the Hitchmans actions in taking over Lamplighter Chino: " … So this insanity is even going to get worse because there **is litigation involving Chino**. … I've got **litigation in October**. Do they know about that? Okay. I've got **a huge trial involving $30 million**. Are they going to, what, **take that over too**? Put Bill **Benz in charge of that**? Are you kidding me? They have **no idea** what they've gotten into." (Exhibit 834, pages 31 and 36-37. Emphasis added.)

One would think that any reasonable attorney representing a client who took over Lamplighter Chino, who did not know anything about the lawsuit between Lamplighter Chino and the City of Chino, would jump out of their chair and ask Pech (or ask the court to ask Pech), either during the hearing and on the record, or after the hearing, either verbally or in writing: *hey, by the way, what are you talking about? What's this talk about litigation in October, huge trial, and $30 million? How are we taking over that?* One would reasonably think so, but unfortunately that's not what Team Hatchman did.[45]

When confronted during their testimony in this trial regarding what appears to be a glaring and serious dereliction of duty, breach of duty, and alleged misrepresentation, both Glowacki and Benz testified that even though they both attended and participated in the June 28, 2017, hearing on behalf of the Hitchmans, they did not remember Pech making the above listed statements. Glowacki testified that he had no idea what Pech was talking about. Benz insinuated that he may not have remembered it because Pech talked and argued for over 25 minutes. The court is not persuaded.[46]

As the trier of fact, the court is left with three possible conclusions to explain the unpersuasive and unreasonable testimony of Glowacki and Benz regarding this issue: (1) they both just did not care what Pech was telling the court, so they completely ignored what he was saying; (2) they both just did not care what Pech was telling the court, so they **both** stopped listening and metaphorically speaking closed their ears whenever Pech spoke while at their side of counsel's table and they **both** actually did not hear what Pech said; or (3) their similar testimony on this issue is a coordinated effort to provide untruthful testimony. Any of the three possible conclusions are bad for the Hitchmans when it comes to the issues to be resolved by the court in this litigation.

---

[45] Furthermore, even if the court is to accept that Team Hitchman did not know about this major lawsuit involving Lamplighter Chino and the City of Chino until December 28, 2017, such delayed knowledge is another glaring example about the breach of duty by a fiduciary who fought hard to take over the control and the management of a valuable mobile home park, then to control it and manage it for over six months before finding out that the park is involved in a multi-million dollars lawsuit.

[46] During his testimony, Glowacki was confronted about this issue and whether he even asked Pech about it after Pech was fired as Trust attorney. "*Question by Thomas' attorney:* Mr. Glowacki. Did it ever occur to you a seasoned litigator leading the team to ask Mr. Pech knowing he had been fired what the lawsuit was so you could handle it? *Answer by Glowacki:* It may have occurred to me. I don't recall. *Question by Thomas' attorney:* If it occurred to you, you didn't do it; correct? *Answer by Glowacki:* Not specifically, no." (Glowacki's testimony on April 10, 2024.) The court finds this testimony very probative and damaging to the Hitchmans' position in connection with the cause of action of failure to preserve a malpractice claim against Pech on behalf of the Trust.

The court finds, based on the totality of all the evidence introduced during the trial, that Glowacki and Benz simply did not care about Thomas' position as expressed by Pech, they simply did not care about Thomas' concerns regarding Lamplighter Chino as expressed by Pech, and they did not care about the clear notice and warning Pech was giving them on the record regarding the pending lawsuit. Adding to this, the court finds Team Hitchman's utter disdain for Pech made it easier for Glowacki and Benz to ignore what Pech was saying and to not give it even an iota of credibility or an iota of the benefit of the doubt. The court finds, based on the totality of all the evidence introduced during the trial, that the above listed state of mind was not exclusive to Glowacki and Benz, rather, it was prevalent for the entirety of Team Hitchman, including Bruce H. and Lee Ann.

Certainly, and as discussed elsewhere in this statement of decision, Pech did a lot to earn the disdain of the Hitchmans and their attorneys, however, that is not an excuse for breaching the fiduciary duties the Hitchmans **owed to Thomas and to the Trust**. This was never, and should never have been, about Pech.

On August 29, 2018, the Supreme Court denied Thomas' petition for review of the DCA's above-described opinion. (Supreme Court Case number S249782.) On August 31, 2018, the DCA issued the remittitur. (ROA 1679.)

On September 14, 2018, Thomas filed limited objections to the Hitchmans' petition seeking approval of the settlement between Lamplighter Chino and the City of Chino relating to the *taking lawsuit*. Thomas did **not** object to the actual settlement agreement, rather, he objected to the Hitchmans filing a petition seeking approval of the settlement agreement (he alleged the Hitchmans are doing so to generate fees), as well as what he termed a patently false allegation regarding when the Hitchmans claimed they became aware of the *taking lawsuit*. (ROA 1696.)

On September 19, 2018, the Honorable Judge Gerald Johnston presided over a hearing regarding the Hitchmans' petition to approve the Chino related settlement.[47] Exhibit 844 is the transcript of the hearing. At the start of the hearing, Benz, on behalf of the Hitchmans, indicated that

[47] At that time, Judge Johnston was the Supervising Judge of the Probate and Mental Health Panel of the Orange County Superior Court. Judge Johnston has since retired, and so did Judge Hubbard.

as to the objections raised by Thomas, the Hitchmans are not asking the court to make a finding regarding the truth of the allegations stated in the Hitchmans' petition to approve the settlement agreement in the *taking lawsuit*. (Exhibit 844, pages 3-4.) During the hearing, Gold, on behalf of Thomas, expressed concerns to the court about the Hitchmans, in his opinion, inappropriately and in breach of their duties, paying their fees and their attorneys' fees using Lamplighter Chino's funds as well as Trust funds. When specifically asked by the court, Benz indicated that he was not sure about the Hitchmans' fees but confirmed that the Hitchmans had been paying the Hitchmans' legal fees without court authorization.

Judge Johnston asked Benz if the Trust was court supervised, and Benz answered by saying: "the Trust is court supervised, but the Court's order didn't require any sort of court approval for --." Judge Johnston responded: "Well, I think we may have a disagreement on that. I feel very strongly that when the Court takes over the supervision of a Trust, the Trustees pay themselves at their own peril. Now I'm not happy. … I'm issuing the minute order that the Hitchmans are not to pay themselves a penny without court authorization. If they do so, they will be removed. And I think this is a message that should go out to all professional fiduciaries. If the Court appoints you to look after a Trust, don't presume because the Trust allows you to pay your fees, that you get to do so. If it's court supervised, you need the permission of the judge from this court. I'm very, very disappointed to hear this."

Judge Johnston confirmed that his order applies to the Hitchmans paying their own fees as well as their attorney's fees. (Exhibit 844, page 6, line 23 to page 8, line 5.) Judge Johnston approved the petition to approve the settlement agreement in the *taking lawsuit* between Lamplighter Chino and the City of Chino, with an express indication that the court is not making any finding regarding the truth of the allegations by the Hitchmans stated in the petition. (ROA 1705 and 1791. Exhibit 844.)

On October 3, 2018, Thomas filed a petition for an order removing the Hitchmans as interim co-trustees and seeking a review of their accounting and to surcharge them in addition to imposing damages for alleged breaches of fiduciary duty. (ROA 1721.)[48]

[48] This petition was subsequently amended on November 22, 2019, and the amended petition (ROA 2590) is one of the matters that were tried before the court resulting in this statement of decision.

On October 12, 2018, the Hitchmans filed a motion pursuant to Code of Civil Procedure section 473(b) ("473(b) motion") seeking relief from Judge Johnston's September 19, 2018, order prohibiting them from paying their fees and their attorney's fees without prior court authorization. (ROA 1741.) The Hitchmans' motion was brought on the grounds that Benz "mistakenly informed the Court that the Trust was under 'court supervision' when in fact the Trust was not under 'continuing court supervision.'." The Hitchmans argued that their "prior posting of their Court-ordered $12,000,000 bond is more than sufficient security to protect the Trust estate … ." (ROA 1741, page 2, lines 18-25.)

On October 17, 2018, the Hitchmans filed their First and Second Accounts Current and Report of Interim Co-Trustees, Petition for Settlement of Accounts, and for Ratification of Attorneys' Fees and Interim Co-Trustees Fees Paid. (ROA 1784.) This Petition will also be referred to in this statement of decision as the First Accounting Petition.

On November 6, 2018, the court signed the order approving the settlement agreement between Lamplighter Chino and the City of Chino in the *taking lawsuit*, with Thomas reserving his right to object to any and all fees and costs incurred relating to the Hitchmans' filing of the petition to approve this settlement agreement, or to the Hitchmans' conduct in general relating to Lamplighter Chino. (Exhibit 853.)

On December 7, 2018, Judge Johnston held a hearing regarding the Hitchmans 473(b) motion. The Hitchmans were represented by four attorneys for this motion, namely, Glowacki, Roehl, Benz, and Carico. At the start of the hearing, Judge Johnston asked the Hitchmans' attorneys, who all made an appearance on the record indicating that they are appearing to represent the Hitchmans: "I'm not going to hear from all four of you, am I?" Carico responded, "We're all here because it definitely affects both firms. And in case you had questions for us, we're not obviously all billing for this. But we wanted to be here because it's such an important and depositive [sic] motion moving forward." (Exhibit 859, page 4.)

At the conclusion of the December 7, 2018, hearing, Judge Johnston granted the Hitchmans' 473(b) motion finding that the $12 million bond is sufficient to address any surcharge which may be assessed against the Hitchmans at some future time. (ROA 1869.)

On January 29, 2019, Thomas filed his objections to the Hitchmans' First Accounting Petition. (ROA 1923.)

On January 30, 2019, the Hitchmans filed their first verified supplement to their First Accounting Petition. (ROA 1943.)

On February 28, 2023, the Hitchmans filed a request to dismiss their seventh cause of action in the H-17200 Petition, namely, Instructing Thomas to Turn Over Books and Records of the Trust, a cause of action against Thomas in his capacity as suspended trustee. (ROA 2023.)

On March 12, 2019, the Hitchmans filed a motion for leave to amend their H-17200 Petition seeking to amend their causes of action to reflect "(1) Recovery of Trust Property; (2) Financial Elder Abuse; (3) Rescission; (4) Breach of Trust during Beverly C. Morgan's Lifetime as Trustee de son Tort; (5) Breach of Fiduciary Duty during Beverly C. Morgan's Lifetime as Attorney-in-Fact; (6) Conversion; (7) Breach of Trust following Beverly C. Morgan's Death; (8) Constructive Fraud; (9) Denying Suspended Trustee's Fees; and (10) Denying Suspended Trustee's Attorneys' Fees and Costs; (11) Accounting for period of Trustee de son Tort administration. (Exhibit 874 / ROA 2064, page 2, lines 7-13.)

In filing their motion for leave to amend, the Hitchmans indicated that "after discovery has proceeded and new facts have come to light, Interim Co-Trustees seek to file an amended version of their original 17200/850 Petition." (*Id*. at lines 21-23.) This was the Hitchmans' proposal to remove/dismiss/drop their initially filed sixth cause of action alleging fraud. In addition, the Hitchmans were seeking the court's permission to drop the following claims related allegations in their H-17200 petition: (a) 2005 Country Highlands Associates loan; (b) $650,000 mobile park management loan; (c) $350,000 check dated May 8, 2013; and (d) $349,998.75 cashier's check issued to Kristin and Jared Voght.

Therefore, by filing their leave to amend, the Hitchmans were asking the court's permission to drop their serious claim against Thomas for fraud whereby they had alleged that the Trust would not have been procured and executed but for Thomas committing fraud. In addition, the Hitchmans were asking the court's permission to drop claims against Thomas for alleged inappropriate conduct casing

loss/damages in the grand amount of $1,349,998.75. The court considered this evidence, in addition to all the other evidence introduced during the trial, in concluding that when the Hitchmans filed their H-17200 Petition on November 14, 2017, they did so without first doing proper good faith investigation and without having legitimate and good faith factual basis to support their action.

Certainly, not every time a litigant decides to dismiss or drop a previously filed claim that shows the dismissed claim was improperly filed in the first place. Far from it. There are plenty of good and legitimate reasons and after-discovered-evidence that surfaces necessitating the dismissals of properly previously filed claims. However, in this case and based on the totality of all the evidence introduced showing that no good faith investigation took place by the Hitchmans before they filed their H-17200 Petition, the Hitchmans' action in seeking to dismiss and drop claims and allegations is an added piece of evidence that the court considered in reaching the findings detailed in this statement of decision. To be clear, the Hitchmans did the right thing by asking the court's permission to dismiss and drop claims and allegations they should not have filed in the first place.

The Hitchmans also were seeking the court's permission to amend their H-17200 Petition regarding claims in connection with two promissory notes in the amount of $403,935 (January 1, 2012) and $350,000 (January 1, 2013). In the proposed new 17200 Petition, the Hitchmans were seeking the court's permission to add allegations relating to the Avalara stocks and the Hitchmans referenced statements made by Thomas during his deposition.

On March 27, 2019, the Hitchmans filed a request to dismiss their tenth cause of action in the H-17200 Petition, namely, Accounting against Thomas and others. (ROA 2167.) On the same day, Thomas filed his objections to the Hitchmans' motion to amend their H-17200 Petition. (ROA 2169.)

On April 9, 2019, and after a lengthy mediation hearing that started on April 8, 2019, the beneficiaries of the Trust, namely, Thomas, Nancy, John, and Nancy's daughters (family members) reached a comprehensive settlement agreement resolving all their disputes and all the petitions they filed against each other in this case, and among other terms, the settlement agreement calls for Thomas

to be reappointed as the trustee of the Trust. The Hitchmans participated in the mediation but were not a party to the settlement agreement because they were not given the release they demanded.[49]

The court finds that the totality of all the evidence introduced during the trial fully convinces the court that if the Hitchmans were given the release they wanted, they would have joined the settlement agreement, and more importantly, they would not have taken any of the subsequent actions they took against Thomas as listed below, including objecting to the beneficiaries' settlement agreement and making allegations that Thomas engaged in tax related fraudulent activities.

That same day of April 9, 2019, the day the beneficiaries reached a settlement agreement without giving the Hitchman a release, Bruce H. wrote and made available checks, out of the Trust account, to pay the Hitchmans' fees and the attorneys' fees for his lawyers, as discussed in more details below.

Within hours after Team Hitchman realized that the family members are going to settle their disputes without giving the Hitchmans a release of liability, Team Hitchman started putting in place a plan that was designed to "bring pressure to bear" on Thomas "in hopes of expanding a settlement to include Hitchman Fiduciaries." (Bruce H.'s testimony on December 1, 2024.) The **same day** the beneficiaries reached the settlement agreement, and as part of Team Hitchman's *plan to squeeze* a release from Thomas as discussed in more details below, the Hitchmans **drafted a new 17200 Petition** against Thomas.

By 6:59 PM on April 9, 2016, Team Hitchman had already drafted the new 17200 Petition, and they emailed it to Thomas' attorneys with a letter from Carico. (Exhibit 726.) In his letter on behalf of the Hitchmans, Carico states that the "confidential settlement agreement by definition raises public policy concerns … sadly, by deliberately excluding the Hitchmans from settlement discussions … your client has given the Hitchmans no real choice other than to object to those portions of the settlement that would return management and control" to Thomas, and that the "Hitchmans are providing you

[49] The reference in this statement of decision of a *release* that the Hitchmans wanted from Thomas, is a reference to an agreement by Thomas to release the Hitchmans from liability in connection with their conduct and activities as the interim co-trustees of the Trust. Thomas never agreed to give the Hitchmans this release, and it was not a term of the settlement agreement between the beneficiaries.

with an advance copy of their petition in the event you want to attempt to have meaningful discussions with me this evening. … Barring a last minute settlement this evening with the Hitchmans that addresses their concerns as set forth in the attached petition, the Hitchmans will have to file the petition tomorrow morning." (Exhibit 726.)[50] The court finds that this was the first overt step in the Hitchmans' *plan to squeeze*.

The court notes that this letter by Carico purports to complain, based on public policy concerns, about the confidential nature of the settlement. However, interestingly enough, the letter was only addressed to one side of the confidential settlement but not the other side. As logic always dictates, a confidential settlement agreement requires more than one side. Carrico did not send this letter to Team Nancy, rather, it was only sent to Thomas' attorneys. Not even a carbon copy to Team Nancy. That's because Team Nancy was not standing in the way of a release the Hitchmans wanted.

As a matter of fact, and as discussed elsewhere in this statement of decision, Team Nancy, in reciprocating the loyalty Team Hitchman extended to them unconditionally from the beginning of their interim co-trusteeship, told the court that if it was up to them (Team Nancy), they would not want Thomas to be litigating anything against the Hitchmans. The court finds, based on the totality of all the evidence introduced during the trial, that public policy concerns had nothing to do with the Hitchmans' motivation in drafting the new 17200 Petition, in sending Carico's letter to Thomas, in threatening to file the new 17200 Petition, or in actually filing the new 17200 Petition the very next day. If Team Hitchman's real genuine concern was public policy, they would have at least sent the same letter to Team Nancy to convince them not to enter into a confidential settlement agreement against public policy.

---

[50] The court finds interesting but not surprising that the Hitchmans did not do the same thing with their H-17200 Petition, namely, send a draft copy of it to Thomas' attorneys before they filed it and suggest a pre-filing "meaningful discussion" between Team Hitchman and Team Thomas. The court finds the reason no such invitation was extended before the H-17200 Petition was filed, but was extended after the new 17200 Petition was drafted but before it was filed, is the following: the two petitions were drafted and filed for two completely separate and somewhat opposite reasons. The H-17200 Petition was filed because Team Nancy wanted the Hitchmans to file it so showing it to Thomas before filing it and inviting a discussion fly in the face of the Hitchmans' objective in filing it. On the other hand, the new 17200 Petition was filed to try to pressure Thomas into giving the Hitchmans a release so showing it to him before filing it is exactly in line with the Hitchmans' objective because they were hoping after reading what was in it, Thomas will relent under their pressure and give them the release. He did not.

On April 10, 2019, at 8:10 AM, about 13 hours after Carico sent his above listed letter to Thomas' attorneys, the Hitchmans filed a petition for confirmation of their status as interim co-trustees. In this petition, the Hitchmans allege that the family members reached a settlement that was designed to thwart their inquiry into Thomas' financial elder abuse against Beverly, and that it buys the beneficiaries' silence on Thomas' financial elder abuse. This new April 10, 2019, petition filed by the Hitchmans will be referred to by the court as the new 17200 Petition in different parts of this statement of decision. The Hitchmans further alleged that the settlement agreement between all the beneficiaries of the Trust violates California's public policy. The Hitchmans asked the court to reaffirm their status as managers of Lamplighter Chino and to allow them to continue conducting discovery.

In this new 17200 Petition, the Hitchman started alleging that the settlement agreement is objectionable because it "avoids the accurate disclosure of reportable events to the taxing authorities." However, no specific or even vague references were made as to what "reportable events" the Hitchmans were talking about. Furthermore, there is no direct or indirect reference in the new 17200 Petition to any allegations concerning stock related transactions involving a company by the name of Avalara. As a matter of fact, Bruce H. admitted during his testimony on December 1, 2023, that when the Hitchmans launched the tax related accusations in the new 17200 Petition, the Hitchmans did not even have Avalara in mind: "*Question by Thomas' attorney:* Right. That accusation of undisclosed assets was a placeholder for something you and your team had yet to come up with; correct? *Answer by Bruce H.:* No. *Question by Thomas' attorney:* You already had Avalara in mind? *Answer by Bruce H.:* No." The court finds this testimony to be just one additional piece of evidence, amongst substantial pieces of evidence, supporting the court's finding that the tax related allegations made by Team Hitchman against Thomas, after the settlement agreement was reached, were devoid of any genuine basis in facts, and were made for the sole purpose of trying to *squeeze* a settlement out of Thomas.

In one of their prayers for relief in this petition, the Hitchmans asked the court, in the event Thomas is reinstated as trustee of the Trust, to suspend Thomas' specific powers to bring legal action, as Trustee, against the Hitchmans. (ROA 2233 / exhibit 877.) This new 17200 Petition was signed by Glowacki and Carico, and it was verified by Bruce H. and Lee Ann.

In another prayer for relief contained in this new 17200 Petition, Glowacki and Carico requested that the "Court order Thomas E. Morgan, III, Nancy Shurtleff, John Morgan, Jessica Shurtleff, and Kathleen Shurtleff to deliver to the Hitchmans' counsel and file with the Court a copy of the confidential settlement agreement." (ROA 2233 / exhibit 877, page 6, lines 18-20.) This new 17200 Petition was signed by Glowacki and Carico on April 19, 2019, and filed with the court on April 10, 2019, at 8:10 AM. However, the evidence introduced during the trial clearly proves that Glowacki actually received a copy of the confidential settlement agreement from Team Nancy on April 9, 2019, at 2:59 PM, before he filed the new 17200 Petition. (Exhibit 724.)

Ironically enough, the Hitchmans in this new 17200 Petition could not help but take credit for helping Team Nancy reach a settlement with Thomas: "The Hitchmans' efforts apparently allowed the Trust beneficiaries, Nancy Shurtleff, Jessica Shurtleff and Kathleen Shurtleff to achieve a favorable settlement with Tom." (*Id.*, at page 5 - numbered as page 3 in the document, lines 17-18.) The Hitchmans certainly deserve the credit they are claiming for helping Team Nancy, however, as the law makes it clear, as private professional fiduciaries and interim co-trustees their job was **never** to help **one beneficiary over the other**. This new 17200 Petition was subsequently dismissed with prejudice.

On that same day, April 10, 2019, at 9:30 AM, the attorneys for the family members (beneficiaries of the Trust) notified Judge Hubbard, in open court, that they have reached a confidential settlement agreement. The Hitchmans were represented by Glowacki and Benz during this hearing. The court directed the attorneys for the family members to provide a copy to settlement agreement to the Hitchmans' attorneys. The copy of the settlement agreement (binding settlement term sheet) was handed to Glowacki in open court, and he was admonished not to disseminate it or the information contained therein. A copy of the confidential settlement agreement (binding settlement term sheet) was filed with the court as a sealed document. (ROA 2270.)

///

The binding settlement term sheet, containing all the terms of the settlement, was introduced during trial, as a sealed exhibit, consistent with the request of the parties. (Exhibit 721.)[51]

Glowacki had previously received an email from Team Nancy's attorneys with a copy of the confidential settlement agreement, which he confirmed during the trial. However, during his testimony he did not commit that he received the settlement agreement from Team Nancy in the afternoon of April 9, 2019. As discussed above, the email from Team Nancy to Team Hitchman, including Glowacki, dated April 9, 2019, clearly shows that Glowacki, Benz, Carico's firm, and Roehl all received a copy of the signed confidential settlement agreement at 2:59 PM. (Exhibit 724.) By requesting a court order directing that the Hitchmans be given something they already received from Team Nancy could reasonably be viewed as an attempt to conceal the close and collaborative relationship between Team Nancy and Team Hitchman.

Later that same day on April 10, 2019, at 3:39 PM, Judge Hubbard issued a minute order indicating that she reviewed the "Binding Settlement Term Sheet," which is the same as trial exhibit 721, and issued the following orders: "Parties to that agreement are advised as follows: 1) this Court has assumed jurisdiction over the trust and parties may not amend same without court authority; 2) this Court appointed the Hitchman's [sic] as the Interim Co-Trustees and the parties may not agree to remove them without court authority; and, 3) the parties may not agree to dismiss the Hitchman's [sic] petitions without their consent." (ROA 2271.)

On April 12, 2019, the Hitchmans filed a slew of discovery motions to compel. (ROA 2291, 2292, 2297, 2298, 2299, 2305, 2306, 2312, 2313, 2319, 2311, 2304, and 2318.) Ultimately all these discovery motions were taken off calendar as moot after the family members' settlement agreement was approved by the court.

On April 15, 2019, at 8:00 AM, the Hitchmans filed a status report and objections to the family members' settlement agreement. In this status report, the Hitchman alleged that record obtained from

[51] Since this statement of decision is a public document, the court is not going to make any reference to specific information contained in the confidential settlement agreement as contained in exhibit 721. However, the court has considered exhibit 721, and gave the information contained in it the weight it deserves, as appropriate. Nothing in exhibit 721 is dispositive of any issue pending before the court and resolved by way of this statement of decision.

Avalara Inc. ("Avalara") show that Thomas failed to disclose assets to other beneficiaries of the Trust, to taxing authorities, and to the court. The Hitchmans further alleged that for taxation purposes, Thomas, with Pech's involvement, intentionally concealed assets from the Federal Government. The Hitchmans' status report requested a list of instructions from the court, including allowing them to continue to litigate against Thomas and to continue to manage Lamplighter Chino. (ROA 2325.) On that same date of April 15, 2019, at 11:35 AM, Thomas filed his preliminary response to the Hitchmans' latest status report from three and a half hours earlier. (ROA 2333.) Little over two hours later, on April 15, 2019, at 1:45 PM, Judge Hubbard ordered the family members' attorneys to file a petition to approve the settlement agreement by April 29, 2019, to be heard on June 3, 2019. Judge Hubbard further ordered all discovery stayed pending the hearing on the petition to approve the settlement agreement. (ROA 2367.)

On April 29, 2019, the family members/beneficiaries filed a joint petition to approve the settlement agreement and to modify the Trust. (ROA 2419.) On May 13, 2019, the Hitchmans filed their response to the beneficiaries' joint petition to approve the settlement agreement. In their response, the Hitchmans presented objections to the approval of certain terms of the settlement agreement, and they also indicated that they "would agree to being replaced as Interim Co-Trustees and managers of Chino now **provided** they are granted a million dollars reserve from which to pay counsel to defend themselves." (ROA 2423, page 4, lines 24-25. Bold and underline in original.)

On June 17, 2019, the attorneys for all the parties appeared before Judge Hubbard. During this hearing, Judge Hubbard disclosed that "it has come to" her "attention that her significant other is doing unrelated work for one of the parties in this matter." The minute order for the June 19, 2019, hearing reflects that "at the request of the parties: The Honorable Kim R. Hubbard hereby recuses self from this matter. Matter is now assigned to the Honorable Jacki C. Brown for all purposes." (ROA 2503.) The evidence introduced during this trial established that Mr. Richard Coombs, a practicing attorney, is the "significant other" referenced by Judge Hubbard.

Prior and subsequent to the Hitchmans' appointment as interim co-trustees in this case, the Hitchmans had retained Mr. Coombs to represent them in connection with *unlawful detainer* type of

legal actions. There is no allegation, and all the parties agree, that Mr. Coombs never did any work for the Hitchmans in connection with this case. As of June 17, 2019, Glowacki was aware prior to Judge Hubbard's voluntary disclosure of "a few engagements" that the Hitchmans had with Mr. Coombs, and that none of these engagements were in the "Morgan" case. Glowacki further informed the court that if he "thought we had been required to disclose it, we would have done so." (Exhibit 771.) It is not clear to the court who are is the "we" Glowacki was referring to on June 17, 2019. The court presumes that since Glowacki was making this statement in his capacity as the Hitchmans' attorney, that "we" refers to members of Team Hitchman.

On that same date of June 17, 2019, Judge Brown put in place the procedural steps needed to approve the settlement agreement. (ROA 2503.)[52] Three days later, on June 20, 2017, the Hitchmans filed their preliminary objection to the proposed order approving the beneficiaries' joint petition to approve the settlement agreement. In this preliminary objection, the Hitchmans continued to raise objections to some of the terms of the settlement agreement and persisted in requesting authorization to continue to litigate their discovery motions, and for an evidentiary hearing regarding their request for the appointment of a Trustee *ad litem* and an evidentiary hearing regarding their "request to retain a $1,000,000 reserve in their possession and control … ." (ROA 2497, pages 8-9.)

On March 16, 2020, Thomas filed the first supplement to Thomas' Amended Petition. (2635.)

On June 21, 2019, Judge Brown presided over a hearing regarding the beneficiaries' petition to approve the settlement agreement, the Hitchmans' objections thereto, and other petitions that were still then pending before the court. After hearing arguments by all counsel, Judge Brown approved the beneficiaries' settlement agreement.[53] Consistent with the approved settlement agreement, the Hitchmans' co-trusteeship ended, and Thomas was reinstated as trustee of the Trust. Accordingly, the Hitchmans' interim co-trusteeship lasted from March 29, 2017, to June 21, 2019, a total of 2 years, 2 months, and 3 weeks (814 days). Judge Brown proceeded to issue the following additional orders:

---

[52] Judge Brown, like Judge Hubbard and Judge Johnston, has since retired. All these three Honorable Judicial Officers had retired when the trial in this case started.

[53] The June 21, 2019, signed order approving the settlement agreement is ROA 2527. Exhibit 895 (ROA 2650) is the order issued by Judge Brown, correcting *nunc pro tunc*, the June 21, 2019, order.

- Denying, pursuant to the settlement agreement, the Hitchmans' subsequent new 17200 Petition to confirm their status as interim co-trustees and for instructions.
- Dismissing with prejudice, pursuant to the settlement agreement, Nancy's amended petition.
- Dismissing with prejudice, pursuant to the settlement agreement, the Hitchmans' two subsequent trust petitions.
- Dismissing with prejudice, pursuant to the settlement agreement, the Hitchmans' petition for instruction and review of accounting relating to Thomas' prior trusteeship.

Judge Brown clarified that "there are only two petitions remaining unresolved, Petition filed 10/03/2018 by Thomas Morgan and Petition filed 10/17/2018 by Bruce and Lee Ann Hitchman." (ROA 2526.) Judge Brown's reference to the October 3, 2018, Petition by Thomas is a reference to the above-listed petition filed by Thomas seeking an order removing the Hitchmans as interim co-trustees and seeking a review of their accounting and to surcharge them in addition to imposing damages for alleged breaches of fiduciary duty. (ROA 1721.) Judge Brown's reference to the October 17, 2018, Petition by Bruce and Lee Ann Hitchman is a reference to the Hitchmans' above listed First and Second Accounts Current and Report of Interim Co-Trustees, Petition for Settlement of Accounts, and for Ratification of Attorneys' Fees and Interim Co-Trustees Fees Paid. (ROA 1784.)

Starting from the early days of the Hitchmans' appointment as interim co-trustees when they started the process to take over Lamplighter Chino, Thomas has consistently taken the position that the Hitchmans were breaching their fiduciary duty causing harm to him and to the Trust, and filed a petition against them on October 3, 2018, as reflected in ROA 1721. After the settlement agreement between the beneficiaries was approved and Thomas was reinstated as the trustee of the Trust and the manager of Lamplighter Chino through MPI, he continued to take the same position and indicated in multiple status reports that he filed with the court his intention to continue to litigate against the Hitchmans in his capacity as a beneficiary, suspended trustee, and now reinstated trustee. After the settlement

agreement was approved, Nancy, on the other hand, made it very clear that she was **not** in favor of any litigation against the Hitchmans.

On October 18, 2019, Nancy filed a response to one of Thomas' status reports stating that "she has no interest in pursuing further litigation against the Hitchmans or asserting any claims held by her, or any trust or entity subject to her control, against the Hitchmans. … the time has come to move on." (ROA 2573, page 2, lines 3-11.)

On October 25, 2019, Judge Brown presided over a status review hearing relating to the remaining petitions in the case, as well as other miscellaneous matters. After hearing from the attorneys for Thomas and the Hitchmans, Judge Brown issued two separate orders providing the procedural approval for Thomas to file his amended petition. (ROA 2584, 2585, and 2586.)

On November 22, 2019, Thomas, acting both in his individual capacity and in his capacity as trustee of the Trust, filed his Amended Petition against the Hitchmans for Instructions, Damages for Failure to Assert Claim (against Pech), Disgorgement of Fees for Failure to Disclose Conflict of Interest in Order to Secure and Preserve Appointment (relating to Mr. Coombs), and Damages for Breach of Fiduciary Duty. (ROA 2590.)[54] This petition will also be referred to as Thomas' Petition.

On December 13, 2019, the Hitchmans filed two new petitions: (1) A petition requesting orders directing Thomas to transfer funds ($1 million) to the Hitchmans for a reserve to pay the Hitchmans' costs of administration, including attorney fees and litigation costs (ROA 2596)[55], and (2) A petition requesting an order appointing a special trustee, or trustee *ad litem*, to exercise the power of the trustee as they relate to the Hitchmans. (ROA 2597.)[56]

Also on December 13, 2019, the Hitchmans filed their Third and Final Account/Report and Petition for Settlement of Account, for Ratification of Attorneys' Fees Paid and Interim Co-Trustees Fees Paid, for Approval of Currently Outstanding Fees and Costs, and for Exoneration of Bond. (ROA 2598.)

---

[54] On September 25, 2019, Thomas filed his exhibits to this amended petition. (ROA 2569.)

[55] This petition is referred to as the *Kasperbauer* reserve petition (*Kasperbauer v. Fairfield* (2009) 171 Cal. App. 4th 229.)

[56] This petition is referred to as the trustee *ad litem* petition.

On January 7, 2020, Thomas served the Hitchmans with a sanctions motion, pursuant to Code of Civil Procedure section 128.5 and 128.7, triggering the 21-day safe harbor for the filing of the motion with the court seeking sanctions against the Hitchmans' based on the (alleged) bad faith filing of the December 13, 2019, *Kasperbauer* and trustee *ad litem* petitions. (Exhibit 891.) Seventeen days later, on January 24, 2020, the Hitchmans substituted out Glowacki, Roehl, Carico, and Benz,[57] as the Hitchmans' attorneys, and substituted in Lawrence Hilton as the Hitchmans' new attorney. (ROA 2613.) Four days later, On January 28, 2020, the Hitchmans withdrew their *Kasperbauer* and trustee *ad litem* petitions. (ROA 2615.)

On August 14, 2020, Thomas, individually, as trustee of the Trust, and in other capacities, filed a civil, non-probate, lawsuit against the Hitchmans alleging civil claims relating to the Hitchmans' actions as co-managers of Lamplighter Chino. (Orange County Superior Court case 30-2020-01155277.) This civil action is presently stayed pending the conclusion of this probate case.

On February 16, 2021, Thomas filed his objections to the Hitchmans' Final Accounting Petition. (ROA 2677.) On March 9, 2021, the Hitchmans filed their opposition to Thomas' Petition and their response to Thomas' objections to their accountings. (ROA 2681.)

On July 13, 2021, the Hitchmans filed their response to a status report submitted by Thomas in his capacity as trustee, and this response includes declarations by Glowacki and Benz in support of the Hitchmans' Final Accounting Petition. (ROA 2760.)

On September 17, 2021, the law firm of Sheppard, Mullin, Richter & Hampton, LLP associated with Lawrence Hilton to represent the Hitchmans. (ROA 2772.)

On April 20, 2022, the Hitchmans filed a supplement to their Third and Final Account as well as a declaration in support of fees paid to the Hitchmans during the third and final accounting period. (ROA 2868 and 2869.)

On February 28, 2023, the case was assigned for all purposes to the undersigned judicial officer. (ROA 3115.)

[57] As well as their respective law firms of Roehl & Glowacki and Carico MacDonald Kil & Benz, LLP.

On October 25, 2023, the parties filed their joint pretrial statement, and on October 26, 2023, they filed their stipulation of facts. (ROA 3273 and 3285.)

The trial started on October 27, 2023, eight months after it was assigned to the undersigned judicial officer, and it consumed 60 separate court sessions totaling 43 full trial days ending on October 28, 2024.

The following twelve witnesses testified during the trial: McDermott,[58] Bruce H., Lee Ann, Roehl, Pech, Charles Morris,[59] MacDonald, Carico, Glowacki, Benz, John Hartog, and Thomas. Below is a summary of relevant portions of the testimony of the witnesses, interspersed with multiple factual findings and analysis by the court. None of the factual findings listed below is reached solely based on the testimony of any one single witness, rather, each factual finding is made based on the totality of all the evidence introduced during the entirety of the trial, including all testimonial and documentary evidence.

By providing the following summaries, the court is not in any way, shape, or form finding or implying that the summaries listed below contain the only portions of the testimony that the court relied upon in assessing the witness' credibility, or in reaching the ruling, findings, and decisions detailed in this statement of decision. Far from it. The court relied on the entirety of all the testimony of every single witness in making decisions regarding the witness' credibility and the probative value, if any, of the entirety of the testimony.

Bruce McDermott:

McDermott is an attorney who practices in Washington State, and he was the lead attorney representing Nancy during the litigation in this case. McDermott testified that he wanted to try Nancy's

[58] The parties stipulated to have portions of McDermott's video-taped deposition played in open court with an agreement that the court can consider the deposition testimony as if he was testifying live in court.

[59] Charles (Chuck) Morris is an experienced tax attorney who testified during the trial. Evidence was introduced during the trial regarding an accountant by the name of Chris Morris who did work for the Morgan family. Any reference to Morris or Mr. Morris in this statement of decision is a reference to attorney Charles (Chuck) Morris, unless specifically otherwise indicated.

case against Thomas with a neutral PPF who concluded consistent with Nancy's conclusions about Thomas, but with such conclusions being reached by the PPF independent of Nancy.

After Thomas was suspended as a trustee of the Trust by Judge Hubbard, McDermott was involved in contacting the Hitchmans and after talking to them, he nominated them as one of three options for Judge Hubbard to consider. When he talked to the Hitchmans before he nominated them, he asked them about their availability and/or any conflict they may have to being appointed. McDermott testified that the Hitchmans never mentioned to him their work relationship with Mr. Coombs as a potential conflict. McDermott admitted that if the Hitchmans had told him about their prior business relationship with Mr. Coombs, he would have at least discussed it and explored it with them further.

In nominating the Hitchmans, McDermott testified that he was hoping that they would join the litigation on Nancy's side and against Thomas. After the Hitchmans were appointed as interim co-trustees, he argued forcefully to them as to what he wanted them to do. He admitted that by the time the Hitchmans were appointed as interim co-trustees, Nancy had already received all that was bequeathed to her under the terms of the 2013 Trust, the instrument the Hitchmans were appointed to administer.

McDermott admitted that after the Hitchmans were appointed as interim co-trustees, he shared his draft pleadings with them and they shared their draft pleadings with him, before any of the pleadings were finalized and filed with the court. The court finds this testimony to be very credible and consistent with all the evidence introduced the trial. The court further finds that no such courtesy was ever extended to Thomas by Team Hitchman. As a matter of fact, the evidence introduced during the trial clearly established that Team Hitchman went out of their way to keep Thomas and his attorneys in the dark regarding their actions and pleadings, while at the same time they kept Team Nancy fully informed about many of their actions, most of the time before such actions were even taken.

McDermott confirmed that Nancy wanted the Hitchmans to take over all of the entities related to Trust that were under the management and/or control of Thomas and/or MPI. In September of 2017, McDermott participated in a meeting with Team Hitchman to advocate for the Hitchmans to take

certain actions relating to the Trust, and the Hitchmans ended up taking most of the actions he wanted them to take, including the Hitchmans not allowing, at Nancy's request, ground set homes at Lamplighter Chino, as Thomas and MPI had put in place before the Hitchmans took over Lamplighter Chino.[60] The Hitchmans proceeded as Nancy asked and they did not allow the previously planned ground set homes in Lamplighter Chino. McDermott described this September 2017 meeting between Team Nancy and Team Hitchman as a meeting for Team Nancy to advocate to Team Hitchman regarding what positions they wanted Team Hitchman to take. He described the meeting as a mutual exchange of ideas, and a give-and-take between equals. McDermott testified that the Hitchmans were open and receptive to whatever Team Nancy was saying.

The court finds that at no time whatsoever during the Hitchmans' co-trusteeship did they ever genuinely extend a similar courtesy to Thomas and his attorneys, and that Team Hitchman never treated Thomas and his attorneys similarly to how they treated Team Nancy as far as listening and considering their ideas and their views of the facts. The court finds this conduct by the Hitchmans to be in violation of their fiduciary duties, including the duty of impartiality.

McDermott testified that at the heart of Nancy's case was the trust contest and he did not expect the Hitchmans to take a position on the trust contest, so he was *pleasantly surprised* when the Hitchmans took Nancy's side and filed a petition alleging that the Trust instrument they were appointed to administer was procured unlawfully as a result of elder abuse by Thoms. McDermott testified that there was substantial overlap between the Hitchmans' H-17200 Petition and Nancy's petition. McDermott confirmed that Team Nancy wanted the benefit of the *halo effect* by having the Hitchmans advocate for the same positions as Team Nancy.[61]

---

[60] A "ground set home" in a mobile park refers to a mobile home that is positioned at ground level making it appear more like a traditionally built house rather than sitting on blocks above the ground level. This is usually accomplished by placing the mobile home into a shallow pit dug in the ground.

[61] The *halo effect* is a cognitive bias that occurs when a person's initial impression of someone or something influences their overall perception. In the context of this case, Team Nancy wanted the court's impression of their legal and factual positions in the underlying litigation to be positively influenced by the fact that an independent court appointed private professional fiduciary was taking the same positions. This term is not being used by the court on its own initiative: this is the term the witness used in his testimony, and the parties used it during the witness' testimony and during the trial.

Bruce Hitchman

The court finds that during his testimony, Bruce H. came across as a sophisticated, smart, and knowledgeable professional in the financial field and in the field of licensed fiduciaries.

Bruce H. graduated from high school in the 1972 and earned a BA and then an MBA in 1979. He worked for various financial institutions in the United Kingdom and the United States. In 2010, Bruce H. obtained his professional fiduciary license. In his career, Bruce H. was involved in hundreds of trust administrations, and he was appointed as a private professional fiduciary in approximately one hundred cases. Bruce H. has been married to Lee Ann for 44 years, and together they have 6 children. Lee Ann founded Hitchman Fiduciaries ("HF") in 2004, and he joined the business around 2008. At the time of the trial, Hitchman Fiduciaries had eleven employees. Including himself and Lee Ann, six out of the eleven employees of HF are licensed fiduciaries.

Bruce H. testified that he first learned about the Trust in this case when he was contacted by Garrett at the end of March 2017. Bruce H. testified that Garrett told him that they needed a private professional fiduciary able to work on the case in a timely fashion, and that the case involves a large trust with heavy litigation. After he consulted with Lee Ann, Bruce H. told Garrett that HF agrees to be considered for an appointment by the court as interim co-trustee in the Morgan case. Bruce H. testified that he never spoke directly to Nancy, John, or Nancy's daughters. He also testified that prior to this case, he had no experience with Byers or McDermott.

In connection with the Trust, Bruce H. and Lee Ann were appointed as interim co-trustees on March 29, 2017, and their interim co-trusteeship ended on June 21, 2019. Bruce H. testified that he personally did 80% of the work in connection with this case when compared with Lee Ann. Bruce H. testified that at the time of his appointment, he did not anticipate any role for the Hitchmans in the underlying litigation, and that he only anticipated that the Hitchmans will marshal assets and administer the Trust. Based on the totality of all the evidence introduced during the trial, the court does not find this testimony to be credible. As discussed in more details elsewhere in this statement of decision, the evidence introduced during the trial fully establishes that from the start, the Hitchman intended to become involved in the litigation on Team Nancy's side and opposite Thomas.

Bruce H. testified that he does not believe he did anything in this case in bad faith, and that he did not make any mistakes in his dealings with Thomas. Bruce H. testified that when it comes to trust contests, a court appointed private professional fiduciary should remain neutral. During his in-court testimony, Bruce H. testified that as private professional fiduciary, in general he tries not to get involved in trust contests, however, he was impeached by his deposition testimony in which he did not qualify his answer.

Bruce H. testified that prior to his appointment as interim co-trustee, he spoke to McDermott, Nancy's attorney, about the Hitchmans' potential nomination and appointment as interim co-trustees.

Bruce H. admitted that throughout his entire interim co-trusteeship, he never reached out to Thomas or Thomas' attorneys to ask about Thomas' side regarding any issue, including the claim that Thomas was financially c*hoking off* Nancy by withholding distributions from the Trust or Trust related entities. Bruce H. testified that he requested a meeting with Thomas and Thomas' attorneys, but he was declined such a meeting. Based on the totality of all the evidence introduced during the trial, the court does not find this testimony to be genuinely credible, and the court specifically finds that Team Hitchman never extended a **genuine** unconditional invitation to meet with Thomas, in his capacity as a beneficiary, to hear his side, as Team Hitchman repeatedly extended to, and repeatedly participated in, with Team Nancy.

The court gave substantial weight to the Hitchmans' time records (Exhibit 792) in evaluating their work on this case, viewed in light of the totality of all the evidence introduced during the trial. The court hereby finds that the Hitchmans communicated, coordinated, consulted, and strategized regularly and continuously with Team Nancy, while on the other hand always kept Thomas and his attorneys in the dark. The Hitchmans continuously kept Thomas and his attorneys in the dark even when Team Hitchman was planning on taking actions that were clearly detrimental to Thomas and the Trust, and when such actions by Team Hitchman would undoubtedly be better informed if Thomas was given an opportunity to tell his side.

The Hitchmans, as interim co-trustees and as private professional fiduciaries, did not have an obligation to agree with Thomas' positions and views on the facts, but as a beneficiary of the Trust, if

not its major beneficiary, the Hitchmans most certainly had a legal obligation to treat him impartially and hear him out to seek input from him, especially when they were contemplating taking actions based on what they thought Thomas was doing or was planning on doing. This obligation on the part of the Hitchmans exists because Thomas was a beneficiary of the Trust, but even more so, because he was the previous long-time manager of Lamplighter Chino for over a quarter a century, an entity not owned by the Trust and never before managed by the Trust, that they secretly took over without having the expertise to manage or to run.

Exhibit 792 tells a story that is worth listening to, and learning from, when it comes to how private professional fiduciaries acting as court appointed interim trustees, should **not** treat competing beneficiaries involved in a litigation contesting the validity of the very same testamentary instrument the private professional fiduciary was appointed to administer on an interim basis.

The Hitchmans consulted, communicated, or conferred with Garrett, one of Team Nancy's attorneys approximately 19 times during their interim co-trusteeship, including a direct communication between Bruce H. and Garrett outside the presence of the Hitchmans' attorneys. Not a single such courtesy was given by the Hitchmans to any of Thomas' attorneys. On April 5, 2017, the day after Judge Hubbard officially signed the order appointing the Hitchmans as interim co-trustees, Bruce H. and some of his attorneys had a 6.5-hour in person meeting with Garrett, McDermott, and Byers to discuss "Trust issues." No such similar meeting at the start of the interim co-trusteeship ever took place with Thomas and/or his attorney. However, even before Judge Hubbard signed the official order appointing them, the Hitchmans took the time to receive and review the "Disciplinary records of attorney Pech," and to exchange an email regarding same with Roehl. (Exhibit 792, entries on the bottom of page 4, and top of page 5 for April 3, 2017.)

The Hitchmans consulted, communicated, or conferred with McDermott, team Nancy's lead attorney, approximately 17 times during their interim co-trusteeship. Not a single such courtesy was given by the Hitchmans to any of Thomas' attorneys. More alarming, Bruce H. was given the opportunity and took the time, at the Trust's expense obviously, to review **draft** pleadings by Team

Nancy sent by McDermott to Glowacki, and forwarded by Glowacki to Bruce H., in response to the Hitchmans' then pending proposed court order. (Exhibit 792, page 67, July 31, 2017.)

So, a supposedly independent and impartial PPF appointed by the court to administer a Trust while the beneficiaries of the Trust are engulfed in an acrimonious legal dispute and Trust contest involving the validity of the very same trust instrument the PPF was appointed to administer, is actually secretly (unbeknownst to the one side of the fighting beneficiaries) exchanging draft pleadings with the other side of the fighting beneficiaries. To add *insult to injury*,[62] this draft pleading that Team Nancy's side gave to Team Hitchman is apparently the response of Team Nancy to the status report and *ex parte* application pending before the court at that time and was objected to by Thomas. (*Id.*, ROA 1572, 1574, and 1577.)

Exhibit 792 also shines light on the reliability and credibility of a position Team Hitchman consistently took throughout the trial in this case. The Hitchmans insist that they did not take on the interim co-trusteeship with a made-up mind to become involved in the underlying litigation between the beneficiaries. On multiple occasions, Bruce H., Glowacki, and other witnesses from Team Hitchman testified that the Hitchmans did not decide to become involved in the litigation until they became aware of information that caused them, in their sound judgment, to need to become involved. Thomas consistently took the opposite position, namely, that the Hitchmans' involvement in the underlying litigation by filing the H-17200 Petition was a *fait accompli* from before they were even appointed as interim co-trustees, and that this *fait* was *accompli* when the Hitchmans were interviewed by McDermott and committed to provide *quick action* if they were to be appointed.[63]

Based on the totality of all the evidence introduced during the trial, the court finds that Thomas' position is supported by overwhelming evidence, and Team Hitchman's position is not persuasive and not supported by competent and credible evidence.

---

[62] The phrase "add insult to injury" apparently comes from a fable by Phaedrus in the first century C.E. The phrase is also found in Aesop's Fables from around 620-560 B.C. The phrase was allegedly first recorded in English in 1748.

[63] *Fait accompli* is a French phrase commonly used to describe an action that is completed before those affected by it are in a position to query or reverse it. The earliest evidence of the use of this French phrase is from 1845, in the writing of Richard Ford, art connoisseur and author.

On March 29, 2017, the very same day when Judge Hubbard appointed the Hitchmans, and before she even signed the order of appointment, Bruce H. started the process to bring Glowacki to the team, in addition to Roehl, for (in Bruce H.'s own words) "purpose of litigation." (Exhibit 792, page 1, entry number four on March 29, 2017.) This is just one of many pieces of direct and circumstantial evidence supporting Thomas' position regarding the Hitchmans' frame of mind in becoming involved in the underlying litigation between the beneficiaries. Adding Carico and his law firm to Team Hitchman, when viewed in light of all the testimony introduced during the trial, is another such piece of evidence supporting Thomas' position and leading the court to reach the above listed factual finding.

Exhibit 792 sheds another bright light on a very important point: *When did the Hitchmans read the Trust instrument for the very first time?* It cannot reasonably be argued that when it comes to a PPF carrying out its fiduciary obligations, no document is more important that the trust instrument itself. A PPF is entrusted with administering a trust pursuant to the terms of said trust, as long as such terms are not contrary to law. A PPF needs to read the trust to know what the terms of the trust call for.

The Hitchmans kept detailed and good records regarding their activities, including their billing invoices. A review of exhibit 792 clearly reflect the level of details that Bruce H. included when accounting and billing for his time. Bruce H. documented and billed for his time regularly, including for tasks that are not relatively that important, consuming as little as 0.10 of one hour (6 minutes). Exhibit 792 reflects approximately 480 billing entries for tasks that each took a mere 6 minutes, many of which were done by Bruce H. The court finds absolutely no fault whatsoever with a PPF billing for tasks that take 6 minutes or even less. A PPF is a professional and is not a non-profit provider. A PPF is unquestionably entitled to make a living, a good living, and to be fairly compensated for every minute of work done for the benefit of a trust the PPF is charged with administering. The PPF's work is hard, and it is sometimes thankless, so a PPF deserves to be compensated for every minute the PPF spends reasonably, fairly, and impartially administering the trust. The Trust document in this case is a 51-page document that can easily be described as a complex testamentary instrument. (Exhibit 23.)

On May 30, 2017, Bruce H. documented his billing invoices to reflect that on that day he "Receive[d]" the 2013 Trust amendment and complete restatement, and that he "Perform[ed]" the

"initial review." Bruce H. indicated that it took him 1.6 hours (96 minutes) to complete this task. (Exhibit 792, page 36.) The court finds that 96 minutes is a reasonable amount of time needed to conduct the initial review of the Trust document.

During the trial, when he was confronted with the fact that it was not until May 30, 2017, that he actually read the Trust instrument, even though he had already taken many actions as the interim co-trustee that were detrimental to Thomas and to the Trust itself, including making serious allegations against Thomas and seeking to take control over entities that turned out to be not necessarily Trust assets, Bruce H. testified that he actually believes he has seen the Trust instrument and read it before May 30, 2017, but simply did not document the time in his invoices. Bruce H.'s testimony is impeached by his own entries in his own invoices. The May 30, 2017, entry specifically indicates that Bruce H. **received** the Trust instrument on May 30, 2017, and that he conducted, on that specific day, the **initial review** of the Trust instrument.

If Bruce H. had seen and reviewed a copy of the Trust instrument prior to May 30, 2017, and had simply forgotten to bill for it (reasonable), and then decided to read it again on May 30, 2017, there would have been no need for him to use the term "received" and "initial" when describing his activities on May 30, 2017. Based on the totality of all the evidence introduced during the trial, the court is not persuaded by Bruce H.'s testimony on this issue, and the court finds his testimony on this issue not credible. The Hitchmans' conduct in taking all the steps that they took before even reading the Trust document is consistent with all the other evidence introduced during the trial showing their attitude, their state of mind, and their objectives regarding the Morgan Trust and its administration. Such attitude, state of mind, and objectives are consistent with the Hitchmans being fully aligned, from day one, with Team Nancy. It is also consistent with the Hitchmans viewing and treating Thomas, a Trust beneficiary, as an adversary.[64]

During his testimony, Bruce H. admitted that even though he relied on his attorneys regarding legal advice, he knew, and he fully understood, that the *buck stops* with him and Lee Ann as the interim

[64] The evidence introduced during the trial shows that, based on the time records of members of Team Hitchman, MacDonald was the first member of the team to review the Trust document on May 25, 2017.

co-trustees owing a fiduciary duty to the Trust and to the beneficiaries. Bruce H. testified that as a result of this fiduciary duty, the Hitchmans had a duty to supervise their lawyers. More specifically, Bruce H. testified that he did not rely on his attorneys to tell him if he should bring a claim or cause of action, rather he made the decision. Bruce H. also admitted that he had a duty to investigate Lamplighter Chino before he made the decision to take it over.

Based on the totality of all the evidence introduced during the trial, including the testimony of Bruce H., the court concludes it is more likely than not that **no investigation whatsoever** was conducted by Team Hitchman before the Hitchmans made the decision to take over Lamplighter Chino. As to whether the Hitchmans conducted an **impartial and duly diligent investigation** before taking over Lamplighter Chino, the court finds that it is highly probable no such impartial and duly diligent investigation ever took place. The court finds that Team Nancy telling the Hitchmans they should take over Lamplighter Chino does not constitute an investigation by the Hitchmans, let alone an impartial and duly diligent investigation.

During his trial testimony, Bruce H. testified that as a PPF, he did not owe a duty of candor. When he was impeached by his deposition testimony where he stated that he did owe a duty of candor, he explained this inconsistency by stating that during his deposition he had the wrong interpretation of what *duty of candor* means. The court does not find Bruce H.'s testimony regarding this specific issue to be persuasive. Simply stated, a duty of candor is the duty to tell the truth. It is not the duty to provide information, but it is the duty to not lie or intentionally mislead when providing information. Certainly, A private professional fiduciary has a duty to tell the court the truth, at all times and under all circumstances. As to the PPF's dealings with a beneficiary to whom the PPF owes a general fiduciary duty, such general fiduciary duty prohibits the PPF from lying or intentionally misleading the beneficiary.

The court is not suggesting that a PPF is always required to immediately, or at all, answer the inquiries of a beneficiary. However, if the PPF decides to respond to inquiries and to provide information to a beneficiary, the PPF should never lie to a beneficiary and should never intentionally mislead the beneficiary. The court can certainly think of many situations where a PPF properly

concludes that certain information, at a certain point in time, should not be shared with a beneficiary, even if the beneficiary asks for it. In such situations, the PPF should do exactly that - not share the information by, for example, stating *I am not in a position to answer your inquiry or give you the information you asked for*. The PPF, on the other hand, should never intentionally lie to a beneficiary or *partially answer* the beneficiary's inquiry and intentionally omit relevant and material information making the provided answer a misleading one.

In this case, Bruce H. and many of the witnesses who were part of Team Hitchman testified about the reason they withheld information from Thomas and his attorneys regarding many of their impending actions during the Hitchmans' co-trusteeship. Bruce H. and witnesses from Team Hitchman testified that they did so because the Hitchmans were afraid Thomas may try to stop them, interfere with their actions, or try to move money out of Trust accounts or Trust related entities, before they acted. As to all these actions that Team Hitchman kept secret from Thomas and his attorneys, the evidence shows that Team Hitchman almost always told Team Nancy about such actions, and almost never kept any such actions secret from Team Nancy.

Furthermore, the court finds not credible, and not persuasive, all the reasons provided by Bruce H. and other witnesses from Team Hitchman regarding their actions in keeping Thomas and his attorneys in the dark. In addition, the court finds, based on all the evidence introduced during the trial, that the real reason why Team Hitchman did not inform Thomas and his attorneys about actions they took or they were planning on taking, is because Team Hitchman viewed Thomas as an adversary not just to Team Nancy, but also to Team Hitchman, and because keeping this information a secret from Thomas was exactly what Team Nancy asked the Hitchmans to do.

Bruce H. confirmed during his testimony that he never asked for court authorization or permission to file the Hitchmans' H-17200 Petition against Thomas. Furthermore, Bruce H. confirmed that when his attorneys and Team Nancy's attorneys specifically asked, by way of *ex parte* applications, for such authorization to be given to the Hitchmans to litigate and file claims against Thomas, the court denied such *ex parte* requests.

Bruce H. confirmed that during the Hitchmans' interim co-trusteeship, distributions from Lamplighter Chino were the primary source of income for the Trust, and as the co-trustees, the Hitchmans did not save any money from such distributions, rather, they spent the money on Trust administration, including paying fees and litigation expenses. Bruce H. admitted that under the Trust the Hitchmans were appointed to administer, Thomas was the devisee set to receive Lamplighter Chino. Furthermore, Bruce H. admitted that the Hitchmans' entry into the litigation against Thomas drove the expenses of the Trust administration. The court finds, by overwhelming evidence, that *but for* the Hitchmans' unrelenting pursuit to enter the litigation between the beneficiaries, on Team Nancy's side and against Thomas, the vast majority of expenses paid or incurred by the Hitchmans during their interim co-trusteeship would not have been necessary and would not have been reasonably incurred. The court further finds that all such litigation related expenses and fees were not for the reasonable benefit of the Trust.

Bruce H. agreed that the Hitchmans' actions in this case gave Team Nancy the *halo effect* that McDermott wanted. When asked about the factual basis for his conclusion that Thomas committed fraud as the Hitchmans alleged in their H-17200 Petition, Bruce H. admitted that the main basis for the Hitchmans' conclusion was the petition Nancy had previously filed against Thomas in the underlying litigation. The court finds based on the totality of all the evidence introduced during the trial, including Bruce H.'s own testimony, that the Hitchmans never took genuine reasonable steps to get Thomas' side of the dispute, either from Thomas or from Thomas' attorneys, before filing the H-17200 Petition.

When confronted with the large volume of important documents provided by Thomas' attorney to the Hitchmans on May 30, 2017, and the fact that these documents were indexed by Thomas' attorney before they were turned over to the Hitchmans, Bruce H. admitted that the members of Team Hitchman apparently did not review them, and missed some of the important documents in their possession before making serious allegations against Thomas, including failing to review and consider MPI's management contract with Lamplighter Chino.

"*Question by Thomas' attorney*: Well, for example, you got a copy of Morgan Partners Inc.'s asset management contract with Lamplighter Chino and apparently the **entire team just missed it**;

right? *Answer by Bruce H.:* Yeah, that's certainly a possibility." (Bruce H.'s testimony on November 14, 2023.) The court finds that the Hitchmans breached their fiduciary duty to the Trust and to Thomas by not properly reviewing what was in their actual possession before acting, at Team Nancy's urgings, to hastily and secretly take over Lamplighter Chino.

Most significantly, the court is convinced based on the totality of all the evidence, including Bruce H.'s testimony, that Bruce H., the lead PPF and interim co-trustee in this case, could **not identify a single document or a single piece of evidence** that he reviewed and/or looked at before deciding to verify and file the H-17200 Petition accusing Thomas of fraud and of intending to cause injury to Beverly by engaging in "despicable" conduct that would cause reasonable people to "look down upon [Thomas] and despise [him]." (ROA 1601, page 22, lines 4-8.)

This inability to identify a document or a piece of evidence was not an example of a witness being surprised by an unexpected question and being caught off guard during his in court-testimony. No. Far from it. This was the answer provided by Bruce H. in interrogatories when Bruce H. had plenty of time to think, research, review his records, and consult with all the other members of Team Hitchman to recollect if he actually reviewed and/or looked at a **single document** to reach such serious conclusions against Thomas, one of the beneficiaries of the Trust the Hitchmans were charged with administering. During his November 14, 2023, testimony, the following exchange took place:

"*Question by Thomas' attorney:* Okay. Now, this was your opportunity to work with your lawyers to come up with the best answer you could to a basic question. What did you look at before you sued, right? *Answer by Bruce H.:* Yes, I don't disagree with that. *Question by Thomas' attorney:* Mr. Hitchman, you didn't even list the 2013 Trust, did you, as something you would have looked at before? *Answer by Bruce H.:* No, I didn't. *Question by Thomas' attorney:* Not a single document in response to one of these questions; right? *Answer by Bruce H.:* That's correct." Trust trials usually don't have a *smoking gun*, but unfortunately this trial contained many astonishingly surprising testimony and revelations about the breakdown in the process of carrying out important fiduciary duties owed by a private professional to the Trust and its beneficiaries. This was one such revelation.

By his own admission during his trial testimony, when asked what formal discovery Team Hitchman propounded before suing Thomas, Bruce H. testified: "None that I am aware of." (Bruce H.'s testimony on December 7, 2023.)

When confronted with the fact that he (Bruce H.) previously declared under penalty of perjury that as of June 2017, all the members of Team Hitchman "had already formed the conclusion that much of what Thomas conveyed did not actually accord with the facts anyway," (exhibit 902, page 2, lines 33-35), but that he also admitted under oath during his January 2023 deposition that he could **not recall a single incident** where Thomas told anyone on Team Hitchman, including Bruce H., a single thing that was **not** in accordance with the facts, Bruce H. could not give a reasonable explanation for such unmitigated impeachment and contradiction. The only explanation Bruce H. gave was that he was embellishing.

The court does not find the *I was embellishing* explanation to be persuasive or to be credible. Embellishing is when one says that there were dozens of examples when in reality there were only a handful of examples. That's embellishing. But when one says "much of what" was said was untrue, and then fails to name a single untruth, that's not embellishing. It's either an intentional lie or a reckless disregard for the truth. Having said that, the implication that *embellishing* while making statements under oath is not such a bad thing is an implication that flies in the face of common sense and fidelity to the truth,

Based on the totality of all the evidence introduced during the trial, including the testimony of Bruce H., the court finds that Thomas never had a chance for a fair shake with the Hitchmans, starting from day one of their appointment as interim co-trustees. Certainly, the condescending, unprofessional, misguided, and sometimes contemptuous conduct of Pech as Thomas' attorney did not help Thomas in his capacity as a beneficiary, nor did it help the Trust. Nonetheless, the fiduciary obligations and duties of a PPF do not become less important and less mandatory just because the attorney of one of the beneficiaries is not professional.

During his testimony, and after he was given the opportunity to review multiple exhibits documenting communication from Thomas' attorneys to the Hitchmans' attorneys, Bruce H. testified

as follows: "*Question by Thomas' attorney:* Have I shown you enough there were many requests for meetings by Tom's side, sir? *Answer by Bruce H.:* There were -- there were many writings suggesting meetings. I will give you that." (Bruce H.'s testimony on December 6, 2023.)

In connection with the allegations he made against Thomas for misappropriating $450,000 from Lamplighter Chino's Bank of America account in early June 2017 (June 1st and June 2nd), Bruce H. admitted that at the time of these transactions Thomas, through MPI, was the lawful manager of Lamplighter Chino. Nonetheless, Bruce H. insisted that Thomas' actions amounted to misappropriation of funds. This is an accusation by Team Hitchman that was repeated by Bruce H. and members of Team Hitchman, over and over again. Bruce H. admitted on the stand when questioned by Thomas' attorney that the $450,000 Team Hitchman accused Thomas of misappropriating and absconding with, out of Lamplighter Chino's bank account, was actually deposited at Thomas' directions, the **very next day** after it was withdrawn from the Bank of America account of Lamplighter Chino, in a Wells Fargo account in the **name of Lamplighter Chino and under the control of Newport Pacific**, the property manager of Lamplighter Chino.

"*Question by Thomas' attorney:* So something starts in the evening on June 1st, and by 3:44 PM the next day every penny of the $450,000 is sitting safely in a Lamplighter Chino account at Wells Fargo Bank? *Answer by Bruce H.:* Yes." (Bruce H's trial testimony on November 15, 2023.) The court finds that the evidence introduced during the trial establish that Thomas provided to Team Hitchman proof regarding his activities relating to the transfer of the $450,000. In a June 1, 2017, letter to Newport Pacific, with copies of the relevant checks attached to the letter, Thomas convincingly showed that there was never any misappropriation nor was there any absconding of Lamplighter Chino's money. (Exhibit 174.)

When confronted with the fact that he incorrectly and falsely claimed that the $450,000 in question was a Trust asset, Bruce H.'s answer was: "It's probably over stating the position." (Bruce H.'s testimony on November 15, 2023.)[65] The facts introduced during the trial clearly establish, and even Bruce H. had to begrudgingly admit during cross examination, that the $450,000 in question was

[65] Sounds very similar to the *embellishment* explanation.

never a Trust asset, rather, it was always the asset and the money of Lamplighter Chino and at all relevant times relating to the $450,000 transaction, Thomas, through MPI, was the lawful manager of Lamplighter Chino.[66]

In connection with Team Hitchman's actions in going to Bank of America to place a freeze on certain bank accounts and make a claim on Lamplighter Chino's over $6 million Certificate of Deposit by levying accusations against Thomas, Bruce H. admitted that he did not tell Bank of America the full story, and he that he left out information that was favorable to Thomas and contrary to the position the Hitchmans were taking against Thomas: "*Question by Thomas' attorney:* You didn't tell the rest of the story to Bank of America about what happened to the $450,000; correct? *Answer by Bruce H.:* Correct. … *Question by Thomas' attorney:* You left out the Covina Hills account, you identified it was controlled by Newport Pacific who also was the Lamplighter Chino property manager? *Answer by Bruce H.:* I did. *Question by Thomas' attorney:* You left out the 450 grand was there only for so long as it took Newport to open up a Wells Fargo account? *Answer by Bruce H.:* I did. *Question by Thomas' attorney:* And you left out that as soon as that Wells Fargo account was opened, the entire $450,000 was moved into Lamplighter Chino's operating account at Wells Fargo Bank? *Answer by Bruce H.:* I did. *Question by Thomas' attorney:* And you left out that that 450 grand had been sitting there for ten days prior to your giving these affidavits to Bank of America? *Answer by Bruce H.:* I left that out, yes. *Question by Thomas' attorney:* Okay. Now, you knew that Bank of America was a significant financial institution not just for Lamplighter Chino but for a number of the Morgan family businesses; correct? *Answer by Bruce H.:* I knew that there was a relationship, yes." (Bruce H's testimony on November 15, 2023.)

The court finds that Bruce H.'s above listed testimony, when examined and considered in light of all the evidence introduced during the trial, clearly show that the Hitchmans acted like Thomas'

---

[66] The evidence introduced during the trial clearly establish that Lamplighter Chino was a separate legal entity from the Trust and was never a Trust asset. Even Bruce H. had to admit this important point during his testimony. "*Question by Thomas' attorney:* You recognize Lamplighter Chino as a separate legal entity from the Trust sir? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* Different tax payer I.D. numbers? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* And different tax returns? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* Different owners? *Answer by Bruce H.:* Yes." (Bruce H. testimony on November 15, 2023.)

underhanded legal adversary, rather than treating him fairly, impartially, and without bias as a beneficiary of the Trust. The court in this statement of decision is repeatedly referring to Thomas as a beneficiary because that's what he was during the entirety of the Hitchmans interim co-trusteeship, and to highlight the breaches committed by the Hitchmans against both the Trust and Thomas as a beneficiary of the Trust. However, even as a suspended trustee, Thomas was still entitled to the legal benefit of being treated fairly and reasonably by the Hitchmans, and there is no rational good reason for a fiduciary to intentionally hide facts from, and tell half the story to, a financial institution in the hope of producing a negative action against a suspended trustee, let alone a beneficiary. Certainly, an interim trustee can seek legal remedies for perceived wrongdoings by a suspended trustee and a beneficiary, but doing so should be done fairly and honestly and not by embellishing and telling half stories.

In trying to justify the Hitchmans' treatment of Thomas, Bruce H. testified that the fact the Hitchmans owed Thomas a fiduciary duty does not mean Thomas had immunity against wrongdoing. The court certainly agrees with this general statement,[67] however the court finds that there is a difference between a trustee not giving a beneficiary *immunity* (proper) and a trustee being biased against the beneficiary and partial in favor of his adversary (improper).

As to the Hitchmans accusations, and ringing of loud sounding alarms, in their June 13, 2017, *ex parte* application (ROA 1493) regarding the Certificate of Deposit in Bank of America Account # X-1371 with a balance of $6,006,250.63, Bruce H. had to admit on the stand that **before Judge Hubbard ruled** on this *ex parte* application, **Bruce H. knew** that the information Team Hitchman provided to the court in the *ex parte* application regarding this Certificate of Deposit was inaccurate and it included a **false** alarm. *"Question by Thomas' attorney:* So plenty of time even if you couldn't correct your papers before filing them on the morning of June 13th. You had plenty of time, you agree, to file something to let Judge Hubbard know false alarm as to the $6 million CD, it's safe, right? *Answer by Bruce H.:* I would agree as to plenty of time, but I do not know what -- what the -- what

[67] Ignoring for now the exculpatory clauses that Beverly expressly included in the Trust, and the fact that such exculpatory clauses may very well potentially apply to Thomas in his capacity as suspended trustee.

legally would have needed to have been filed. *Question by Thomas' attorney:* Well, your papers told the court there is a risk Tom will take this $6 million CD. The truth is there was no risk at all; correct? *Answer by Bruce H.:* Yes." (Testimony of Bruce H. on November 15, 2023.)[68]

This admission by Bruce H. represents an acknowledgment of conduct that goes to the heart of the justice system. All private professional fiduciaries owe a duty of candor to the court.[69] It flies in the face of such duty to knowingly fail to correct false information provided to the court, before the court acts on such false information, when correcting such false information can easily be accomplished simply by one of the Hitchmans' attorneys, who was present outside the courtroom waiting for the ruling on the *ex parte* application, to walk into the courtroom and tell the clerk, and also tell Thomas' attorney, that Team Hitchman has now become aware that some of the information they submitted to the court, in support of the *ex parte* application, is false. Regretfully, no such action was taken by anyone on Team Hitchman.[70]

A more significant admission by Bruce H. was that even after Judge Hubbard ruled, there was no effort by the Hitchmans to go back to Judge Hubbard, by way of a status report or any type of filing, to let the court know that they had presented false information to the court and that such false information was the basis of a court's ruling in their favor. Nor was there any such effort by Team Hitchman in connection with Bank of America to let them know that the allegations stated by Bruce

---

[68] The next day Bruce H. again confirmed during his testimony that he knew before Judge Hubbard ruled that she was considering a false statement contained in in his verified *ex parte* application: "Q: Well, Let's be clear on our chronology. You knew in that the story you had verified under penalty of perjury about the $6 million CD being at risk, you knew that was untrue before judge Hubbard ruled; correct? A: I believe that's correct. Q: Right. And you did nothing to correct that? A: I did not. I did not attempt to correct it at that time, no." (Bruce H.'s testimony on November 16, 2023.)

[69] The court, the litigants, and the justice system deserve more and better from private professional fiduciaries appointed by the court: "Q: Mr. Hitchman, whether you thought it was true or false, the story you told Judge Hubbard in those papers is at odds with the objective truth; correct? A: It's at odds with what we've later found out had transpired." (Bruce H.'s testimony on November 15, 2023.) More alarming, the court finds that even after realizing that the picture they painted to the court contains falsity, and **before the court ruled** on the Hitchmans' request based on this falsity, Team Hitchman did not take prompt appropriate steps, or any reasonable steps, to clear the record.

[70] It wasn't just Bruce H. who knew about the falsity in the Hitchmans' *ex parte* application prior to Judge Hubbard issuing her ruling, the Hitchmans' lawyers also knew it. Exhibit 242 contains a June 14, 2017, email between members of the Hitchmans' legal team including Carico, Benz, Glowacki, and Roehl, at 12:11 PM, before Judge Hubbard's ruling on the *ex parte* application, whereby the following is said: "unsure if anyone read [Thomas]'s declaration and the exhibits attached but he has correspondence with the property manager and bank statements that tell a different story than what we alleged. … Just a heads up."

H. in his affidavits to Bank of America contained falsity. "*Question by Thomas' attorney:* After you got this order, no effort to go back to Judge Hubbard saying, you know, we got the facts wrong about Tom Morgan, here's the rest of the story? *Answer by Bruce H.:* There was no effort, no. *Question by Thomas' attorney:* Right. No effort to Bank of America either? *Answer by Bruce H.:* No." (Bruce H.'s November 16, 2023, testimony.)

Bruce H. and Team Hitchman became aware and in **actual possession** of all this information, including Thomas' June 1, 2017, letter to Newport Pacific, no later than June 14, 2017, when it was attached to Thomas' opposition to the Hitchmans' *ex parte* application alleging misappropriation of the $450,000. (ROA 1506, pages 167 to 170.) That should have been the end of Team Hitchman making the false allegations that Thomas absconded with or misappropriated $450,000 of Lamplighter Chino's money. The facts introduced during the trial clearly established that even in the face of such information and such knowledge, Team Hitchman continued to make these false allegations against Thomas, in breach of the Hitchmans' fiduciary duties to the Trust, and to Thomas as a beneficiary of the Trust.

As to the allegation by Team Nancy, repeated by Team Hitchman, that Thomas was holding off distributions from Lamplighter Chino, thereby *choking off* Nancy, Bruce H. admitted during his testimony that he accepted at face value Team Nancy's *choking off* allegations, and that such allegations were factually false. Bruce H. further admitted that it was his job not to accept Nancy's allegations at face value. The court finds, based on the totality of all the evidence introduced during the trial, that during the Hitchmans' interim co-trusteeship they repeatedly accepted at face value Team Nancy's factual allegations and positions without conducting any independent and duly diligent investigation.

As to the Hitchmans' conduct in taking over Lamplighter Chino in secret, Bruce H. admitted that he did have the option of seeking the court's permission to do so, that he had discussions with his attorneys regarding the option of seeking authorization from the court, but that the Hitchmans decided not to go that route: "*Question by Thomas' attorney:* Okay. So although you have the option of going to Judge Hubbard, coming out in the open and saying the Trust has 51 percent in Chino and Nancy would like us to take it over or we like to take it over, please approve this, you chose not to do that; correct? *Answer by Bruce H.:* Correct." (Testimony of Bruce H. on November 15, 2023.)

During his deposition prior to the trial, Bruce H. testified that he never accused Thomas of stealing the $450,000 from Lamplighter Chino's Bank of America account, and he explained that he accused Thomas of misappropriating the $450,000 which, according to Bruce H., is different than stealing. Bruce H. further testified that he would not use the term "absconding" when describing Thomas' conduct regarding the $450,000. However, Bruce H. was impeached by his verified statement in support of the Hitchmans' 473(b) motion to convince Judge Johnston to again allow the Hitchmans to pay their fees, including attorney fees, without court authorization. Bruce H's verified statement in support of the 473(b) motion includes the following: " … which we obtained after Thomas objected to our replacing the Manager of Lamplighter Chino and **absconded** with $450,000 from Lamplighter Chino." (ROA 1809 / Exhibit 856, page 11, lines 22-24 and page 13.)

The seriousness of this repeated allegation by the Hitchmans against Thomas regarding Thomas misappropriating and/or absconding with Lamplighter Chino's $450,000 is magnified by the fact that it took place on November 30, **2018**, more than 17 months after Team Hitchman became aware of the factual falsity of such accusation, as detailed above. The court finds, based on all the evidence introduced during the trial, this conduct to be just one of many examples showing the Hitchmans' willingness to make all types of false accusations against Thomas, without proper factual foundation, and while being in actual possession of facts and information showing that such accusations were not warranted and not factually truthful.

Team Hitchman accused Thomas of absconding with money belonging to Lamplighter Chino – he did not. Team Hitchman accused Thomas of choking off distributions to Nancy – he did not. Team Hitchman accused Thomas of committing fraud without any evidence to support such accusation. Team Nancy accused Thomas of acting in a manner constituting willful misconduct or gross negligence in managing business entities without any evidence to support such accusations.

Bruce H. confirmed that on October 16, 2018, in his opposition to Thomas' *ex parte* application relating to Lamplighter Chino, he [Bruce H.] verified under penalty of perjury a false allegation that "Thomas also fails to mention that the Chino entities had not made a distribution since April 2015." (ROA 1754 / Exhibit 1754, page 7, lines 26-27.) Bruce H. was then confronted with the fact that on

October 16, 2018, when he verified this false statement, the Hitchmans had available to them, and in their possession **for over a year**, summary of accounts prepared by the Hitchmans' retained accountant (Morris) showing that Thomas actually made distributions from Lamplighter Chino during that period. (Exhibit 622.)

Bruce H. testified as follows: "*Question by Thomas' attorney:* Your testimony would be that Mr. Morris actually missed a distribution and Tom even distributed more than he thought? *Answer by Bruce H.:* It appears that way from this. *Question by Thomas' attorney:* Now, this is something you had available for over a year before you swore under penalty of perjury that Tom Morgan had made no distributions out of Chino since April 2015? *Answer by Bruce H.:* Yes.? … *Question by Thomas' attorney:* Okay. So not only did you have information at your disposal to tell you that your sworn statement in the declaration we looked at was wrong, but you actually received and billed 1.4 hours for reviewing the information that told you what you were swearing to under oath was not true; correct? *Answer by Bruce H.:* Yes." (Bruce H.'s testimony on November 16, 2023.)

This testimony by Bruce H. paints a clear picture of the compromised manner by which the Hitchmans performed, and continuously breached, their fiduciary duties towards Thomas and the Trust. First, the Hitchmans had in their possession accounting documents prepared by a Certified Public Accountant showing that Thomas made distributions to Nancy from Lamplighter Chino. Second, Bruce H. reviewed the accounting documents, and he charges the Trust for the time it took him to review the accounting documents. Then, incredibly, Bruce H. turned around and filed a verified pleading with the court, under penalty of perjury, accusing Thomas of not making distributions from Lamplighter Chino. This example is, sadly, not an isolated incident. During a trial that lasted close to a year and consumed 43 full court days, Thomas introduced overwhelming evidence of repeated conduct by Team Hitchman that fits in the same category as the above listed examples: breach, after breach, after breach, of fiduciary duties.

Bruce H. admitted that this case was the only case he could think off where he, as a private professional fiduciary, had either a formal or informal common interest agreement with one set of beneficiaries (Team Nancy) as reflected in exhibit 129 discussed above. "*Question by Thomas'*

attorney: Okay. Whether formal or informal fair to say you can't think of any other trust representation where you would have had a common interest agreement with one set of beneficiaries; correct? *Answer by Bruce H.:* Correct. *Question by Thomas' attorney:* And I -- as you sit here, do you recall ever writing an e-mail to your lawyers saying in substance, wait a minute, whether formal or informal we can't have any type of agreement with one set of beneficiaries to minimize paper trail? *Answer by Bruce H.:* No." (Testimony of Bruce Hitchman on November 17, 2023.)

The court finds that the above listed evidence is one piece of direct evidence that when viewed in light of additional multiple other pieces of circumstantial and direct evidence introduced during the trial, establishes to the court's satisfaction that from the start Team Hitchman treated Nancy and her lawyers as allies and teammates, while on the other hand Team Hitchman treated Thomas as the adversary. The court finds that Team Hitchman specifically and expressly spoke about strategizing with Team Nancy regarding how the Hitchmans should carry out their *supposed* independent functions as interim co-trustees and fiduciaries, to the benefit of Team Nancy and consequentially to the detriment of Thomas **and** the Trust. Furthermore, the court finds that Team Hitchman took affirmative steps to try to hide and keep a secret from Thomas, **and the court**, the fact that Team Hitchman was all along working hand-in-hand with Team Nancy to achieve the goals that Team Nancy wanted to accomplish.

The court finds that the evidence introduced during the trial strongly and convincingly lead to the above listed conclusions. The Hitchmans had a completely different attitude when dealing with Team Nancy as compared with Thomas and his attorneys. The court finds exhibit 1082 to be very probative in supporting the above listed conclusions. On August 9, 2017, Carico wrote an email to Glowacki, Roehl, Bruce H., Lee Ann, and Benz. The email starts as follows.

///

///

From: Chris Carico [mailto:CCarico@cjtllp.com]
Sent: Wednesday, August 09, 2017 2:51 PM
To: John Glowacki <John@rg.legal>; Cynthia Roehl <cynthia@rg.legal>; Bruce Hitchman <Bruce@hitchmanfiduciaries.com>; LeeAnn Hitchman <LeeAnn@hitchmanfiduciaries.com>; Bill Benz <BBenz@cjtllp.com>
Cc: Bill Benz <BBenz@cjtllp.com>
Subject: Update on Rest of Meeting

Dear Hitchman Team:

Bill and I finished up the call with counsel for the beneficiaries. [redacted]

If a reasonable person is to read the beginning of the above shown August 9, 2017, email from Carico, one of the Hitchmans' lead attorneys, addressed to the rest of the Hitchmans' legal team and to the Hitchmans, regarding the call Carico just finished up "with counsel for the **beneficiaries.**" such a reasonable person would conclude that the reference to the **counsel for the beneficiaries** means exactly that: the counsel for the beneficiari**es** – **all** the beneficiaries. After all, Carico did not state he just finished up a call with **one side** of the beneficiaries. He did not state he just finished up a call with counsel for **some** of the beneficiaries. He didn't even state he just finished up a call with counsel for the **majority** of the beneficiaries. Having said that, the phone call was actually with counsel for only one side of the fighting beneficiaries. The phone call was with Team Nancy's counsel (McDermott and Garrett), and nowhere to be found on this phone call was anyone representing the main, major, and majority beneficiary, namely Thomas. Nonetheless, for one of the Hitchmans' two lead litigation attorneys, that was a phone call with the beneficiaries.

The court finds that the above listed evidence is bad for the Hitchmans' position, but that's not all. In this discussion with *apparently* the only beneficiaries of the Trust according to Carico, the attorneys for Team Nancy "expressed a willingness to share their strongest evidence at the upcoming walk-thru **provided we** [Team Hitchman] **did not disclose it to the other side**. Bill [Benz] and I [Carico] **welcomed** the idea." (Exhibit 1082, bottom of page 3 to top of page 4. Emphasis added.)

Attorneys for PPF co-trustees in a case where the beneficiaries are involved in a bitter litigation and the PPF was appointed on an interim basis to administer and protect the trust fairly and reasonably, *should not welcome* an opportunity to be placed in apposition to intentionally hide and withhold evidence from one side of the fighting beneficiary at the request of the other side. They should reject and decline such opportunity.

Based on the totality of all the evidence introduced during the trial, and in light of the totality of all the competent facts proved during the trial, the court finds this above listed email to be devastating to the Hitchman's argument that they treated Thomas fairly, and that they were not partial to one side against the other. Based on the totality of all the evidence, the court finds that the way Carico described the specific family members in the above listed email, namely, Nancy, Nancy's daughters and John as the beneficiaries, is not merely a typo or an inadvertent mistake that was the result of a *slip of the* proverbial *tongue*, rather, as reflective of the attitude and frame of mind of Team Hitchman throughout the Hitchmans' interim co-trusteeship: Nancy, Nancy's daughters, and John are the alleys and the only beneficiaries. Thomas is the adversary.

Glowacki, in responding to Carico's above listed email indicated that "HF (Hitchman Fiduciaries) and its legal team are now in a much better position to **assimilate** and understand **the** [Team Nancy's] **claims** (from Nancy's perspective, at least) and use that information to inform their further strategic decision-making." (Exhibit 1082, page 4. Emphasis and [ ] added. Parenthesis in original.) A private professional fiduciary appointed by the court as an interim trustee of a trust, where beneficiaries are embroiled in heavy litigation, should **not** aim to assimilate their position and strategic decision-making process with those on one side of the fighting beneficiaries against the other side. This is exactly what Glowacki said, and what the Hitchmans did, based on all the facts introduced during the trial, including the above listed statement by Glowacki.

During his testimony Bruce H. testified that he did not like Glowacki's use of the term *assimilate*. The court finds that encouraging. However, Bruce H. was included on the above email where the term *assimilate* was used. The court would give more weight to this testimony by Bruce H. about his disapproval of one of his lead lawyers' use of the term *assimilate* if Bruce H. had responded

to the email by reminding his lawyers that the Hitchmans' job is **not** to assimilate their position with that of Team Nancy, and that the phone call Carrico and Benz had with Team Nancy's attorneys was **not** a phone call with the beneficiaries' counsel, rather, it was a phone call with one side of the beneficiaries in a two sided litigation between the beneficiaries.

Other relevant statements contained in exhibit 1082 include Carico indicating that one of the benefits of Team Hitchman having further *walk-thru* meetings with Team Nancy include a "quick way to get Bill [Benz] and I [Carico] up-to-speed for a **future** mediation and **trial**." Not potential trial, but a future trial. This is another piece of the substantial direct and circumstantial evidence that the court relied upon in finding that from the start Team Hitchman had planned to join the litigation and be part of the trial, contrary to Bruce H.'s testimony.

In reaching its findings and conclusion, the court considered that in one of his responses to the above listed email exchange, Glowacki stated that it is important for Team Hitchman to take Pech up on his offer to meet with the Hitchmans, but the court finds that such a statement lacks much probative value or credibility because in the same paragraph, Glowacki states the following: "Maybe even do the TEM [Thomas] meeting **first**, to get his side so we understand his perspective **before** going to hear what will no doubt be a parade of horribles [sic] presented by McDermott and his team." (Exhibit 1082, page 2. Emphasis added.) This statement by Glowacki was typed on August 9, 2017, after Glowacki and Roehl personally had at least one substantive and detailed meetings with Team Nancy, and after Team Hitchman already had multiple discussions/meetings with Team Nancy and heard their side of the story. The insinuation by Glowacki that if Team Hitchman was to meet first with Thomas after August 9, 2017, such a meeting with Thomas would have been the equivalent of Team Hitchman meeting with Thomas before meeting with Team Nancy is a factually wrong insinuation.

Bruce H. was confronted with an email he wrote on December 22, 2017, regarding the payment of invoices and bills. In referring to making payments out of Lamplight Chino, Bruce H. made the following statement: "Am I okay paying out of the Chino … account? As Willie Sutton said, that's where the money is." (Exhibit 424.) Bruce H. confirmed that his reference to Willie Sutton is a reference to an infamous bank robber. Willie Sutton was a colorful character born in 1901 who said he

robbed banks "because that's where the money is." Willie Sutton was one of the first fugitives named on the FBI's Top Ten List. The court certainly appreciates human nature and the fact that when individuals are communicating with their attorneys, in what they perceive to be a confidential and privileged communication, sometimes the guards go down leading to attempts at humor that may be, or may not be, considered funny. Certainly, Thomas and his trial attorneys should not be faulted if they thought a reference to an infamous bank-robber in connection with making payments out of a business that Thomas and Beverly worked hard at building and making successful.

In his testimony, Bruce H. conceded that the Hitchmans' motivation for taking over Lamplighter Chino was the cash it generates. Furthermore, Bruce H. testified that when he refers to Trust administration expenses, he includes attorney fees and litigation expenses. The court found this testimony probative in ruling on the Hitchmans' First and Final Accounting Petitions.

In connection with the Hitchmans' actions in secretly taking over Lamplighter Chino, and in light of Bruce H's testimony about his access to documents relevant to Lamplighter Chino before they took it over, the court finds that had the Hitchmans conducted a proper investigation regarding Lamplighter Chino, including carefully reading the documents they had in their possession, the Hitchmans would have found out that taking over the management of Lamplighter Chino triggers an event of default regarding the $14 million loan that Thomas personally guaranteed to PNC. Bruce H. admitted during his testimony that he did not read Lamplighter Chino's loan documents before taking over Lamplighter Chino. More simply, had the Hitchmans told Thomas about their plans to take over Lamplighter Chino, he testified he would most certainly have told them that such action will have negative potential consequences. The court finds this testimony by Thomas to be credible and to be supported by all the other evidence introduced during the trial.

The court finds unpersuasive all the reasons and justifications proffered by Bruce H. for keeping the Hitchmans' plans to take over Lamplighter Chino a secret from Thomas. During his testimony, Bruce H. admitted that he started and ended the process of taking over Lamplighter Chino and displacing its long-term manager, MPI, without even reading the important loan documents relating to Lamplighter Chino to see if there is any possible negative impact on Lamplighter Chino if the

Hitchmans were to displace MPI as the manager.[71] Knowing that MPI is a company owned and controlled by Thomas, nonetheless, Bruce H. admitted that during the time he was taking over Lamplighter Chino, his attorneys communicated actively and repeatedly with Team Nancy's attorneys but never informed Thomas and his attorneys.[72]

Bruce H. testified that the Hitchmans initially considered borrowing money against the Lido Condo but then decided against it because the Lido Condo was a "specific bequest" under the Trust. Bruce H. testified that he ultimately decided to take over Lamplighter Chino. However, he admitted that Lamplighter Chino was also a specific bequest under the Trust. In assessing the credibility and persuasiveness of the Hitchmans' position in this case, the court considered and gave appropriate weight to the fact that both the Lido Condo and Lamplighter Chino were **specific bequests to Thomas** under the Trust that the Hitchmans were appointed to administer and protect.

The court finds that Bruce H's likening his conduct of paying bills out of Lamplighter Chino to the conduct of a bank robber who targets banks because that's *where the money is* should not be dismissed as just the funny musing of a PPF talking to his attorneys, rather, it is relevant for the court to consider as one factor, but not a dispositive one, in assessing the Hitchmans' state of mind during their interim co-trusteeship. The court is making this finding based on (1) the substantial evidence introduced during the trial about the Hitchmans' conduct and breaches of fiduciary duty as interim co-trustees, (2) the Hitchmans' reckless takeover of Lamplighter Chino, (3) the Hitchmans' distribution of close to $7 million out of Lamplighter Chino at the request of Nancy, and (4) the Hitchmans' spending of the Trust's portion of the distribution from Lamplighter Chino mostly to fund a litigation that the Hitchmans had no business launching.

After having to admit that at the time he took over Lamplighter Chino he was not aware of any issues whatsoever regarding Thomas/MPI's management of Lamplighter Chino, and after being

---

[71] "*Question by Thomas' attorney:* Well, you did displace the manager without reading the loan documents? *Answer by Bruce H.:* Yes." (Bruce H's testimony on December 7, 2024.)

[72] "*Question by Thomas' attorney*: your lawyers communicated actively with Nancy Shurtleff's lawyers as you were taking over Chino but you never kept Tom informed, did you? *Answer by Bruce H.:* Not on this particular issue no." (Bruce H's testimony on December 7, 2024.)

reminded on the stand that under the 2013 version of the Trust he was appointed to administer Thomas was the actual beneficiary designated to get Lamplighter Chino, Bruce H. admitted that cash was the **only** reason he took over Lamplighter Chino: "*Question by Thomas' attorney:* Cash was the reason? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* Like Willie Sutton's saying, Chino is where the money is; right? *Answer by Bruce H.:* I mean, that's a phrase I used, yes." (Bruce H's testimony on November 17, 2023.)

As to the allegation that Bruce H. made against Thomas on April 24, 2017, claiming that in managing the different relevant mobile parks, Thomas' actions constituted fraud, gross negligence, or incompetence, Bruce H. admitted during his testimony that in April of 2017 when he made these claims, as well as in March of 2019, during his deposition, Bruce H. did not have, or know of any, factual basis to support these claims. Bruce H. further admitted that Team Hitchman had not conducted any investigation before signing the organizational documents (actions by written consent) to support these allegations against Thomas.

During his testimony, Bruce H. conceded that he was required to investigate before filing a lawsuit against Thomas. As stated above, the court finds that no such genuine or good faith investigation was conducted by the Hitchmans before they filed their H-17200 Petition against Thomas. In reaching this conclusion, the court relied on the entirety of all the evidence introduced during the trial, including admissions made by Bruce H. on the stand. Bruce H. testified as follows: "*Question by Thomas' attorney:* What were your contributions in terms of -- leading up to your own investigation? *Answer by Bruce H.:* Well, there wasn't there **wasn't a lot of material, factual that we had obtained that was new**. Most of it was -- had been outstanding for a long time. So there wasn't much in the way of -- there wasn't discovery for instance that we could rely on. It was basically the **stuff that was out there**." (Bruce H.'s testimony on December 4, 2024. Emphasis added.)

The court finds the above listed testimony by Bruce H. to be very probative and telling. The court finds the above answer as an admission by Bruce H. that the Hitchmans did not conduct any independent investigation before filing a serious trust contest against the Trust instrument they were appointed to administer. The court finds that *the stuff out there* is nothing more than a reference to what

Team Nancy was telling Team Hitchman. The court finds that by blindly relying on what Team Nancy was telling them, the Hitchmans breached their fiduciary duty to the Trust and to Thomas.

Bruce H. admitted that for managing Lamplighter Chino, the Hitchmans paid themselves extraordinary fees out of the Trust **and not** out of Lamplighter Chino. The court finds that in doing so, the Hitchmans shifted the payment of this cost from Lamplighter Chino, where some of this cost would have been allocated to Nancy's share out of Lamplighter Chino, to the Trust where none of the costs will be apportioned to Nancy, and all of it will be shouldered by the Trust because by that time Nancy had already received all she was entitled to receive from the Trust, namely, $1 million. The court finds this knowing and willful conduct by the Hitchmans to be substantially harmful to the Trust, and it was done to benefit Team Nancy.[73] In reaching the conclusion that the Hitchmans knew the impact of what they were doing, and they willfully did it anyway, the court relied on the entirety of all the evidence introduced during the trial, including Bruce H.'s own testimony.

Bruce H. testified that before directing Benz to send the letter firing Pech, he (Bruce H.) did read the transcript of the June 28, 2017, hearing where Pech told the court, in the presence of Glowacki and Benz, about the pending "huge trial involving $30 million" that he was handling involving Lamplighter Chino, described in more details above. (Exhibit 834.) Even though he admitted reading the transcript of the June 28, 2017, hearing, Bruce H. still testified that he missed it because he did not focus on the part where Pech made the notification, on the record. Therefore, the trial testimony regarding this issue is as follows: Glowacki and Benz, present in the courtroom a few feet away from Pech when he made the notification on the record, still, they did not hear it or catch it. Bruce H. also missed the same notification when he read the transcript of the hearing.

When questioned regarding this troubling trend, Bruce H. said the following. "*Question by Thomas' attorney:* Okay. Let's look at trial exhibit 834. June 28 hearing in front of Judge Hubbard. You would have read this transcript sir? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* Okay. Let's go to page 31. So this is Mr. Pech speaking. He says, this insanity is even going to get

[73] The term **willful/willfully** as used in this statement of decision refers "generally to intentional conduct undertaken with knowledge or consciousness of its probable results." Willful conduct, as used in this statement of decision, does "require more than negligence or accidental conduct." (*Patarak v. Williams* (2001) 91 Cal. App. 4th 826, 829.)

worse because there's litigation involving Chino; right? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* Okay. And you had not one, but these two lawyers at this hearing who heard this as well; correct? *Answer by Bruce H.:* Yes, I believe so. *Question by Thomas' attorney:* Okay. Let's go to page 36. Here's Pech again and if you want to go up first just a few lines, lines 15 so you can see he's talking about Lamplighter Chino. *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* He says, I've got litigation in October. Do they know about that? Okay. I've got a huge trial involving $30 million. Are they going to, what, take that over too, put Bill Benz in charge of that? They've got no idea what they've gotten into; right? *Answer by Bruce H.:* That's what it says. *Question by Thomas' attorney:* So twice in the span of a few pages in this transcript Mr. Pech tells you and your lawyers he's handling a really important lawsuit for Lamplighter Chino; right? *Answer by Bruce H.:* That's what he's saying here. *Question by Thomas' attorney:* Did you miss it, Mr. Hitchman? *Answer by Bruce H.:* As part of the entire thing, yes, I did not focus on this part." (Testimony of Bruce H. on November 27, 2023.)[74]

The court finds it hard to imagine what other part Bruce H. should have focused on rather than an on-the-record notification of a pending $30 million trial in a lawsuit relating to an entity that the Hitchmans took over. The court finds this pattern to be additional proof of the reckless nature of the Hitchmans' conduct in repeatedly breaching their duties as private professional fiduciaries appointed as interim co-trustees, including in taking over the cash-rich Lamplighter Chino. This pattern is also consistent with the facts showing that when the Hitchmans came into the picture in this litigation, Lamplighter Chino was the answer to Willie Sutton's favorite refrain: *where is the money?*

During his testimony, Bruce H. admitted that before he authorized the filing of the H-17200 Petition against Thomas, he never conducted a cost-benefit analysis to determine if the money that could be recovered from such litigation is more than the money the Trust will have to spend in pursing such litigation. Bruce H. admitted that such cost-benefit analysis is something a trustee should do. The court finds this admission by Bruce H. to be exceptionally relevant to the finding that the Hitchmans

[74] In addition to what transpired during the June 28, 2017, hearing, exhibits 226, especially page 17, is relevant to show the knowledge on the part of Team Hitchman regarding the *taking* lawsuit involving Lamplighter Chino and the City of Chino.

breached their fiduciary duties towards the Trust, and Thomas as a beneficiary of the Trust. The court further finds, based on all the evidence introduced during the trial, that the Hitchmans did not conduct such a cost-benefit analysis before pursuing the litigation because pursuing such litigation benefited Team Nancy and was consistent with the Bruce H.'s promise of *quick action*.

Bruce H. admitted that if Pech committed malpractice by giving bad advice to Thomas, such conduct by Pech would potentially be a viable basis for a claim by the Trust against Pech. When questioned about his reasons for not pursuing a claim against Pech on behalf of the Trust for malpractice regarding Pech billing the Trust for services Pech provided to Thomas in his individual capacity, Bruce H. did not provide a reasonable explanation and admitted that he knew he had one year to pursue such a claim and failed to file a claim, or to preserve it, before the expiration of the statute of limitations. When asked why at least he did not continue to reach out to Pech until he received more information and preserved the malpractice claim, Bruce H. answered: "I don't know why that decision was made." (Testimony of Bruce H. on November 30, 2023.)

The court finds that the Hitchmans had way more evidence available to them, within the statute of limitations, about harm caused to the Trust by Pech, including for malpractice, than the evidence (if any) that they had to support the filing of the H-17200 Petition against Thomas. This includes Pech's own admission, in the *lip service* accounting he filed, that the Trust paid him $250,000 in fees for services he provided to Thomas in his individual capacity. Nonetheless, the Hitchmans decided to go after Thomas by filing the H-17200 Petition and did nothing to pursue the malpractice claim against Pech.

Bruce H. conceded that if the court finds that a trustee benefitted personally from his breaches of trust, the court should deny such trustee all compensation. Also during his testimony on November 30, 2023, Bruce H. stated that "**words are words, actions speak louder than words**." The court completely agrees with this assessment by Bruce H. The court's findings and orders as detailed in this statement of decision are based on the actions by the Hitchmans, as established by the evidence.

As to the evidence of the exceptional collaboration and cooperation between Team Hitchman and Team Nancy in drafting the H-17200 Petition the Hitchmans filed as interim co-trustees against

Thomas, giving Team Nancy the best *halo effect* they could have hoped for, and in one of the major understatements of this long trial, Bruce H. admitted that it is not common, in his experience, for a trustee and his lawyers to collaborate with one set of beneficiaries in active litigation against another one of the beneficiaries.

Bruce H. testified that the Hitchmans retained Mr. Coombs on one unrelated matter prior to the Hitchmans being appointed as interim co-trustees in this case. After the Hitchmans were appointed as interim co-trustees in this case, the Hitchmans retained Mr. Coombs on three other separate and unrelated matters. Bruce H. testified that at the time the Hitchmans were appointed at interim co-trustees in late March 2027, Mr. Coombs was not retained by the Hitchmans on any cases. Bruce H. indicated that he never disclosed to the court, or to any of the parties in this case, the fact that the Hitchmans had ta business relationship with Mr. Coombs. Bruce H. conceded that Thomas would have objected to the Hitchmans' appointment as interim co-trustees had the Hitchmans disclosed their prior relationship with Mr. Coombs. Bruce H. was then asked: "Doesn't the fact that Tom Morgan would have objected if he had known these facts make them material for disclosure?" and he answered "Yes." (Bruce H.'s testimony on December 1, 2023.)

After considering the totality of all the evidence introduced during the trial, including the testimony of Glowacki on this issue as listed below, the court finds Bruce Hitchman's testimony regarding Mr. Coombs to be credible, and the court further finds that the Hitchmans' legal arguments regarding this issue to be persuasive. Accordingly, the court finds that Thomas failed to prove his third cause of action against the Hitchmans relating to Thomas' request for disgorgement of fees for failure to disclose conflict of interest in order to secure and preserve their appointment.

Regarding the plans Team Hitchman designed and started implementing within hours after Team Hitchman realized that the family members (the beneficiaries) reached a settlement that did not include giving the Hitchmans a release, Bruce H. testified as follows: "*Question by Thomas' attorney:* Okay, now, the plan that you referenced was a **plan to bring pressure to bear** on Tom Morgan in hopes of expanding a settlement to include Hitchman Fiduciaries; correct? *Answer by Thomas H.:* I

don't agree with the characterization. **But it's sort of correct**." (Bruce H.'s testimony on December 1, 2023.) The court makes the following two findings in connection with this issue.

First, a factual finding. The court finds that the entirety of the evidence introduced during the trial **clearly and overwhelmingly** establish that it was totally, and not *sort of*, correct that the Hitchmans' plan starting hours after the settlement was reached on December 9, 2019, was expressly designed to bring pressure to bear on Thomas to try to squeeze a release from him. The court further finds, as a matter of fact, that in trying to bring pressure to bear on Thomas, and not unlike how they filed the H-17200 Petition, Team Hitchman proceeded to make reckless and *fact-devoid* allegations against Thomas.

Second, a legal finding. Team Hitchman's conduct in bringing pressure to bear on Thomas constitutes a massive breach of their fiduciary duties to the Trust and to Thomas as a beneficiary of the Trust.

Exhibits 717 and 728 are two of many examples of testimonial and documentary evidence introduced during the trial showing the planning and discussions between members of Team Hitchman as this *plan to squeeze* started developing.[75] As shown in exhibit 717, Glowacki sends an email to Carico, Benz, and Roehl, at 1:29 AM on April 9, 2019, with the subject line "Morgan To Do List," therefore starting a discussion about what Team Hitchman should do since the beneficiaries settled without giving the Hitchmans a release. At 6:49 AM that same day, Carico sends a response and in it he states the following: "Given that Tom appears to have **deliberately concealed assets in order to avoid the payment of transfer taxes**,[76] I would like to discuss with you taking the following posture with respect to any settlement to ensure the Hitchmans have carried out their fiduciary duties and have no liability with respect to estate taxes." (Exhibit 717. Emphasis added.)

---

[75] During the trial, Thomas' attorneys referred to this plan as a *plan to extort*. The court declines to use this term because the reference to extortion could be viewed by some as a reference to criminal activity, since extortion is defined as a crime in Penal Code section 518. The court is not reaching any such conclusion. The evidence introduced during the trial, including Bruce H.'s own testimony, however, supports the conclusion that Team Hitchman proceeded to place pressure on Thomas to try to get him to give them a release, hence, the court's use of the term *plan to squeeze*.

[76] This is also an allegation of criminal conduct.

The court finds that at the time members of Team Hitchman started talking about making allegations against Thomas for tax evasion, concealment of assets for tax purposes, or any other type of tax related violations or wrongdoing, as well as when they started taking actions to convey such allegations to the court and to Thomas, such talks, allegations, and actions were **not** based on any credible or reliable facts known **at that time** to Team Hitchman, rather, the talks, allegations, and actions were made solely for the purpose of obtaining a leverage against Thomas to get him to give the Hitchmans a release. This factual finding is made by the court based on the totality of all testimonial and documentary evidence introduced during the trial, and after considering and giving appropriate weight, if any, to the denials by the Hitchmans and their witnesses during their testimonies in the trial.

Ten minutes after Glowacki sent the April 9, 2019, 1:29 AM, email to Carico, Benz, and Roehl starting the discussion about Team Hitchman's *plan to squeeze*, Glowacki sent another email. At 1:39 AM on April 9, 2019, Glowacki sent an email to Bruce H., with a carbon copy to Roehl, containing the invoices and bills for attorney's fees covering March 2019, and April 1 through April 8, 2019. By 8:10 AM on that same day, namely, April 9, 2019, (less than seven hours after the 1:39 AM email was sent) the Hitchmans already had Glowacki and Roehl's checks ready for pick up: "Your checks are available today." (Exhibit 719.)

Only few hours after Glowacki sent his bills and invoices to the Hitchmans, Carico made the same request for his law firm's fees. On April 9, 2019, at 6:51 AM, a mere two minutes after he sent to Glowacki, Benz, and Roehl the email discussing the tax fraud allegation against Thomas, Carico sent an email to Bruce H. and Lee Ann with his law firm's invoices through March 7. If nothing, Bruce H. is consistent because at 8:08 AM on April 9, 2019, two minutes before he responded to Glowacki's request for payment, Bruce H. responded to Carico telling him: "your check is available today." (Exhibit 720.)

On that same day of April 9, 2019, the Hitchmans also paid themselves. Exhibit 888 reflects that on April 8, 2019, the date the mediation started and April 9, 2019, the date the settlement agreement was reached, the Hitchmans paid $81,650.13 to Glowacki's firm and $192,575.44 to Carico's firm. Also, on the same day the settlement agreement was reached, the Hitchmans paid themselves

$49,183.05. In total, the day the settlement agreement was reached between the beneficiaries, the Hitchmans paid themselves and their attorneys a total of $323,408.62. (Exhibit 888, pages 96-97.) During his testimony, Bruce H. admitted that the reason he made these, not previously scheduled, payments on April 9, 2019, was because he knew that there was "an April 10 hearing in front of Judge Hubbard," and he was worried that he would "lose control of the Trust fund and the ability to pay" himself and his lawyers. (Bruce H. testimony on December 7, 2023.)

Certainly, attorneys are hard working professionals who do not run their law firms as non-profit organizations when they provide legal services. Attorneys deserve to be generously and timely compensated for legal services they provide.[77] However, the court considered this evidence as just one piece of information relevant to assessing the frame of mind of members of Team Hitchman at the time when allegations of tax fraud where being discussed and planned against a beneficiary of the Trust. A plan that the court finds to be in breach of the fiduciary duty owed by the Hitchmans to the Trust and to Thomas, as a beneficiary of the Trust. This frame of mind is relevant for the court in deciding how to rule on the many issues pending before the court, including but not limited to allegations of breach of fiduciary duty and a request for exemplary damages.

Based on all the facts introduced during the trial, including all testimonial and documentary evidence, and the court's ability to observe, first-hand and from about 5 feet away, the demeanor, tone of voice, and body language of all the witnesses who testified during the trial, including but not limited to Bruce H., Lee Ann, Glowacki, Carico, Benz, and MacDonald, the court finds based on a standard of proof of high probability (clear and convincing) and not just more likely than not (preponderance of evidence), that all the tax related allegations made by the Hitchmans against Thomas, after the settlement agreement was reached between the beneficiaries, were a pretext for the purpose of squeezing a release for the Hitchmans from Thomas, and that such allegations and claims by the Hitchmans were **not** based on a genuine actual good faith factual basis for concluding that Thomas had

[77] However, the practice of law is not a business, it is a profession. As Justice Bedsworth reminded us all, "the practice of law is not a business. It is a profession. And those who practice it carry a concomitantly greater responsibility than businesspeople." (*Lasalle v. Vogel* (2019) 36 Cal. App. 5th 127, 134.)

engaged in any improper tax related conduct, including but not limited to allegations relating to Avalara Inc. In reaching this conclusion, the court also considered the testimony of Morris and MacDonald.

Bruce H. testified that Morris is an accomplished tax attorney, and that the Hitchmans retained him starting in April of 2018 in connection with this case. Bruce also testified that MacDonald, one of the attorneys in Carico's firm, who subsequently became a named partner in the firm, specialized in tax related matters. Bruce H. admitted during his testimony that both Morris and MacDonald reached the same conclusion: Thomas did not violate any tax related laws and did not fail to report or disclose any assets or transactions to the IRS. Furthermore, Bruce H. admitted that within the 4 days after the beneficiaries reached a settlement agreement, Team Hitchman filed two separate pleadings alleging tax improprieties by Thomas, however, and even though Morris (a renowned and leading tax expert) was on retainer by the Hitchmans in this case, the Hitchmans never talked to Morris or consulted him regarding these alleged tax improprieties before making them and filing two public pleadings containing these allegations.

The court finds the following testimony by Bruce H. on December 1, 2023, to be relevant and probative in showing that the filing of the tax related allegations against Thomas was not done for legitimate reason for public policy concerns, or after a genuinely diligent examination of the facts and the law, rather, it was done for the purpose of trying to squeeze a release from Thomas. "*Question by Thomas' attorney:* Well, you didn't consult him until after you had already gone public with this undisclosed assets issue in not one, but two different pleadings sir; isn't that the truth? *Answer by Bruce H.:* It's a period of two days, yes. *Question by Thomas' attorney:* Well, you filed a petition on April 10th. Do you remember that? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* And then you filed a status report on April 14th ? *Answer by Bruce H.:* Yes. *Question by Thomas' attorney:* You didn't talk to Chuck Morris to get his take on this until **May of 2019**; correct? *Answer by Bruce H.:* Correct. *Question by Thomas' attorney:* Wouldn't it have been more prudent for you to have talked to Mr. Morris and get his views first before you level these charges in pleadings you filed with the court? *Answer by Bruce H.:* **Due to the time constraint,** no. *Question by Thomas' attorney:* The only time constraint was whether or not the settlement would be approved and whether or not you

would get your release; correct? *Answer by Bruce H.:* That was the first part of that; not the second part. *Question by Thomas' attorney:* You wanted to get that charge out there before the court approved the settlement? *Answer by Bruce H.:* Absolutely. *Question by Thomas' attorney:* And your hope was either the settlement would not be approved and you remain in charge or Tom Morgan would give you the settlement that you wanted? *Answer by Bruce H.:* Either would have been acceptable." (Emphasis added.)

The court finds that Bruce H.'s testimony about "time constraint" is persuasive circumstantial evidence supporting the conclusion that *but for* the family members reaching a settlement agreement without giving the Hitchmans a release, the allegations of tax impropriety would not have been levied the way they were levied against Thomas.

The facts introduced during the trial establish that Team Hitchman ignored the advice of their two most experienced tax lawyers and still made claims against Thomas alleging tax related improprieties, contrary to the conclusions of the Hitchman's tax experts. The court finds that the attempts by the Hitchmans during the trial to argue that Carico was also a tax expert, and that they decided to follow his advice in making the tax related allegations against Thomas, to be unpersuasive and contrary to the totality of all the evidence introduced during the trial. Carico may very well be an expert on tax law, however, the Hitchmans' actions, as discussed above, were not premised on a genuine good faith belief in a tax-wrongdoing related theory, rather, the Hitchmans' actions were solely and completely motivated by a desire to do whatever they could do to get a release from Thomas.

Bruce H. confirmed that during the Hitchmans' interim co-trusteeship, he had multiple meetings with Team Nancy's attorneys, with the first such meeting being on April 5, 2017, at Garrett's office. Bruce H. also testified that he did not make any improper commitments to Team Nancy. The court does not find this testimony to be credible in light of all the evidence introduced during the trial.

Bruce H. confirmed that the Hitchmans owed a fiduciary duty to Thomas, Nancy, Nancy's daughters, and John. Bruce H. further confirmed that under the Trust instrument he was appointed to administer, Lamplighter Chino goes to Thomas, but that under the 2012 amendment, the inoperable and not controlling instrument that Nancy was advocating for, Lamplighter Chino would go to Nancy.

Bruce H. testified that in late May 2017, he learned from Benz that the Hitchmans' April 24, 2017, attempt to take over Lamplighter Chino by executing the first version of the organizational documents (action by written consent) was not legally sufficient and that new organizational documents needed to be executed to allow the Hitchmans to properly take over Lamplighter Chino. (Exhibit 179.) Bruce H. testified that based on what his attorneys told him, he believed that by drafting the subsequent legally sufficient organizational documents around June 8, 2017, such action rendered the Hitchmans' lawful takeover of Lamplighter Chino retroactively effective on April 24, 2017. The court does not find this testimony by Bruce H. to be credible based on the entirety of all the evidence introduced during the trial, including evidence of email exchanges between the members of Team Hitchman.

During his testimony, Bruce H. initially testified that it was not until June 9, 2017, that he gained access to Lamplighter Chino's Bank of America's accounts. However, he was impeached, and he had to admit that he was actually added as a signatory on the Bank of America account on May 12, 2017. (Exhibit 156.)

Bruce H. testified that he wanted to meet with Thomas and his attorneys and indicated that Thomas' attorneys placed conditions on such meeting. Bruce H. also testified regarding exhibit 1057 being an example of Team Hitchman's willingness to meet with Thomas and his attorneys. Exhibits 347 and 348 are also examples of what the Hitchmans argue are evidence of the Hitchmans' willingness to meet with Thomas. Exhibits 347 and 348 relate to discussions between Team Hitchman (Carico and Glowacki) and Thomas' attorneys (Gold) on August 12, August 21, and August 23, 2017. However, to properly and fairly decide what probative value the court should give to exhibits 347 and 348, if any, the court needs to evaluate what Glowacki and Carico were telling Thomas' attorneys on August 12, 21, and 23, 2017, in light of what Glowacki and Carico were saying to each other and to the Hitchmans a mere few days earlier on August, 9, 10, and 11, 2017, as detailed in exhibit 1082, discussed above.

The court also considered what Team Hitchman was telling Team Thomas on August 23, 2017, namely, that the "Hitchmans have not made any determination at this point concerning whether or not Tom does or does not have liability to the Trust" (exhibit 348), when in truth eight days earlier on August 15, 2017, Team Hitchman were talking to each other about "the best way to bring HF into the

lawsuit," and hoping that their meeting with Team Nancy "will help" them "develop a sounder basis" to "allege breach of fiduciary duty and elder abuse" against Thomas. (Exhibit 338.)

The court finds that after considering all the evidence in totality and not in a vacuum, which is what a trier of fact is required to do, the court concludes that exhibits 347 and 348 do not support the Hitchmans' position, rather, these exhibits provide more evidence in support of Thomas' position that the Hitchmans were always partial to Team Nancy, always biased against Team Thomas, and that notwithstanding certain overtures towards Thomas, such overtures were pretextual, superficial, not in good faith, and not genuine.

The court finds that exhibit 1082 documenting discussions between members of Team Hitchman regarding their plans and their welcoming attitude of Team Nancy's offer to meet with them, **again**, as long as such a meeting and the information provided are kept a secret from Thomas and his attorneys, is the credible evidence of Team Hitchman's true intentions, plans, attitude, and strategic decision-making process. The court finds that exhibits 347 and 348 are best viewed using Bruce H.'s wise testimony on November 30, 2023, when he stated, "**words are words, actions speak louder than words**." During his testimony on December 7, 2023, Bruce H. admitted that no such meeting ever took place between Team Hitchman and Thomas or Thomas' attorney before the Hitchmans filed their H-17200 Petition. The actions of the Hitchmans in this case are clearly consistent in showing bias in favor of Team Nancy, and bias against Thomas. Such double bias colored all of the Hitchmans' actions as interim co-trustees, resulting in continuous breaches of their fiduciary duty to the Trust and to Thomas as a beneficiary of the Trust.

Based on the entirety of all the evidence introduced during the trial, the court finds Bruce H. testified that he wanted to meet with Thomas and his attorneys and that Thomas' attorneys placed conditions on such meeting, to be **not** credible and **not** persuasive. The court finds that the reference by Carico to Team Hitchman attempting to schedule the meeting with Thomas and his lawyers "by the Doodle Calendaring Process"[78] (exhibits 347, 348, and 1057) to be reflective of talk but no action.

[78] A "doodle calendaring process" is a reference to a computer/email generated process to find a convenient time for multiple individuals to schedule a meeting based on their respective availability.

Furthermore, the court finds that testimony by Bruce H. and other Team Hitchman witnesses about Thomas and his lawyers placing conditions before meeting with the Hitchmans to be unpersuasive and not supported by the totality of all the evidence introduced during the trial.

It is true that Thomas' post-Pech attorneys asked Team Hitchman questions when discussions about meetings were taking place, however, merely asking questions does not mean placing conditions on a meeting. A reasonable review of exhibits 347 and 348 documenting email exchanges between Team Hitchman and Thomas' attorneys support Thomas' position regarding the frame of mind of Team Hitchman towards Thomas.

Having said that, a private professional fiduciary does not have the luxury of saying that he will not meet with a beneficiary who dares ask for clarification from a trustee before the meeting. The law is very clear – a private professional fiduciary acting as an interim co-trustee has an obligation to keep beneficiaries, all beneficiaries, reasonably informed and to answer reasonable trust-related inquiries from such beneficiaries. The Hitchmans did not do that, and their attempt to blame the lack of meeting on Thomas' attorneys flies in the face of the totality of all the credible evidence introduced during the trial.

During his testimony on December 7, 2023, Bruce H. testified that the Hitchmans did not charge the Trust extraordinary fees for litigation activities because, according to Bruce H.'s testimony, doing so would not be fair. However, after being confronted with exhibit 716, he admitted that the Hitchmans did pay themselves extraordinary fees for litigation matters, including charging extraordinary fees for Lee Ann's time attending Bruce H's deposition, and both Hitchmans' time for attending the mediation session.

As early as April 19, 2017, within less than three weeks after the Hitchmans were appointed by the court as interim co-trustees, the Hitchmans' attorneys started referring to Thomas' attorney (Pech), as "opposing counsel." (Exhibit 128.)

This continued with Bruce H. referring to Pech as Richard "Chicken Little" Pech. (Exhibit 276.)[79] As discussed elsewhere in this statement of decision, Pech's unprofessionalism towards the Hitchmans and their attorneys, admitted lack of knowledge in connection with probate matters, condescending/patronizing attitude, and overall unskilled behavior, were not figments of members of Team Hitchman's imagination. Nonetheless, a PPF appointed by the court to protect and administer a trust should not allow such unprofessional behavior by a lawyer to take the focus of the PPF away from their fiduciary duty to the Trust and to its beneficiaries.

The court finds that by allowing Thomas to be viewed as the *opposing* side from the beginning, the Hitchmans set their interim co-trusteeship on the wrong tracks because Thomas was not just the suspended trustee, he was also the main and major **beneficiary** of the Trust they were charged with protecting and administering. Even after Pech was no longer Thomas' attorney, the Hitchmans stayed on the same wrong tracks, even after Pech was replaced with attorneys who were professional, exceptionally knowledgeable in connection with probate matters, respectful, and skilled. The court finds that by starting and staying on the wrong tracks, the Hitchmans breached their fiduciary duty to the Trust and to Thomas in his capacity as a beneficiary of the Trust.

Bruce H. testified that in connection with this case, he entered into a common interest agreement with attorneys Roehl, Glowacki, and Carico. Bruce H. also testified that the day after the successful April 8, 2019, mediation started between the beneficiaries, he wrote the last check in his capacity as interim co-trustee, payable by the Trust to the Hitchmans' attorneys. Bruce H. admitted that when he turned the Trust assets back to Thomas in June of 2019, there was little cash left in the Trust accounts.

[79] In making the findings as stated in this statement of decision, the court is acutely aware that evidence introduced during this trial gave the court an insight into communications between clients and their attorneys that sometimes painted an unflattering picture of the client, the attorneys, and others. Especially when such communications are viewed in light of the issues being litigated in this case. Certainly, most of these communications are usually kept confidential and never see the light of day. However, the law provides otherwise in a case like this where the privilege does not belong to the client in their individual capacity, rather, it belongs to the office they were occupying at the time, namely, the office of the trustee, interim or otherwise. Accordingly, in determining what weight to give such communication, the court considered and took into account that our justice system encourages clients and attorneys to speak freely when exchanging views and thoughts in what they perceive to be a confidential setting. Accordingly, the court did not give too much weight to the use of terms that are unflattering and unprofessional if uttered in a public pleading or other settings, such as referring to Pech as "chicken little."

In connection with the evidence introduced during the trial regarding Team Hitchman having a common interest agreement with Team Nancy, Bruce H. was confronted with the April 18, 2017, email exchange with Roehl stating that she was "fine with Bruce MacDonald reaching out to Nancy's team" and that Team Hitchman does not "need to wait for a common interest agreement because we decided to move forward **without one for now** and have the two teams speak by phone," and that he (Bruce H.) responded to this email by stating: "**I agree completely**." (Exhibit 129. Emphasis added.)

When asked to explain this damaging exchange that clearly shows he completely agreed with the plan regarding the common interest agreement, Bruce H. testified that when he said in his email that he totally agreed, he actually meant to say that he partially agreed.[80] Bruce H. proceeded to testify that (1) at that time he did not "understand what a common interest agreement was," (2) none of his "lawyers explained to" him what it was, and (3) exhibit 129 was the only email he recalls with a mention of a common interest agreement between Team Hitchman and Team Nancy. The cross examination of Bruce H. convinced the court that none of Bruce H.'s above referenced three points were true.

Exhibits 130 and 168 are two separate and additional emails between members of Team Hitchman, including Bruce H., where the common interest agreement between Team Nancy and Team Hitchman was discussed. Exhibit 168 also includes an explanation by Glowacki of the common interest agreement and how Team Hitchman plans on using it in a planned phone call with Team Thomas. The above described testimony of Bruce H., viewed in light of his impressive educational and professional background and expertise, clearly establish that he fully understood what a common interest agreement meant, and he was fully in favor of it.[81] The court finds that this testimony by Bruce H. is very damaging to both his credibility as a witness, and the persuasiveness of the Hitchmans' position that they did not breach their fiduciary duties, including the duty of impartiality.

---

[80] "*Question by Thomas' attorney:* First your testimony unless I misheard it on Friday was although you said I agree completely what you were thinking was I agree partially, … correct? *Answer by Bruce H.:* Yes." (Bruce H's testimony on December 6, 2023.)

[81] "*Question by Thomas' attorney:* are we going to see a writing back from you back to your lawyer saying what is a common interest agreement you guys keep using this term I don't understand it? *Answer by Bruce H.:* No." (*Id.*)

During their First Accounting period, the Hitchmans, as interim co-trustees, collected a total of $1,077,739.54 as follows: (a) dividend income of $1,200; (b) interest income of $644.17; (c) $1,020,000 in distributions from Lamplighter Chino; (d) $49,500 in distributions from Ontario Associates LP; and (e) $395.37 in distributions from Moreno Street Associates.

During their Second Accounting period, the Hitchmans, as interim co-trustees, collected a total of $2,460.15, as follows: (a) $1,260 in dividend income; (b) $787.56 in interest income; and (c) $412.60 in distributions from Moreno Street Associates.

During the Third Accounting period, the Hitchmans, as interim co-trustees, collected a total of $1,277,524.95, as follows: (a) dividend income of $1,380; (b) interest income of $959.95; (c) $185 from Moreno Street Associates; and (d) $1,275,000 in distributions from Lamplighter Chino.

During their interim co-trusteeship, the Hitchmans made the following principal expenditures out of the Trust: (a) $255,108.81 to the Hitchmans as ordinary fees; (b) $67,283.50 to the Hitchmans as extraordinary fees; (c) $462,081.86 to the Roehl & Glowacki law firm; (d) $984,250.35 to the Carico MacDonald Kil & Benz LLP law firm; (e) $10,000 retainer to accountants Trojan & Co.; (f) $71,822 to accountants Sobul Primes; (g) $8,677.50 to attorney Morris with the law firm of Albrecht & Barney to handle the supplemental 706 tax return; (h) $267,185 to Jan Goren, a forensic accounting expert with the accounting firm of Goren Marcus Masino & March; (i) $28,479 to Robert Eroen, an expert retained regarding Pech's fees; (j) $21,007.88 to Steven Hazel of FTI Consulting retained as an expert regarding the value of Avalara's stock; (k) $154,847.50 to the IRS; and (l) $44,575 to a bonding company.

At the end of their interim co-trusteeship, the Trust held the following which was turned over from the Hitchmans to Thomas as the reinstated Trustee of the Trust: (a) $42,522.75 in cash; (b) 1,000 shares of Microsoft Corporation stocks, and the same other business and property interests that were in the Trust at the start of their interim co-trusteeship, namely, (c) 5% interest in MPI; (d) a small equity interest in Moreno Street Associates; (e) 51% interest in Lamplighter Chino; (f) 49.6% interest in Country Hills; (g) 49.5% interest in Ontario Associates; and (h) the Lido Condo.

Lee Ann Hitchman

The court finds that during her testimony, Lee Ann came across as a sophisticated, smart, and knowledgeable professional in the field of licensed fiduciaries.

Lee Ann was certified as a PPF in 2004, and shortly thereafter she founded Hitchman Fiduciaries. Bruce H. joined her in the business in 2008.

Lee Ann testified that the Trust, as they were appointed to administer, was not a *heavy* administration type of case, and that as interim co-trustee she did not provide any input regarding the filing of the H-17200 Petition against Thomas. When asked about her recollection of what the interim co-trustees (Lee Ann and Bruce H.) did in connection with this case, she indicated that she does not remember anything other than the litigation relating to the handling of the supplemental 706 federal estate tax related issues,[82] and the taking over of Lamplighter Chino. Lee Ann admitted that the assets available on hand when the Hitchmans were appointed as interim co-trustees, namely, $104,000 in cash and one thousand shares of Microsoft Corporation stocks, were sufficient to cover all the estate taxes due for the first two accounting periods of the Hitchmans' interim co-trusteeship. Lee Ann confirmed that it was the legal fees during the first and second accounting period that necessitated needs for more funds.

Notwithstanding the availability of assets on hands at the start of their interim co-trusteeship, exhibit 81 shows that on March 31, 2017, a **mere 48 hours** after the Hitchmans were appointed interim co-trustees, Roehl started discussing with Lee Ann and Bruce H. the possibility of selling the Lido Condo, a Trust asset worth around $2 million and designated by the Trust to go to Thomas. (Exhibit 181.) More troubling, and contrary to trial testimony by Bruce H. and others indicating that the Hitchmans were not planning from the start to enter the litigation, Lee Ann confirmed during her testimony that on April 7, 2017, **nine days** after the court appointed the Hitchmans, she [Lee Ann] was

[82] The reference in this statement of decision to supplemental 706 is a reference to the Supplemental Estate Tax Return issues and filing related to the Internal Revenue Service (IRS) Form 706. In this case, the supplemental 706 return was filed for the purpose of lowering Beverly's estate tax, or obtain a refund, based on an increase in deductible administrative expenses arising from all the fees and costs incurred in the litigation relating to the Trust. (Exhibit 794, page 3, lines 19-24.)

attempting to obtain a loan for "$500k" against Trust property to be "used to fund **litigation**." (Exhibit 92. Emphasis added.)

Lee Ann's own entry in the Hitchmans' billing records on March 29, 2017, the day the Hitchmans were appointed, reflects email discussions between Lee Ann and Roehl regarding "involvement of attorney Glowacki for purposes of litigation." (Exhibit 792, page 1.)

The court finds the above-described group of evidence to be probative in showing that from day one of their interim co-trusteeship, and as part of the *quick action* they assured Team Nancy, the Hitchmans were planning to enter the litigation in the underlying dispute, on Team Nancy's side and opposite Thomas. The court finds that by having this frame of mind and by executing on it, the Hitchmans breached their fiduciary duty to the Trust and to Thomas as a beneficiary of the Trust.

When asked about her understanding of the common interest agreement between Team Nancy and Team Hitchman, Lee Ann testified that she did not know what it meant. Lee Ann continued to insist that she did not know what a common interest agreement meant even after being confronted with an April 19, 2017, email from Roehl to MacDonald, with Lee Ann, Bruce H., Glowacki, and Benz included on the email, where in this email Roehl tells MacDonald to proceed with contacting Team Nancy by phone rather than in writing, because with "regard to the common interest agreement, I believe we decided to delay the preparation of a common interest agreement and communicate by phone instead so reaching out to them is a good idea." (Exhibit 130.) The court is not persuaded by Lee Ann's assertion of ignorance regarding the common interest agreement.

The court finds that this email clearly, and on its face, indicates a plan to try to eliminate the existence of written documentation of the substance of the communication between Team Nancy and Team Hitchman until a common interest agreement is in place, and until then the communication should be by phone. Lee Ann was the court appointed interim co-trustee when she was included on the above listed email, and just like Bruce H., she had a fiduciary duty to make sure that her attorneys are not doing anything that conflicts with such duty. The court finds the above listed email as probative evidence showing that the Hitchmans, from the start, were aligning themselves with Team Nancy and were taking affirmative steps to keep such alignment a secret. The court finds that this conduct

constitutes a breach of the Hitchmans' fiduciary duty to the Trust and to Thomas as a beneficiary of the Trust.

Evidence introduced during the trial regarding Team Hitchman's June 2, 2017, preparation for a planned upcoming discussion with Pech supports the above listed findings. Lee Ann was part of this preparation as she was included on the email exchange along with Glowacki, Benz, Roehl, Carico, and Bruce H. In this email exchange, Glowacki states that he wanted to take the position that "conversations on the subject of the entities with the Shurtleff Group's lawyers [Team Nancy's lawyers] are confidential pursuant to the common interest doctrine." (Exhibit 168.) Neither Lee Ann nor Bruce H. inquired as to what Glowacki meant by a common interest doctrine, or by telling him that as PPFs appointed by the court, they should not have a common interest agreement with one litigating beneficiary against another litigating beneficiary. On a side but relevant note, the court finds that on its face, a discussion about confidentiality pursuant to a common interest agreement, as it happened in this case, was as clear as can be, especially when considering that the Hitchmans are sophisticated and experienced licensed fiduciaries that, by then, had been working in this fields for decades.

When asked about her signature on exhibit 138 regarding possibly taking over Country Hills by way of an action by written consent, she confirmed that this document she signed on April 24, 2017, in her capacity as interim co-trust of the Trust, asserts that Thomas is being removed as manager of County Hills for "gross negligence, incompetence, and/or fraud." Lee Ann further admitted that she does not recall any investigation she conducted before she signed the action by written consent to satisfy herself that Thomas had acted incompetently in managing Country Hills, or that he committed gross negligence and/or fraud. Furthermore, Lee Ann admitted that even with the benefit of everything she learned as of the date of her trial testimony on December 7, 2023, she still is not aware of any evidence that showing that Thomas was incompetent or that he committed gross negligence and/or fraud.

The court finds that the Hitchmans signing multiple actions by written consent regarding the different entities, and Bruce H. telling Roehl in an email that included Lee Ann to use whichever one Roehl finds acceptable, constitute a showing that the Hitchmans breached their fiduciary duty to the

Trust and to Thomas, as a beneficiary of the Trust, including the Hitchmans' duty to supervise their attorneys and to not blindly delegate their fiduciary duty to their attorneys.

When confronted with Bruce H.'s August 9, 2021, statement under penalty of perjury attesting that "by June of 2017 **we** had already formed the conclusion that much of what Tom conveyed did not actually accord with the facts anyway" (exhibit 902, page 2, lines 29 to 35), Lee Ann testified that such a statement was unfortunate and that she did not agree with it. When asked if she thought Bruce H. was dishonest when he signed this document under penalty of perjury, she answered: "I don't know." (Lee Ann's testimony on December 7, 2023.)

During her deposition, Lee Ann testified that that as a trustee she would not sign a declaration first and ask questions later relating to the allegations contained in the declaration. However, on the stand she admittedly changed her testimony and said that she would sign first and ask questions later. When given the opportunity to explain this change, Lee Ann testified that she changed her testimony because by the time of her trial testimony she realized that there was no investigation done whatsoever before she and Bruce H. signed the action by written consent organizational document relating to County Hills. The court finds this testimony to be very probative and very damaging to the Hitchmans' position that they did not breach their fiduciary duty to the Trust and to Thomas, as a beneficiary of the Trust.

As to her action on April 9, 2019, (the day the settlement agreement was reached between the beneficiaries) of verifying under penalty of perjury the Hitchmans' new 17200 Petition asserting that Thomas gave Nancy and her daughters a favorable settlement to cover his own elder abuse of Beverly, Lee Ann admitted that she did not have any knowledge to support this assertion because she did not even know the terms of the settlement agreement when she verified this statement. As to the original H-17200 Petition, when asked what facts she relied upon in filing and verifying the sixth cause of action (fraud), Lee Ann testified that she could not remember the information that caused her to reach this conclusion, but she said that she does recall that she did not consider the fraud cause of action to be a trust contest. The court is not persuaded by Lee Ann's testimony, and the court does not find this testimony to be credible.

Cynthia Roehl

Roehl testified that she started practicing law in 1997, the Hitchmans are important clients of her law firm, she works closely with them, and she has represented them in more than seventy-five cases.

On March 25, 2017, while the attorneys for Team Nancy were still interviewing the Hitchmans to potentially nominate them to act as interim co-trustees in this case, Roehl sent an email to Bruce H. letting him know that she started drafting an email to Garrett but then decided not to send it because she did not want "an email in our file that makes us look like we are aligned with Tom [Garrett] and his client. I will call him instead."[83] Bruce H. agreed with Roehl's plan. (Exhibit 65.) When asked about this email during her testimony, Roehl confirmed that she acted this way, with Bruce H.'s agreement, so that there would be no paper trail of her providing the information in question to a member of Team Nancy. The court finds that a fair, impartial, and reasonable PPF appointed by the court to act as interim co-trustee in a case with contentious and heavy litigation between the competing beneficiaries should welcome a paper trail regarding any and all of their communication with all sides of the fighting beneficiaries and should not affirmatively and expressly work at eliminating any paper trail of such communication. This becomes even more important when the PPFs and their attorneys are in the process of being vetted for the PPFs to potentially be nominated for appointment by one side of the fighting beneficiaries.[84]

Roehl confirmed that she participated in the April 5, 2017, in person meeting with Team Nancy's attorneys, namely, Garrett, McDermott, and Byers. This meeting lasted for five and one-half hours, and she confirmed that she left the meeting with the clear impression that Team Nancy wanted the Hitchmans to start litigating against Thomas.

During her testimony on January 8, 2024, Roehl confirmed that Team Nancy had previously hired attorney Morris as Nancy's tax attorney in this case, and Team Nancy recommended that Team

[83] The reference to Tom in this email is not a reference to Thomas Morgan, but to Tom Garrett.

[84] On March 30, 2017, Garrett's legal assistant asked Glowacki and Roehl to send their CVs to Garrett and McDermott. This was during the email exchanges described in detail above regarding the reminder by Garrett, and assurances by Glowacki, of *quick action.* (Exhibit 71, page 6.)

Hitchman should also hire Morris as the Hitchmans' tax attorney, in this very same case. Roehl confirmed that the Hitchmans did as Team Nancy recommended, and they retained Morris as the Hitchmans' tax attorney in this case.[85]

Roehl confirmed that in connection with the approximately $7 million that the Hitchmans pulled out of Lamplighter Chino and distributed to the beneficiaries, it was Nancy who wanted these distributions from Lamplighter Chino, and the Hitchmans proceeded with making the distributions. Roehl also confirmed that as of the end of 2017, Glowacki told her that Pech, as Trust counsel, failed to properly advise Thomas, as trustee of the Trust at the time, on how to properly handle the payment of legal fees. When she was asked if she took any steps to preserve any claims the Trust may have against Pech, she stated that she mentioned it to Glowacki and he told her that he looked into it and talked to Benz about it, and he [Glowacki] concluded there is nothing to preserve.

Roehl testified that usually when her client is a private professional fiduciary appointed as a trustee (interim or otherwise) at a time when competing beneficiaries are involved in ongoing litigation, she proposes and prepares a stipulation for her client to stay out of the litigation. She testified that she did not even attempt to do this in this case because, from the very beginning, it was very clear to Team Hitchman that Team Nancy would not agree to any such stipulation since they wanted the Hitchmans to participate in the litigation.

The court finds that one of the biggest breaches of fiduciary duties the Hitchmans committed in this case is the fact that in most instances during their interim co-trusteeship, unless a course of action met with Team Nancy's approval, the Hitchmans did not pursue it. There is no logical, and reasonable, **good** explanation for why Roehl and the Hitchmans did not do what they usually did under the same circumstances: prepare a stipulation for the Hitchmans to stay out of the litigation, and if the beneficiaries did not all sign the stipulation, bring it to the court's attention and ask the court to instruct the Hitchmans to stay out of the litigation. However, there is a bad explanation for why Team Hitchman did not do so in this case: it would have been contrary to the *quick action* the Hitchmans promised Team Nancy so the Hitchmans can be nominated for the appointment.

[85] More to come on this and the potential conflict of interests.

In connection with Team Hitchman's work on the supplemental 706 estate tax return, and after confirming that Thomas would have been personally responsible for the payment of any estate taxes if the Trust did not have a residue, Roehl admitted the following: (1) Team Hitchman told Team Nancy that any information Team Nancy provides to the Hitchmans about Team Nancy's legal fees for the purpose of preparing the supplemental 706, such information is going to be disclosed to Team Thomas; (2) Team Hitchman did not give Team Thomas the same notice; (3) Team Hitchman kept Team Nancy fully informed and consulted, in real time, about the preparation of the supplemental 706 but never included Team Thomas on any of these phone calls; (4) Team Thomas was never even told that the Hitchmans were contemplating filing the supplemental 706; and (5) Team Thomas was not notified about the Hitchmans' filing of the supplemental 706 until "the business day before the supplemental 706 was filed." (Roehl's testimony on January 10, 2024.)

When asked if the above listed evidence constitutes an "example of Team Hitchman being partial to" Team Nancy, Roehl answered "No." (*Id.*) The court is not persuaded and the court finds that this evidence, viewed in light of all the other evidence introduced during the trial, clearly and unquestionably show Team Hitchman's partiality in favor of Team Nancy, and bias against Team Thomas. Roehl's following attempt to explain her answer denying partiality provides more evidence of such partiality and bias.

Question by Thomas' attorney:	Would you agree that this is an example of Team Hitchman being partial to Nancy Shurtleff and her counsel?
Answer by Roehl:	No.
Question by Thomas' attorney:	Just a coincidence that they were **included on every single piece of information** regarding the supplemental 706 and Tom even though he was responsible for the estate taxes if there is no residue was **totally excluded**?
Answer by Roehl:	**We** were working **with them** toward the **common goal** of bringing assets into the trust which is a common goal for everybody. It benefits everybody including Tom Morgan.

Question by Thomas' attorney:	If it benefits everybody including Tom Morgan why would Tom Morgan be excluded from participating in this conversation?
Answer by Roehl:	Because **we were formulating the plan first** just as to whether **we** were going to go forward with it before **we** brought it to you it.
Question by Thomas' attorney:	And by **we**, it meant the Shurtleff Group and Team Hitchman?
Answer by Roehl:	And Tom Garrett if you were including him in the Shurtleff Group, **yes**." (*Id.* Emphasis added.)

The court finds the above listed testimony by Roehl to be one of the most telling pieces of evidence about Team Hitchman's frame of mind during their interim co-trusteeship: Team Hitchman and Team Nancy were just **one team** working together, formulating plans, and implementing decisions and litigations. Team Thomas was **the adversary**. The court finds this evidence, when viewed in light of all the evidence introduced during the trial, to clearly show that the Hitchmans breached their fiduciary duties to the Trust, and to Thomas as a beneficiary of the Trust.

During her testimony, Roehl confirmed that the references to the common interest agreement between Team Hitchman and Team Nancy was for the purpose of litigation. (Roehl's testimony on December 20, 2023.)

Richard Pech

On November 7, 2018, Pech filed a lawsuit/complaint against Thomas in Los Angeles County in LA Superior Court Case number 18STCV04084 (*Pech v. Morgan*). On August 15, 2019, Thomas filed a cross-complaint against Pech which was followed on September 14, 2020, with Pech filing his second amended complaint against Thomas, and then Thomas filing his second amended cross-complaint against Pech. One of the claims brought by Thomas in his cross-complaint was for malpractice by Pech against Thomas in his capacity as trustee of the Trust.

Pech's lawsuit/complaint against Thomas was filed more than one year after Thomas was suspended as trustee of the Trust, but less than one year after Pech had been terminated by Thomas

from representing Thomas in his personal capacity. As part of his claims against Thomas, Pech sought fees for services he provided to Thomas in his personal capacity after Thomas was suspended as trustee of the Trust. As part of his cross-complaint, Thomas, as the reinstated trustee, accused Pech of malpractice during Pech's representation of the Trust. Thomas, acting in his personal capacity, also accused Pech of malpractice in Pech's representation of Thomas in his personal capacity in this Trust litigation. Exhibit 836, Thomas' second amended cross-complaint, includes Thomas' allegations regarding both malpractice claims.

The LA Superior Court in the above listed *Pech v. Morgan* case sustained Pech's demurrer to Thomas' malpractice claim filed in Thomas' capacity as trustee, on the grounds that such a claim was barred by the statute of limitations. The remaining malpractice claim filed by Thomas in his personal capacity proceeded to a jury trial, along with other claims and counter claims. On August 29, 2023, the jury returned a special verdict in the *Pech v. Morgan* case. As part of their verdict, the jury concluded that Pech failed to perform the services required of him. The final judgment from the trial court's proceeding in the *Pech v. Morgan* case, after the post-verdict rulings by the presiding judicial officer, resulted in a judgment in Thomas' favor awarding him $323,188.25. As of September 11, 2024, this judgment was pending appellate review.

On August 17, 2023, the Hitchmans' attorneys effectuated personal service of a subpoena on Pech directing him to appear in court on November 2, 2023, at 9:00 AM in Department CM05 of the Costa Mesa Justice Complex. The subpoena indicates that "Disobedience of this subpoena may be punished as contempt by this court. You will also be liable for the sum of five hundred dollars and all damages resulting from your failure to obey." (ROA 3463.)

On November 2, 2023, Pech failed to appear in Department CM05, as ordered by the court pursuant to the subpoena. The Hitchmans' trial attorneys notified the court that Pech had failed to appear. The court requested that the Hitchmans' trial attorneys provide the court with a proof of service of the subpoena.

On November 7, 2023, the Hitchmans' trial attorneys submitted to the court the proof of the service of the subpoena on Pech. After reviewing the proof of service, the court made a finding "that

service of the subpoena on Mr. Richard Pech was proper and that a subpoena is court order that is to be followed. Court orders Mr. Richard Pech to appear before the court on 11/09/2023 at 01:30 PM in Department CM05. Failure to appear in person as ordered may result in a Bench Warrant being issued for his arrest. Counsel to provide notice to Mr. Pech." (ROA 3357.)

On November 8, 2023, and as directed by the court, the Hitchmans' trial attorneys provided written notice to Pech notifying him as follows: "Please be advised that you have been ordered by the Hon. Ebrahim Baytieh to appear on November 9, 2023 at 1:30 p.m. in Department CM05 of the Orange County Superior Court, located at 3390 Harbor Blvd., Costa Mesa, CA 92626. If you do not appear, a warrant will be issued for your arrest." (Exhibit 2 in ROA 3463.)

On November 9, 2023, Pech, again, failed to appear in violation of the court's order. The court issued the arrest warrant and again ordered Pech to appear in Department CM05 on November 14, 2023, at 10:30 AM. The court directed the Hitchmans' trial attorneys to provide notice to Pech regarding the arrest warrant, and to tell him that he is now ordered to appear in Department CM05 on November 14, 2023, at 10:30 AM: "Court is satisfied that Mr. Richard Pech was properly noticed and that he has again failed to appear as ordered. The Court finds that the party was properly noticed. Warrant ordered against Richard Pech with bail set at $6,000.00 for multiple failures to appear. Mr. Richard Pech is ordered to appear in person before the court on 11/14/2023 at 10:30 AM in Department CM05." (ROA 3347.) The arrest warrant was issued. (ROA 3348.)

On November 10, 2023, and as directed by the court, the Hitchmans' trial attorneys gave written notice to Pech regarding the arrest warrant and notified him that he is ordered by the court to appear in Department CM05 on November 14, 2024, at 10:30 AM. (Exhibits 3 and 4 in ROA 3463.)

On November 14, 2023, Pech appeared in court and took the position that the subpoena/court order to appear was like a *traffic ticket*, so he decided to just not show up and pay the $500 fine. The following relevant exchanges took place between the court and Pech on November 14, 2023:

THE COURT: CAN YOU TELL ME YOUR FULL NAME, PLEASE.

MR. PECH: RICHARD ANTHONY PECH, STATE BAR NO. 72213.

[…]

THE COURT: SIR, I'M TOLD BY THE ATTORNEYS THAT YOU WERE PREVIOUSLY SERVED WITH A SUBPOENA TO APPEAR AND YOU FAILED TO APPEAR PURSUANT TO THAT SUBPOENA; IS THAT CORRECT?

MR. PECH: CORRECT.

THE COURT: WHY DIDN'T YOU APPEAR WHEN YOU WERE ORDERED TO APPEAR IN COURT?

MR. PECH: ON NOVEMBER 2 I WAS SERVED. I WAS IN TRIAL WITH MR. MORGAN DOWN IN STANLEY MOSK COURTHOUSE. I WAS SERVED WITH APPEARANCE ON NOVEMBER 2 TO APPEAR IN THIS DEPARTMENT AT 9:00 A.M. THE SUBPOENA AS FAR AS THAT GOES, HAS LIKE A $500 MAXIMUM IN TERMS OF NOT APPEARING.

[…]

THE COURT: SO YOU WERE SERVED WITH A SUBPOENA.

MR. PECH: THAT'S CORRECT.

THE COURT: YOU UNDERSTOOD THAT TO BE A COURT ORDER.

MR. PECH: THAT WAS A -- WITH A FINE OF $500 POSSIBLY, THAT'S CORRECT.

THE COURT: SO AM I CORRECT TO UNDERSTAND THAT YOU MADE A DECISION THAT THERE WAS A COURT ORDER, IF I VIOLATE IT, IT'S 500 BUCKS, SO I'M GOING TO VIOLATE IT; IS THAT WHAT YOU DID?

MR. PECH: THAT'S KIND OF LIKE, YOU KNOW, HAVING A SPEEDING TICKET, YOUR HONOR, AS FAR AS THAT GOES.

[…]

THE COURT: A SUBPOENA AND A COURT ORDER IS NOT A SPEEDING TICKET. I WANT TO MAKE SURE I UNDERSTAND YOUR THINKING SO I CAN NOW DECIDE WHAT I NEED TO DO.

MR. PECH: SURE.

THE COURT: ARE YOU TELLING ME THAT YOU RECEIVED THE SUBPOENA; YOU UNDERSTOOD IT TO BE A COURT ORDER FOR YOU TO APPEAR; YOU MADE THE CONSCIOUS DECISION NOT TO APPEAR AND DISOBEY A COURT ORDER BECAUSE YOU FELT THE WORST THAT CAN HAPPEN IS A $500 FINE; AM I CORRECT?

MR. PECH: THAT'S WHAT THE SUBPOENA SAID, CORRECT.

THE COURT: NO, NO, I'M NOT ASKING YOU WHAT THE SUBPOENA SAID. I'M ASKING YOU, IS THAT WHAT YOUR THINKING PROCESS WAS?

MR. PECH: THAT'S BECAUSE THAT'S WHAT THE SUBPOENA SAID, YOUR HONOR. THAT'S EXACTLY WHAT IT SAID IN PLAIN ENGLISH.

THE COURT: SO THIRD TIME, I DON'T WANT YOU TO TELL ME WHAT IT SAYS. I'M ASKING ABOUT YOUR THINKING PROCESS. AM I CORRECT THAT YOUR THINKING PROCESS WAS, I HAVE A COURT ORDER REQUIRING ME TO APPEAR; IF I VIOLATE THE COURT ORDER, THE WORST THAT CAN HAPPEN IS A $500 FINE, SO I'M NOT GOING TO APPEAR AND I'M GOING TO VIOLATE THE COURT ORDER? WAS THAT YOUR THINKING PROCESS?

MR. PECH: CORRECT.

(Transcript of November 14, 2023, Proceeding.)

During the November 14, 2023, hearing, the court proceeded to fully and clearly explain to Pech that the court is going to schedule a hearing for an Order to Show Cause ("OSC") to determine if sanctions should be imposed against Pech for violating a court order. However, the court told Pech and the parties that this issue will not be decided until after Pech testifies in the ongoing trial.[86] Pech never missed a court date after November 14, 2023, and he testified during the trial.

[86] The court subsequently issued a tentative ruling and orders regarding the OSC re contempt and sanctions against Pech and continued the matter to be decided after the trial in this case was resolved. The court gave Pech, as well as the Hitchmans and Thomas, an opportunity to be heard relating to the OSC re contempt and sanctions. The Hitchmans and Thomas decided not to take a position regarding the OSC, and the court ended up discharging the OSC re contempt and sanctions against Pech since Pech's credibility was relevant to the parties in this trial, independent of the OSC re sanctions. The court decided not to make a finding/ruling regarding the OSC after both sides decided not to take a position regarding the OSC. (ROA 3555, 3557, 3610, 3618, and 3712.)

Pech testified that he started practicing law in 1976 and became Thomas' attorney around 2007. Pech confirmed that he stopped representing the Trust around the end of December 2017.

Pech testified that on May 15, 2017, he had a 90-minute discussion with Glowacki outside of court, and that during this discussion Glowacki told him that the Hitchmans are going to stay on the sidelines and not take a position on the Trust contest and the dispute between the beneficiaries. Pech testified that from the time Glowacki told him on May 15, 2017, that the Hitchmans are going to stay on the sidelines and November 14, 2017, when the Hitchmans filed their H-17200 Petition against Thomas, no one from Team Hitchman reached out to him, as Thomas' attorney, to let him know that the Hitchmans changed their position from what Glowacki conveyed to him on May 15, 2017.

Pech testified that he raised with Thomas the issue of Trust funds being used for Thomas' personal defense. Pech testified that he raised this issue with Thomas in an email he sent to Thomas after Nancy's attorneys filed a motion to suspend Thomas as a Trustee. Based on the totality of all the evidence introduced during the trial, including the court's ability to observe firsthand Pech's demeanor, body language, and tone of voice while testifying, especially changes between how he testified on direct and how he testified on cross, as well as changes when asked about different topics, the court does not find this testimony by Pech to be credible.

Pech confirmed that on March 23, 2017, when Judge Hubbard indicated her intention to suspend Thomas as the trustee and requested that each side nominates three PPFs to act an interim trustee, Pech decided not to nominate any PPF because he wanted to *defer* to Judge Hubbard to appoint a neutral. The court does not find this testimony by Pech to be credible, rather, based on the totality of all the evidence introduced during the trial, the court finds that Pech simply refused to engage in the process contrary to Judge Hubbard's directions.

Charles Morris

Morris, a licensed attorney, testified regarding his extensive background in tax law, specifically in the area of estate and gift tax, including a 33-year career with the IRS before he went into private practice in 2008. During the last 10 years of his 33-year career with the IRS, Morris was the Western

United States Territory Manager responsible for Federal estate and gift tax compliance in the western states, and also provided direction and oversight for all national matters related to Federal estate and gift tax compliance. The court finds that Morris' expertise and knowledge in connection with trust and estate tax law to be exceptional.

Morris testified that he was first contacted and retained regarding the Morgan Trust by Garrett. Subsequently, the Hitchmans retained him to work for them on the Morgan Trust in their capacity as the interim co-trustees. After that, when Thomas was reinstated as the trustee, Thomas also retained him to continue working on the Trust's tax related matters. Morris testified that when he was initially retained to work on the Trust's taxes, Nancy paid his fees. When the Hitchmans retained him in April 2018, he, along with Team Nancy and Team Hitchman, signed an agreement regarding waiver of potential conflict of interest. (Exhibit 512.) After signing the agreement regarding the waiver, the Hitchmans became his sole clients in connection with the Trust litigation, until they were replaced by Thomas and then Thomas became his client in connection with the Trust. Team Hitchman did not notify Thomas that they were hiring Nancy's tax lawyer as the Trust's lawyer.

The court finds that at the time of the signing of the conflict-of-interest agreement, Morris was Team Nancy's initially retained tax expert. The Hitchmans decided to retain him, at Team Nancy's recommendation, while Team Nancy and Thomas were still in the middle of the contentious litigation. The court further finds that the Hitchmans never gave Thomas the opportunity to be part of the discussion regarding the potential conflict of interest in hiring Morris as the interim co-trustees' attorney. Certainly, the court is convinced that keeping Morris as the tax attorney assisting the Trust was the correct decision to make, but the court took into account that the Hitchmans, while planning all along to join in the underlying litigation, retained Team Nancy's tax expert without giving Thomas an opportunity to be part of the discussion regarding the issue of the waiver of conflict.

Morris testified that he filed the supplemental 706 related documents with the IRS around the end of April 2018, shortly after the waiver of interest agreement was signed. Morris confirmed that Garrett, on behalf of Team Nancy, was the attorney who brought to him the issue of the supplemental

706, that he worked on it during the Hitchmans' interim co-trusteeship, and that this tax audit matter was finally resolved with the IRS around October 22, 2019, under Thomas' reinstated trusteeship.

At the beginning of this federal estate tax audit that necessitated the need to file a supplemental 706 return with the IRS, the federal government (IRS) was assessing a tax payment of $3,958,886.70 to be paid by Beverly's estate. As a result of his work on this issue, he was able to convince the IRS to give Beverly's estate a tax credit of $3,980,840.50, thereby reducing the almost $4 million estate's tax bill sent by the IRS to a credit to the estate of $21,953.80. (Exhibit 778.)

After confirming that in April of 2019 he was the Hitchmans' retained tax law expert and tax counsel, Morris was asked about the Hitchmans' allegation in section 9 of their April 15, 2019, objections to the beneficiaries' settlement agreement, namely, the Hitchmans' allegation that Thomas' "concealment of Avalara stock from the Federal Government puts Beverly's estate and the Hitchman Fiduciaries in jeopardy with taxing authority," and the fact that in this section the Hitchmans indicate that they acted on the "advice of tax counsel" regarding the issue of the filing of the supplemental estate tax return. (Exhibit 878, also ROA 2325, page 5, lines 6-18.) Morris testified that the Hitchmans did **not** consult with him before filing this pleading and before making the allegations of concealment by Thomas.

More importantly, Morris testified that based on his extensive training and experience in this field, as well as his analysis regarding this issue, it was his opinion that Thomas did not do anything improper, and that Thomas did not conceal anything from the IRS relating to the Avalara stocks. Furthermore, Morris testified and confirmed that Thomas had previously made the required discloser to the IRS in the original estate tax return Thomas filed, long before the Hitchmans raised this issue with the court after the settlement agreement was reached between the parties. "*Question by Thomas' attorney:* So we're clear, the original return given the disclosures in the original return no issue as to whether the Hitchmans had a duty in your mind? *Answer by Morris:* That was my conclusion." (Testimony of Morris on January 9, 2024.)

Morris testified that to the best of his recollection, the first time the Hitchmans ever asked him about his opinion regarding any reporting requirement the Hitchmans may have relating to the Avalara

stocks was on April 16, 2019, the day **after** they filed their objections to the settlement agreement containing the Hitchmans' allegation of tax concealment by Thomas. When asked about the claim by Team Hitchman that he advised them they had an Avalara related obligation to disclose to the IRS, Morris testified that he never advised any of the Hitchmans' attorneys or the Hitchmans that the Hitchmans had an such obligation to disclose in connection with the Avalara stock transactions.

The court finds this testimony by Morris to be exceptionally credible based on his demeanor, tone of voice, and body language while testifying, and **also** based on the totality of all the evidence introduced during the trial. When asked about the May 11, 2019, memo written by Benz (exhibit 761), Morris again confirmed that he told Team Hitchman that they had no further reporting requirements to the IRS, that whoever wrote the memo in exhibit 761, did not "fairly characterize" what Morris told Team Hitchman. Morris testified that as far as exhibit 761, he (Morris) doesn't "think it's completely correct."

When asked about the Hitchmans' May 13, 2019, response to the beneficiaries' joint petition to approve the settlement agreement (exhibit 880 / ROA 2423), specifically the contention by Team Hitchman on page 4 of this pleading, a verified document, about what he (Morris) told them (Team Hitchman) on May 11, 2019, merely two days before the verified pleading was filed with the court, Morris testified that he does not agree with what the Hitchmans told the court is attributed to him. The language on page 4 of the Hitchmans' response was displayed on the screen in the courtroom for Morris to review. The following is his testimony regarding this issue.

"*Question by Thomas' attorney:* Yeah, you wouldn't have endorsed this language … displayed on the screen would you? *Answer by Morris:* No. *Question by Thomas' attorney:* You would agree, I think, that to the extent this language is designed to communicate to the court that Tom had committed tax fraud and the IRS would have nabbed it fully they would have acted sooner, that would not be accurate? *Answer by Morris:* That's the tone of this language, yes. *Question by Thomas' attorney:* That wouldn't be accurate, that's not what you told them in other words? *Answer by Morris:* No, that was not my thinking for sure. … *Question by Thomas' attorney:* Did you have conversations with the Hitchmans or their lawyers about the consequences, what the consequences would be if they made a

report to the IRS along the lines they were suggesting? *Answer by Morris:* Yes. *Question by Thomas' attorney:* And what do you recall about that? *Answer by Morris:* … my message to them was that a disclosure of that sort to the IRS is -- would slow things down dramatically resulting that substantial additional expense to the estate … it would slow things down and be very extensive. *Question by Thomas' attorney:* Well, bottom line in your view based on your -- all your decades of experience in this area, would making a report the Hitchmans had no obligation to make would likely have been **detrimental to the trus**t? *Answer by Morris:* **Yes.**" (Morris' testimony on January 9, 2024. Emphasis added.)

The court finds the above listed testimony by Morris to be exceptionally credible, exceptionally probative, and very damaging to the Hitchmans' position as advanced during the trial. The court finds this evidence, when considered in light of all the other evidence introduced during the trial, as strong evidence showing that when the beneficiaries reached a settlement agreement, Team Hitchman proceeded with a plan that was not fact-driven, to do all they could to squeeze a release from Thomas by raising allegations they knew from their preeminent tax expert to be unfounded and unwarranted. The court further finds that this intentional and willful conduct by the Hitchmans was detrimental to the Trust and its beneficiaries, and a breach of the Hitchmans' fiduciary duty to the Trust and its beneficiaries.

Exhibit 794 is a declaration executed by Morris on May 3, 2022, admitted into evidence. The court finds the information contained in Morris' declaration to be credible and very probative to the issues pending before the court. The court considered the questioning of Morris, by both sides, in reaching the above listed conclusion regarding the credibility of the information contained in Morris' declaration when considered in light of Morris' in-court testimony, as well as all other evidence introduced during the trial.

In his declaration, Morris states: "I spoke with the Hitchmans' lawyers on Saturday, May 11, 2019. By that time, I had reviewed the original 706 filed by Tom and generally reviewed the materials provided to me by Mr. Bertzyk on May 2 and 7, and by the Hitchmans' lawyers on May 9. Although I did not take notes, I do have a general recollection of that call. Generally speaking, I recall that (i) the

Hitchmans' lawyers were trying to **convince me** to endorse a "**tax fraud**" theory for use in an upcoming court filing, and (ii) I advised I did not believe there was an issue to report given the disclosures already made in the original 706 filed by Tom." (Exhibit 794, page 5, lines 18-24. Emphasis added.)

As to the pleading filed by the Hitchmans on May 13, 2019, two days after the Hitchmans' lawyers spoke to him, Morris states the following about the Hitchmans' reference to advice they said he gave them: "I read this as at least suggesting I advised that there would have been a successful tax fraud claim had the IRS acted more promptly but, supposedly in my view, the IRS had failed to act in timely way. I did **not** believe **tax fraud** would have been **at issue in any case**." (Exhibit 794, page 6, lines 12-23. Emphasis added.)

In deciding what weight to give to Morris' testimony and declaration, the court considered the following answer he gave to a question posed to him by the court: "*The Court:* Did you ever feel in any of your communications with the Hitchmans and/or their attorneys that when they're asking you for your opinion regarding this Avalara transaction and whether or not there was any conduct, forget about tax fraud, any conduct that's not appropriate legally or based on tax regulations by Mr. Morgan, did you ever feel they were hoping to get a certain answer from you when they were asking you about that? *Answer by Morris:* No."

The court views this in court testimony by Morris to be potentially contradictory to his declaration, as stated above, when he declared that the Hitchmans' attorneys were trying to convince him to endorse a tax fraud theory. The court considered and gave proper weight to this potential contradiction before reaching the findings as stated in this statement of decision.

Bruce MacDonald

MacDonald, a licensed and experienced attorney, testified that for 13 years he has been a certified specialist in estate planning, trust, probate, and taxation. At the time of his testimony, MacDonald was a name partner in Carico's firm where he worked with Carico and Benz. In connection with the Morgan Trust case, MacDonald testified that he was the primary person and the lead attorney from his firm assigned to work on tax related issues. MacDonald confirmed that within 2 weeks of the

Hitchmans being appointed as interim co-trustees, he started working on helping the Hitchmans take over control of entities from Thomas/MPI.

MacDonald testified that on April 14, 2017, in an email he sent to Glowacki, Carico, Roehl, Bruce H., and Lee Ann, he stated that "in thinking ahead to the possible need for a "**coup**" to gain control over entities (and therefore the business income), I think it is going to be most problematic with respect to the Ontario Associates partnership. This is the most valuable of the entity interests owned by the Trust per the accounting." (Exhibit 117. Internal quotation and parenthesis in original. Bold emphasis added.) The court finds that the use of the term *coup* to describe what Team Hitchman was contemplating two weeks after their appointment to be a part of the circumstantial evidence showing the frame of mind of Team Hitchman, from the beginning, regarding the administration of this Trust, a duty they were given by the court on an interim basis. The court finds it unfortunate that neither Bruce H. nor Lee Ann responded to this email by reminding their newly added lawyer on the case (Carico's firm and MacDonald were brought on board by the Hitchmans a mere few days prior to this email exchange) that the Hitchmans' co-trusteeship is not about a *coup*, rather, it is about administering the Trust impartially and protecting it while the underlying litigation is resolved.[87]

When asked about this email and Team Hitchman's plan to take over business entities, MacDonald stated: "*Question by Thomas' attorney:* Wouldn't it have been a good idea in this instance to reach out to Tom Morgan's team and ask if displacing management would create any operational problems? *Answer by MacDonald:* I suppose." (MacDonald's testimony on January 11, 2024.)

MacDonald, the Hitchmans' second tax expert in addition to Morris, reached the same conclusion as Morris, namely, the Hitchmans had no duty for any further disclosure to the IRS and the supplemental filing, and MacDonald communicated his conclusions and findings to Bruce H., Glowacki, Roehl, and Carico, as early as September 21, 2017, when Team Nancy was advocating for finding fault by Thomas for failure to disclose. (Exhibit 361.) When asked about this topic during his

[87] The origin of the word *coup* is French, and it means "blow." It is widely used in the phrase *coup d'étas.* The court is at a loss to find a positive way for Team Hitchman to use such a term when talking about secretly taking over entities relating to the Trust. Once again, the court appreciates the fact that when attorneys and clients are speaking to each other under the umbrella of confidentiality, guards are down, which is not necessarily a bad thing. The court took that into account in deciding the appropriate weight to give this evidence.

testimony, especially what he wrote in exhibit 361, MacDonald testified as follows: "*Question by Thomas' attorney:* On the duty to disclose, what did you mean by that? A: So in my experience … if you file a return and then you later discover an asset that you were unaware of when you filed a return, that you do not have a duty to basically amend that return to disclose after discovered assets. *Question by Thomas' attorney:* Okay. And you gave that advice in writing to these members of Team Hitchman? *Answer by MacDonald:* In my opinion. *Question by Thomas' attorney:* Including Chris Carico? *Answer by MacDonald:* He's in the e-mail, yes." (MacDonald's testimony on January 11, 2024.)

MacDonald also confirmed that even after additional documents were obtained by Team Hitchman on April 10, 2019, regarding Avalara, his opinion remained that the Hitchmans still had no duty to disclose any additional information to the IRS, and that he conveyed this conclusion to Carico. MacDonald confirmed that after he shared with Carico and other members of Team Hitchman his expert professional opinion that no duty to disclose to the IRS is triggered, he (MacDonald) was after that never consulted or even given an opportunity to review court filings on behalf of The Hitchmans even though the Hitchmans were making tax related allegations against Thomas and a duty to disclose by the Hitchmans.

When asked about this topic, MacDonald testified as follows. "*Question by Thomas' attorney:* We're going to go back to your time records, but to take stock where we are in -- just in these 48 hours or so following the Morgan family only settlement, there is an e-mail discussing this duty of disclosure issue, there's a letter to Tom's lawyers raising the issue, and a petition raising the issue, and none of them were run by you, the primary tax guy at your firm? *Answer by MacDonald:* None were run by me that I recall. … *Question by Thomas' attorney:* What we can see, the reason I've been going, thank you, these time records is to kind of lead up to this point. Although you're the primary tax guy in your firm, for some reason, you were pretty much out of the duty of disclosure to the IRS loop on this case; right? *Answer by MacDonald:* At this point, it appears so." (MacDonald's testimony on January 11, 2024.)

The court finds this testimony to be exceptionally damaging to the persuasiveness of the Hitchmans' position during the trial. The court finds this testimony by MacDonald to be very credible

and probative, but not dispositive, in concluding that the Hitchmans were doing all they can to try to *squeeze a release* from Thomas, in breach of their fiduciary duty to the Trust and to Thomas as a beneficiary of the Trust.

As to the Hitchmans' filing of the H-17200 Petition alleging that the instrument they were appointed to administer was procured by fraud, MacDonald admitted that in all his experiences in this field, he has never heard of any such case: "*Question by Thomas' attorney:* In all your years as a trust and estates lawyer, have you ever seen any case besides this one where a trustee has filed a petition alleging that a trust instrument was procured through fraudulent representations? *Answer by MacDonald:* Not that I recall. *Question by Thomas' attorney:* There are a lot of firsts from this particular representation based on your experience; right? *Answer by MacDonald:* Correct." (*Id.*)

Based on all the evidence introduced during the trial, the court agrees with MacDonald that this case presents *many firsts* relating to conduct by private professional fiduciaries appointed by the court as interim co-trustees. Unfortunately, these firsts do not belong in the positive column.

Chris Carico

Carico testified that he is a certified estate planning, trust, and probate attorney with 30-years of experience. This case was the first time he ever worked with the Hitchmans. Carico confirmed that as interim co-trustees appointed by the court, the Hitchmans had an obligation to conduct an investigation before taking a position regarding the underlying litigation between the beneficiaries.

Carico confirmed that Team Nancy was the primary source of the information that was alleged in the Hitchmans' H-17200 Petition against Thomas. Carico also confirmed that before filing the H-17200 Petition against Thomas, he never reached out to Thomas or any of his attorneys to inquire about Thomas' position regarding Team Nancy's information. Carico also confirmed that at Team Nancy's request, Team Hitchman sent a copy of the draft H-17200 Petition to Team Nancy for their pre-filing review and input. (Exhibit 389). He also confirmed that Team Nancy responded by making changes to the Hitchmans' draft H-17200 Petition. (Exhibit 405.)

Carico testified that he did not reach out to Thomas because that was the condition placed by Team Nancy before giving the information to Team Hitchman. "*Question by Thomas' attorney:* So just to be clear on that, you never received any information from the Shurtleff Group [Team Nancy] and then inquired of Tom as to what his position was on any of the particular claims that Nancy's Team provided to you before filing the petition; right? *Answer by Carico:* Correct. That was the condition of getting information." (Carico's testimony on March 11, 2024.) The court does not find this testimony as providing a valid justification for the Hitchmans' breach of fiduciary duty, including the duty of impartiality.

Even assuming *arguendo* that it was appropriate for Team Hitchman to assure Team Nancy confidentiality before meeting with them to get information, and the court does not find this to be appropriate in this case, such assurances should have been thrown out the window the minute Team Hitchman decided to file a petition against Thomas based on this information. By the time the Hitchmans decided to file the H-17200 Petition, the reason proffered by the Hitchmans for maintaining confidentiality no longer made any practical sense. Confidentiality is going out the window as soon as the petition, a public document, is filed with the court and served on Thomas. Team Hitchman could have easily sent to Thomas' attorneys a copy of the H-17200 Petition the day before they were planning on filing it with the court and gave Thomas' attorneys an opportunity to give their input. Maybe, just maybe, that would have made the Hitchmans better informed before filing their serious H-17200 Petition, especially considering that most of what was alleged in this H-17200 Petition ended up getting dismissed after the Hitchmans received post-filing input from Thomas' attorneys.

As to the assertions by the Hitchmans during the trial that Thomas' attorneys refused to meet with Team Hitchman, Carico admitted no such refusal to meet took place. Carico admitted that by sending his August 21, 2017, email referenced above (exhibit 348), Gold was not refusing to meet with Team Hitchman. As to Carico's response to Gold on August 23, 2017, indicating that Carico "can circulate a *Doodle* calendar with available dates" for Team Hitchman to meet with Thomas' attorneys (exhibit 348, page 2), Carico admitted that he never circulated such doodle calendar to schedule a meeting between Team Hitchman and Team Thomas.

On the other hand, Carico confirmed that on September 20, 2017, Team Hitchman had a two-day long meeting with Team Nancy, a meeting that was kept a secret from Thomas' attorneys, with five of the Hitchmans' attorneys attended this meeting, including Carico. The day following the 2-day meeting with Team Nancy, Glowacki sent to Carico and other members of Team Hitchman, including Bruce H. and Lee Ann, Glowacki's "attempt to synthesize our two days of productive discussions into some action items." (Exhibit 362.)

Carico confirmed that on December 5, 2018, he told the court that the Hitchmans, as interim co-trustees, intended to dismiss Thomas' then pending petition for instruction asking the court to confirm that Thomas had already satisfied a condition precedent under the Trust (paying Nancy the $1 million she is entitled to under the Trust). When asked why the Hitchmans wanted to move to dismiss a pending petition by Thomas that is not included in any other pending petition, Carico testified that he did so because "**if Nancy won** the trust contest, then the issue raised by the petition for instructions would be irrelevant." (Carico's testimony on March 13, 2024. Emphasis added.) The Hitchmans were eager to move to dismiss Thomas' petition that was very important under the terms of the Trust they were appointed to administer, and they did so on the assumption that Nancy was going to win and invalidate the very same Trust they were supposed to administer and protect.

The court finds this testimony to be very damaging to the Hitchmans' position in this case, namely, that they were impartial and they did not do anything to breach a duty they owed to the Trust and to Thomas as a beneficiary of the Trust.[88] This testimony does not just show that the Hitchmans wanted Team Nancy to prevail in their Trust contest and their litigation against Thomas, but that the Hitchmans also made crucial decisions in their capacity as interim co-trustees, including a decision to seek to dismiss a consequential and important petition filed by Thomas, based on Team Nancy prevailing in the Trust contest, before the litigation was decided by the court. The court ended up denying the Hitchmans' attempt to dismiss Thomas' petition, and subsequently granting Thomas'

[88] In his March 13, 2024, testimony, Carico confirmed that Thomas "was one of the primary beneficiaries" of the Trust the Hitchmans were appointed to administer as interim co trustees.

petition finding that he did in fact fulfill the condition precedent of giving Nancy $1 million, as required under the 2013 amendment to the Trust. (Exhibit 965.)

Carico testified that even if the Hitchmans prevailed on their sixth cause of action in their H-17200 Petition, namely, if the court concluded that the Trust instrument would not have been executed but for Thomas procuring it by fraud, such a finding by the court "would have no impact on the Trust," in part because the Hitchmans didn't ask for the court to invalidate the Trust, "so our pleading couldn't have impacted the validity of the 2013 instrument." (Carico's testimony on March 15, 2024.) The court finds this testimony to be not persuasive based on all the facts of this case, and to fly in the face of logic, common sense, and the law. The court finds that by trying to rely on the fact that they did not ask the court to invalidate the Trust to conclude that their H-17200 Petition was not a Trust contest, the Hitchmans are relying on "labels" over "substance," and as *Hamilton* teaches us, such reliance is misplaced. In addition, the Hitchmans' legal position completely ignores that their co-litigant, Team Nancy, was asking the court to invalidate the Trust. The Hitchmans prevailing on their sixth cause of action would have undoubtedly resulted in the court invalidating the Trust.

Carico testified that he reviewed production from Avalara Inc. on April 10, 2019, and he described the information in the production as a "bombshell." When he was asked what information he uncovered from the Avalara production that the Hitchmans did not already know when they filed the supplemental 706 tax return on April 23, 2018, he answered that "the Hitchmans didn't -- **weren't aware** on April 23rd, 2018, that the stock was still in Beverly's name." Carico was then reminded that he was aware of this information from Thomas' prior deposition. So, he revised his testimony and stated: "Well, unaware is probably the **wrong term**. They hadn't confirmed Beverly's interest in the Avalara stock. I guess they were generally aware that there might still be an interest, but Mr. Morgan really couldn't confirm when the transfers happened and we didn't have proof until we have got the Avalara production." (Carico's testimony on March 18, 2024. Emphasis added.)

The court finds this testimony, and post-impeachment admission by Carico, damaging to the persuasiveness and credibility of the Hitchmans' attempt to give an explanation for raising the tax related allegations after the settlement was reached between the beneficiaries as anything other than an

attempt to squeeze a release from Thomas. Based on the evidence introduced during the trial, the court rejects this explanation as being unsupported by the facts.

As to the allegation made by the Hitchmans against Thomas on April 15, 2015, in response to the beneficiaries' joint petition to approve the settlement agreement as discussed above (exhibit 878, also ROA 2325, page 5, lines 15-17), Carico admitted that such allegation was inaccurate. "*Question by Thomas' attorney:* Okay. I want to make sure I'm not misreading this. Team Hitchman's allegation … that it wasn't aware of Beverly's interest in the … stock at the time of her death until April 11th, 2019? … Is that an accurate statement? *Answer by Carico:* Not completely. … Yeah, no, I believe we knew before April 11th that the share certificate was still partly in Beverly's name and Tom's name. … *Question by Thomas' attorney:* Isn't it true that Team Hitchman did know the material aspects of this new Avalara -- this Avalara claim before the April 8th, 2019, mediation? *Answer by Carico:* We knew some of it. … *Question by Thomas' attorney:* Your clients knew the underlying facts which supported the claim that Beverly had an interest in the stock in her name before the mediation? *Answer by Carico:* **Most of them**." (Carico's testimony on March 14, 2024. Emphasis added.) The court considered this testimony, along with all the other evidence introduced during the trial, before concluding that the Hitchmans' motivation in raising the Avalara related allegation, after the beneficiaries' settlement agreement, was for the sole purpose of trying to squeeze a release from Thomas.

Carico testified that trustees do not have a duty to be neutral, rather, they have a duty to be impartial. The court finds that when supported by competent facts developed by a good faith investigation conducted by a court appointed interim co-trustee, it is appropriate in certain circumstances for an interim co-trustee to bring an action against a beneficiary, if doing so is in the interest of the Trust. However, in bringing any such action, an interim co-trustee is not allowed to act based on bias against one beneficiary and in favor of another beneficiary. An interim co-trustee is not allowed to ignore the fiduciary duty owed by the fiduciary to a beneficiary of the Trust. Based on the totality of all the evidence introduced during the trial, the court finds that the Hitchmans were not

impartial towards Thomas from the start until the end of their interim co-trusteeship, and that they acted based on bias against him and in favor of Team Nancy.

The record from Carico's invoices reflects that on April 9, 2019, after the beneficiaries had just reached a settlement agreement, Carico's invoices show that he billed the Trust for 8 hours of work as follows: "Conference with clients concerning **failure** of mediation. Work on petition under 17200. Conference with co-counsel concerning 17200 petition. Conference with clients. Additional research to complete issue raised in new 17200 petition. Review letter from Bertzyk. Work on correspondence to Bertzyk and Gold. Additional conferences with clients concerning the petition." (Exhibit 763, page 6. Emphasis added.) The court finds that the mediation was *not a failure* as far as the beneficiaries were concerned, and the mediation was *not a failure* as far as the Trust was concerned. The beneficiaries reached a global settlement that resolved a long running contentious litigation. To the extent the Hitchmans wanted a release from Thomas as part of the settlement agreement, that would explain Carico referring to the mediation as a failure.

In connection with the Hitchmans' conduct in taking over the Bank of America accounts of Lamplighter Chino by alleging that Thomas misappropriated funds, Carico conceded that had he known that Thomas "put the money into a new Chino account," he (Carico) would "not have recommended the Hitchmans submit the affidavit" they submitted to Bank of America. The court finds that if Carico or any of the Hitchmans' attorneys simply picked up the phone and called Thomas or his attorney, they would have easily found out what Carico admits would have negated the need to file the offending and false declaration with Bank of America.

When asked about MacDonald being sidelined and kept out of the decision-making process regarding the tax issue after MacDonald opined that he did not believe the Hitchmans had any further duty to disclose, Carico testified that MacDonald works for him, and he (Carico) does not have to always take MacDonald's opinion at face value. The court does not find fault with Carico asserting that he has the right as the founding partner to ignore MacDonald's recommendation. However, in light of the totality of all the evidence introduced during the trial, including the evidence regarding Morris' opinion that was also shared with Team Hitchman, the court finds that MacDonald and Morris'

opinions were ignored and/or misrepresented to the court, as stated above, consistent with the Hitchmans' focus on *squeezing a release* from the Thomas by making unsubstantiated and unfounded allegations against him.

During his testimony, Carico insisted that Team Hitchman did not raise the issue of lack of disclosure after the mediation for the purpose of putting pressure on Thomas to give a release to the Hitchmans, rather, according to Carico the issue was raised because the Hitchmans felt they had an obligation to raise it. When asked if they really felt they had such an obligation, why did the Hitchmans not ask Morris for his opinion about this issue before the mediation, Carico said that the Hitchmans did not have all the facts. Carico was then asked: "Why not raise the issue to the family members before the mediation?" and his answer was: "I don't know." (Carico's testimony on March 20, 2024.) The court is not persuaded by Carico's insistence in the face of the mountain of credible evidence pointing in the opposite direction.

During his deposition in October of 2022, Carico admitted that at the time of the filing of the H-17200 Petition, specifically the sixth cause of action (fraud), no one on Team Hitchman had any personal knowledge about any of the facts alleged in connection with this claim, and that he would be guessing as to the purpose behind pleading this sixth cause of action. During the trial, Carico was confronted with this deposition testimony, and he somewhat took it back by testifying that his deposition testimony was "not entirely correct." (Carico's testimony on March 21, 2024.) Based on Carico's demeanor, body language, and tone of voice during his trial testimony, and based on the totality of all the evidence introduced during the trial, the court finds Carico's deposition testimony on this topic to be credible and persuasive in showing that the Hitchmans' had no legitimate, good faith, and fact-based good reason to file the fraud cause of action in their H-17200 Petition. The court also finds that the Hitchmans did have a reason to file such a cause of action: it's what Team Nancy wanted.

Carico confirmed that the first time the *tax issue* raised in the Hitchmans' objections to the settlement agreement between the beneficiaries was "put in writing" was **after** the successful mediation resulting in the settlement agreement with a release to the Hitchmans.

John Glowacki

Glowacki is a licensed attorney specializing, since 2007, in probate, trust and estate planning. The Hitchmans have been Glowacki's clients for a considerable amount of time, even from before he joined the Roehl & Glowacki law firm. Glowacki was the Hitchmans' lead attorney in this case. At the time of the Hitchmans' interim co-trusteeship in this case, Glowacki was a named partner in the Roehl & Glowacki law firm, and at the time of his testimony in the trial he was a named partner in Carico's law firm - Carico Glowacki MacDonald Kil & Benz LLP. Glowacki confirmed that at the time of his testimony in this case, he had a common interest agreement with the Hitchmans.

At the start of his testimony, Glowacki testified that even with the benefit of hindsight, there is nothing he will do differently in connection with his work on this case representing the Hitchmans in connection with the Trust. However, he agreed that it would not have been appropriate for the Hitchmans, as the interim co-trustees of the Trust, to file or join in a contest of the very same instrument they were appointed by the court to administer. Glowacki also agreed that Thomas was "the beneficiary of the lion's share of the assets under the 2013 Trust" that the Hitchmans were appointed to administer, and that "other than 50% of potential residue of the Trust," everything was going to Thomas under the Trust. (Glowacki's testimony on March 22, 2024.)

Subsequently in his testimony, Glowacki testified that knowing what he knows now, he would not have filed the Hitchmans' affidavits with Bank of America alleging that Thomas misappropriated or stole $450,000 from Lamplighter Chino's bank account. Glowacki also testified that knowing what he knows now, he would not have filed with the court the *ex parte* application accusing Thomas of misappropriating $450,000.

Based on the entirety of all the evidence introduced during the trial, the court finds that knowing everything they **knew back then** in 2017 when they filed the affidavits with Bank of America and the *ex parte* application with the court accusing Thomas of misappropriating $450,000, the Hitchmans **should not have filed** any such affidavits and *ex parte* application.

Glowacki testified that the Hitchmans did not come into their interim co-trusteeship with the intent of joining the trial in connection with the underlying dispute between the beneficiaries. However,

he was impeached with his own words on May 1, 2017, a mere one month after the Hitchmans' appointment, when Glowacki told Carico: "Chris, on the scope of **HF's involvement**. My **understanding and hope** is [sic] that you will be a **key part of the trial team** on this, and so it would be appropriate for you to be one of the strategic architect from the pleading stage." (Exhibit 153. Emphasis added.)

When asked to explain his words, Glowacki said that Team Hitchman was merely "planning for the possibility that that will be the way it plays out." (Glowacki's testimony on April 9, 2024.) The court is not persuaded by Glowacki's explanation. Glowacki's in-trial answer does not square with what he wrote on May 1, 2017, when analyzed in light of all the other evidence introduced during the trial. Telling a newly added litigator to the team that as to the client's involvement in the case, one's understanding and hope are for this litigator to be a key part of the trial team is completely different than merely planning for a possibility that the events may just play out in a way that the client becomes involved in the trial.

Glowacki testified that the Hitchmans' work on this case contributed to the beneficiaries reaching a settlement in April of 2019. Based on the totality of all the evidence introduced during the trial, the court finds that any evidence showing that the Hitchmans contributed to the settlement agreement falls into one of two categories: (1) the Hitchmans from day one until the last day of their interim co-trusteeship were completely allied with Team Nancy giving her an advantage in the underlying litigation between the beneficiaries; and/or (2) the Hitchmans from day one until the last day of their interim co-trusteeship continuously took an adversarial position regarding Thomas, as a beneficiary of the Trust, giving him a disadvantage in the underlying litigation between the beneficiaries. Therefore, to the extent the Hitchmans gave an advantage to one side and a disadvantage to the other side, such conduct may very well have assisted the parties in reaching a settlement. However, an impartial court-appointed interim trustee is not supposed to work hard to give an advantage to one beneficiary at the expense of the other, even if such work results in the beneficiaries reaching a resolution, because doing so is not in the best interest of the Trust and is a breach of fiduciary duties.

Glowacki confirmed, after being confronted with emails Team Hitchman received from Byers, one of Nancy's attorneys, that as early as April 12 and April 13, 2017, Team Nancy was asking Team Hitchman to keep the discussions between Team Nancy and Team Hitchman a secret from Thomas, by using terms like "keep this reference opaque," and "would appreciate some discretion." (Exhibits 112 and 114.) After confirming that Team Hitchman sent emails to Team Nancy asking them for input regarding certain issues the Hitchmans were concerned about, Glowacki admitted to Thomas' attorney that "we won't see any writings from anyone on team Hitchman to any of Tom's lawyers dealing with e-mails like this and saying in effect we have a concern about this subject and would like Tom to explain it." (Glowacki's testimony on March 22, 2024.)

Regarding Bruce H. promising Team Nancy that the Hitchmans will provide *quick action*, Glowacki was asked if he remembers ever talking to the Hitchmans and asking them what Team Nancy's lawyers were talking about when they reminded Team Hitchman of the promise of *quick action.* Glowacki answered: "I don't recall." (*Id.*) In deciding what weight to give to this testimony by Glowacki, the court took into account that when Glowacki **himself** was reminded by Team Nancy about Bruce H.'s promise of *quick action*, his answer was to assure Team Nancy that "Hitchman Fiduciaries **and Roehl & Glowacki** have the time and resources for **quick action**." (Exhibit 71. Emphasis added.) The court find this evidence, coupled with Glowacki's answer, to be very relevant, very probative, and very damaging to the Hitchmans' position in this trial.

In connection with the Hitchmans' conduct in trying to replace MPI as the manager of Lamplighter Chino, Glowacki confirmed that Lamplighter Chino's lender, PNC, sent a letter notifying the Hitchmans that such an action to replace the manager of Lamplighter Chino is an event of default on the loan guaranteed by Thomas. (Exhibit 541.) PNC sent this letter to the Hitchmans and Thomas on June 28, 2018, sixteen days after Benz notified PNC that the Hitchmans had taken over Lamplighter Chino.

In connection with the June 13, 2017, *ex parte* application by the Hitchmans discussed in more details above, Glowacki confirmed that he was present in court on June 14, 2017, the day Judge Hubbard was set to rule on the *ex parte*, in the event she decided to have a hearing, and he confirmed

that after reading Thomas' opposition before Judge Hubbard issued her ruling, he (Glowacki) and Team Hitchman realized that they now had "information that seemed to contradict some of what was in our papers." The court finds that at that moment in time, before Judge Hubbard ruled on the Hitchmans' *ex parte* application, the Hitchmans were in actual possession of actual irrefutable and convincing evidence putting them on notice that a major part of what they were alleging in their verified *ex parte* application was false and wrong. The court further finds that, in real time, Team Hitchman did not miss the importance of this evidence, and that they actually exchanged emails confirming that they realized what they submitted to the court in support of their *ex parte* application was materially false.

Sadly, the evidence introduced during the trial showed that Team Hitchman did not do anything after discovering this falsity. Not just that, the evidence introduced during the trial showed that members of Team Hitchman repeated this same known falsity on multiple occasions after June 14, 2017, and months later they even submitted to Judge Johnston the order issued by Judge Hubbard granting their *ex parte* application as evidence in support of what they knew to be wrong, namely, that Thomas misappropriated and/or absconded with $450,000.

In connection with this serious and troubling issue, Glowacki testified as follows: "*Question by Thomas' attorney:* Would you agree sir that it would be inappropriate after you learned the truth about the flow of funds to tell an Orange County Superior Court probate judge that Tom Morgan had absconded with $450,000 … *Answer by Glowacki:* I don't think it would have been appropriate. … To tell a judge that he had misappropriated the fund or absconded with the funds." (Glowacki's testimony on March 22, 2024.)

As far as using Judge Hubbard's April 14, 2017, order granting the *ex parte* application as proof that Thomas absconded or was trying to abscond with $450,000 from Lamplighter Chino's bank account, this conduct took place on November 30, 2018, **nineteen months** after Team Hitchman had irrefutable evidence showing that no such stealing, absconding, or misappropriating took place. The Hitchman had in their possession all the evidence showing that Thomas moved the money from one Lamplighter Chino account to another Lamplighter Chino Account, and both accounts were under the control of Lamplighter Chino's property manager Newport Pacific. Nonetheless, in November 2018,

the Hitchmans submitted Judge Hubbard's April 14, 2017, order to Judge Johnston in the context of the Hitchmans' above described 473(b) motion so that Judge Johnston would allow them to resume paying themselves and their attorneys out of the Trust accounts without prior court authorization.

On November 30, 2018, Glowacki executed and submitted to the court (Judge Johnston) the Hitchmans' reply to Thomas' opposition to their 473(b) motion, which included a declaration by Bruce H. (Exhibit 856.) In this filing by Glowacki, Team Hitchman submitted to the court, in a verified format, a declaration stating: "Attached as Exhibit 1 is a true and correct copy of the Court's Order Approving Ex Parte Application dated June 14, 2017, which we obtained after **Thomas objected** to our replacing the manager of Lamplighter Chino **and absconded with $450,000 from Lamplighter Chino**." (Exhibit 856, page 11, lines 21-24. Emphasis added.) The court finds this evidence to be exceptionally devastating and damaging to the Hitchmans' position in this trial. Nineteen months later, the Hitchmans were still trying to use the same *known-to-them* false information to convince a judicial officer to rule in their favor.

When Glowacki was confronted with this evidence during the trial, he was asked if he can justify the above statement made to Judge Johnston on November 30, 2018, in the Hitchmans' reply brief. Glowacki answered that "without re-reading the entirety of the reply brief and the supporting declarations," he "can't recreate what" he "was thinking at the time." The court stopped the examination of Glowacki by Thomas' attorney and stated the following: "Now, Mr. Bertzyk, the witness just said that in order for him to better answer your question, he would like the opportunity to read the entirety of the reply brief and the supporting declaration. … I think it's only fair to give this witness the opportunity to look at these documents. And this is an important question. So what I am inclined to do right now is to take a 10, 15-minute break. … Give Mr. Glowacki … the opportunity to read it because that's only fair to the witness, any objection." (Glowacki's testimony on March 22, 2014.) There was no objection by either side, and Glowacki was given the opportunity to review all he wanted to review, including the reply and its attachments (exhibit 856).

After the break, and after Glowacki reviewed the documents he asked to review, the following exchange took place between the court and Glowacki during his March 22, 2024, testimony.

The COURT: Here's where we were when we stopped. Mr. Bertzyk showed you Exhibit 856, a November 30, 2018, reply in support of the 473(b) motion. He asked you if you had seen it. You indicated you do see it. He asked you to go to page 10 where you signed it and confirmed you did sign it, he asked you if you were vouching for the accuracy of this pleading to judge Johnston you said yes, I was making all the representations that go with the signature. Then Mr. Bertzyk invited you to go to the declaration from Mr. Hitchman which was attached in paragraph 4, it says attached is Exhibit 1, is a true and correct copy of the court's order approving the ex-parte application dated June 14, 2017 which we obtained after Thomas objected to our replacing the manager of Lamplighter Chino and absconded with $450,000 from Lamplighter Chino. And the question was, can you justify that statement to me, sir. You started answering, you started saying without re-reading the entirety of the reply brief and the supporting declaration, I can't recreate what I was thinking at the time. What I can say as I testified earlier -- that's where I stopped you. I trust you had a chance to read the document you wanted to read Mr. Glowacki?

GLOWACKI: Yes, your Honor I have reviewed --

THE COURT: You don't have to tell me. As long as you had a chance to review what you wanted to review.

GLOWACKI: Yes.

THE COURT: You may answer the question from Mr. Bertzyk.

THE WITNESS: So to continue where I left off, the motion sought relief from a particular order that Judge Johnston issued. The opposition, and I am gauging this on reading the reply in the declaration of Bruce Hitchman attached to the reply, spent a lot of time making factual assertions about things that happened in the case. Our purpose was to identify for the court that we disputed many of those factual assertions without exhaustively listing every fact that we disputed. One of the general facts in the opposition was that the Hitchmans had wrongfully taken control of the Chino entities, and this paragraph with Mr. Hitchman's declaration appears to be attempting to explain that the -- their decision to change the manager role was not wrongful and it cited several court orders that had to do with that question. And the way we described it was the way that we had described it as we filed the ex-parte application.

The court does not find the above listed answer by Glowacki to be a reasonable and valid justification for why the Hitchmans, on November 30, 2018, were still telling a Superior Court Judge what they knew to be false, as if it was true, and then trying to claim that a prior court order confirms that it was true. Glowacki was asked to provide justification for telling Judge Johnston on November 30, 2018, that "Exhibit 1 is a true and correct copy of the Court's Order Approving Ex Parte Application dated June 14, 2017, which we obtained after Thomas objected to our replacing the manager of Lamplighter Chino **and absconded with $450,000 from Lamplighter Chino**."

The court finds that Glowacki failed to provide the justification because there is no reasonable and valid justification for a licensed PPF to knowingly tell a Superior Court Judge, in a verified pleading, what is patently false, knowing that it is blatantly false. The court finds that this conduct by the Hitchmans is a clear and grave breach of the fiduciary duty owed by a court appointed licensed professional to the Trust and to the Trust beneficiaries. This conduct is also a breach of what the court should always be able to expect from a court appointed fiduciary: the duty to be truthful and candid with the court.

After the above response was given by Glowacki, he testified as follows. "*Question by Thomas' attorney:* And this sentence in Mr. Hitchman's declaration that we're focusing on doesn't say we alleged Thomas misappropriated $450,000 and the court entered the order attached as Exhibit A. It says attached is an order we obtained after Thomas objected it to our replacing the manager of Lamplighter Chino and absconded with $450,000; right? *Answer by Glowacki:* Right. *Question by Thomas' attorney:* And that sentence is wrong, correct, that he had not absconded with $450,000? *Answer by Glowacki:* **That phrase is incorrect**." (Glowacki's testimony on March 22, 2024.)

Glowacki's testimony provided evidence establishing that Team Hitchman communicated with Bank of America during this litigation, and that such communication was intended to cast a negative and bad light on Thomas, and it had the foreseeable impact of interfering with Thomas' long standing business relationship with Bank of America. Glowacki testified that all the actions of Team Hitchman in interacting with Bank of America were for the purpose of the Hitchmans carrying out their duty to administer and protect the Trust. Based on the totality of all the evidence presented during the trial,

including Glowacki's own testimony, the court is not persuaded. On the contrary, the court finds that the Hitchmans' actions in interacting with Bank of America were for the purpose of assisting and carrying out Team Nancy's goal of having the Hitchmans do Team Nancy's bidding in connection with entities that were the subject of the underlying dispute between Team Nancy and Thomas.

In reaching this conclusion, the court relied on the entirety of all the evidence introduced during the trial, including exhibit 286. The court finds that this conduct by the Hitchmans constitutes a breach of their fiduciary duty to the Trust and its beneficiaries, including Thomas.

Glowacki admitted that within the statute of limitations period for the Trust to bring a malpractice lawsuit against Pech, he recognized the possibility that Pech committed such malpractice against the Trust in his representation of Thomas as a trustee, and that the Hitchmans clearly had the standing to file such lawsuit on behalf of the Trust. Notwithstanding this frame of mind and knowledge, Glowacki testified that Team Hitchman did not do any investigation regarding this possible claim on behalf of the Trust, even though in his own pleading that he filed with the court on March 23, 2017, Pech admitted that he was paid out of the Trust for legal services he provided to Thomas in his personal capacity. (ROA 1340.) Glowacki further testified that there was nothing to stop the Hitchmans from at a minimum asking Pech to toll the statute of limitations, but they did not do so.

Furthermore, Glowacki admitted that before the expiration of the statute of limitations for the filing of a claim by the Trust against Pech for malpractice, Glowacki recognized that Pech had specifically "given Tom Morgan bad advice" on the issue of the Trust paying Pech for non-Trust related legal services Pech provided to Thomas in his personal capacity.

Glowacki testified that it would be improper for the Hitchmans to simply take Team Nancy's word for anything relating to the underlying disputes between the beneficiaries, and he also testified it would not have been proper for the Hitchmans to deny Thomas or any interested party an opportunity to give their side of the story regarding issues important to the Trust and its administration. The court finds, based on the totality of all the evidence introduced during the trial, that the Hitchmans did exactly what Glowacki testified was improper: they took Team Nancy's word at face value regarding most

about everything, and they did not give Thomas an opportunity to tell his side of the side regarding most about everything.

After being confronted with the irrefutable facts that Team Hitchman shared with Team Nancy the Hitchmans' draft H-17200 Petition before it was filed, and Team Hitchman allowed Team Nancy to give input, and incorporated such input into the final version of the H-17200 Petition, Glowacki was asked if he can recall any "case besides this one," where he "shared a draft pleading attacking a beneficiary with other beneficiaries for review and comment." Glowacki answered: "As I sit here, I cannot think of another example having done that. It doesn't mean that it hasn't happened." (Glowacki's testimony on April 10, 2024.)

Initially in his testimony, Glowacki testified twice that the Hitchmans' H-17200 Petition did not have a cause of action alleging that the 2013 amendment to the Trust was procured through fraud. The next day during his multi-day appearance on the stand, the following exchange took place between Glowacki and Thomas' attorney: "*Question by Thomas' attorney:* I asked you yesterday if you remembered filing a cause of action alleging that the 2013 trust amendment had been procured through fraud. You said no twice. I like to give you a chance to change your answer. Would you agree with me, sir, that the Hitchmans filed a cause of action alleging that the 2013 amendment was procured through fraud? *Answer by Glowacki:* I'm going to take a minute to read through this draft version or me to look at the final version filed." (*Id.*)

After reviewing the H-17200 Petition, the following exchange took place. "*Answer by Glowacki:* Well, I don't think my prior answer was that I didn't recall. I think my prior answer was no. *Question by Thomas' attorney:* Okay. Would you like to change your prior answer then? *Answer by Glowacki:* No, I don't think so. *Question by Thomas' attorney:* You don't think alleging that Beverly would not have executed the 2013 trust but for these matters presented to her by Thomas E. Morgan under a cause of action labeled fraud is not alleging that the 2013 amendment was procured through fraud? *Answer by Glowacki:* I understood your question yesterday and your questions today to be focused on whether or not the Hitchmans were seeking to set aside the 2013 amendment. And my answer to that is no, that is not what they were seeking to do." (*Id.*)

When reminded that he was answering a question that was not asked, the following exchange took place: "*Question by Thomas' attorney:* So you're answering a question I didn't ask. Please answer my question -- did the Hitchmans assert a cause of action alleging that the 2013 amendment was procured through fraud? *Answer by Glowacki:* Not in those words." (*Id.*) The court finds the above exchange to be very probative in assessing the validity and credibility of the Hitchmans' position regarding whether their H-17200 Petition was a trust contest. The above answer, considered in light of the entirety of the evidence, is also relevant to the court in assessing the credibility of Glowacki's testimony.

Glowacki, the Hitchmans' lead attorney, having previously testified that as interim co-trustees the Hitchmans could not properly file a trust contest, was very reluctant to admit what this court finds to be undeniable based on the facts of this case and the law: by alleging that the 2013 amendment to the Trust was procured by fraud and that **but for** this fraud, the 2013 amendment to the Trust would not have been created, the Hitchmans were for all practical purposes attacking the validity of the Trust instrument they were appointed to administer and protect. From a substance point of view, the court finds that was a Trust contest

Regarding Thomas' allegations that the Hitchmans' actions during their interim co-trusteeship were consistent with what Team Nancy wanted the Hitchmans to do, Glowacki gave the following testimony. "*Question by Thomas' attorney:* but you would agree with me that in terms of actions the Hitchmans took, many of the actions by Team Hitchman from the time they entered the case all the way up through the settlement were actions consistent with things you understood **Team Nancy wanted the Hitchmans to do**? *Answer by Glowacki:* I am thinking carefully because I want to make sure I understand your question. I think the answer to your question is **yes**." (Glowacki's testimony on April 11, 2024. Emphasis added.)

Glowacki was questioned regarding most of the contentions that the Hitchmans made against Thomas relating to the allegations initially made by Team Nancy, and then repeated by Team Hitchman. As to most of these allegations, the court finds that Glowacki was not able to provide valid factual basis for the Hitchmans making such allegations. The court finds, after considering the totality

of all the evidence introduced during the trial, that Team Hitchman made all these allegations without having proper factual foundation, other than *Team Nancy told Team Hitchman*. Below is just one such example.

In their Supplement to their Final Accounting that they filed on April 20, 2022, the Hitchmans allege that they commenced an extensive forensic accounting because of, in part, "Thomas' free use of Beverly's and the Trust's accounts for personal purposes, and many other financial irregularities with Trust accounts when he was the Trustee." The Hitchmans further told the court in this Supplement to their Final Accounting that it was this type of conduct by Thomas that they relied on to "support" filing their H-17200 Petition. (Exhibit 1142 / ROA 2868, page 33, section Z, lines 10.) However, when asked about this allegation, as well as many others, the answers provided by Glowacki and all the other witnesses from Team Hitchman who testified during the trial failed to convince the court that there was any proper factual basis for any of these allegations, other than a blind reliance without proper independent investigation on what Team Nancy told Team Hitchman.

In addition to doing all they could to support and join Team Nancy in their existing litigation against Thomas, the evidence introduced during the trial support the conclusion that Team Hitchman also encouraged Team Nancy to initiate **new and more** litigation against Thomas. "*Question by Thomas' attorney:* Didn't you actually invite Team Nancy to initiate a lawsuit to having a receivership appointed for Ontario and then to nominate Hitchman Fiduciaries as the receiver? *Answer by Glowacki:* Yeah, it's possible that we did that." (Glowacki's testimony on May 30, 2024.)

The court finds, based on the entirety of all the evidence introduced during the trial, such conduct by Team Hitchman actually occurred, and that it was not just a "possibility" that they "did that." The court further finds that this evidence is very damaging to the Hitchmans' position that they treated all the beneficiaries impartially and without bias. The court finds that by inviting one set of the fighting beneficiaries to initiate additional litigation against another set of the fighting beneficiaries and suggesting that the Hitchmans should be appointed as receivers in connection with such new litigation, the Hitchmans breached the fiduciary duty they owed to the Trust and to the beneficiaries of the Trust. This breach of fiduciary duty becomes even more significant and serious when considering

that if such litigation was initiated by Team Nancy, as recommended by the Hitchmans, such litigation would have had a catastrophic negative impact on the Trust the Hitchmans were appointed to protect and administer.

In an email Glowacki sent on July 7, 2017, to Team Nancy's attorneys with carbon copy to Roehl, Carico, and Benz, he lays out some of this advice Team Hitchman was giving Team Nancy regarding how to expand their litigation against Thomas. In this email, Glowacki acknowledges that the "Court's order appointing the Interim-Co-Trustees … and the Court's subsequent rulings, however, does not authorize the Interim Co-Trustees to file such an action. … Nancy, however, has no such constraint upon her." (Exhibit 1079, page 1.) The court finds this email very probative, very relevant, and very damaging to the Hitchmans' position that they were impartial when dealing with the fighting beneficiaries. They were not. This invitation by the Hitchmans to Team Nancy has all the hallmarks of a court appointed PPF trying to get through the window what the court told them, repeatedly, they could not get through the door.

When questioned about the advice Team Hitchman was giving to Team Nancy, Glowacki testified as follows. "*Question by Thomas' lawyer:* So you're suggesting to Nancy, look at these things you can do, file affidavits, file a lawsuit and we will be your receiver? *Answer by Glowacki:* We -- I wrote this e-mail identifying those two things that we thought Nancy had the power and authority to do, yes. *Question by Thomas' lawyer:* Is it common for you as counsel of trustee owing a duty of impartiality to approach one side and suggest strategy for them? *Answer by Glowacki:* I wouldn't say it was common." (Glowacki's testimony on May 30, 2024.) The court finds this conduct by Team Hitchman as one of many examples of the Hitchmans' egregious partiality in favor of Team Nancy, and unmitigated bias against Thomas, all in violation of the Hitchmans' fiduciary duty.

In connection with the Hitchmans' argument that their conduct in suing Thomas was pre-authorized by the court, Glowacki acknowledged that Judge Hubbard did not order the Hitchmans to investigate and sue Thomas, and that "there was no explicit direction [from the court] to file a petition and seek damages against Tom." (Glowacki's testimony on May 31, 2024.) Glowacki also acknowledged that after Judge Hubbard issued her initial order appointing the Hitchmans, she explicitly

told the parties that if they have any confusion or need clarification about the terms of the appointment order, they could always come back to court and ask for clarification. The record is very clear that Team Hitchman never took the court up on its offer. Team Hitchman never requested instructions on whether they should file their H-17200 Petition.

The evidence introduced during the trial convinced the court that there was a reason for the Hitchmans never seeking such instructions or clarification from the court: doing so would have been contrary to the Hitchmans' promise to Team Nancy of *quick action*.

Based on the totality of all the evidence introduced during the trial, the court finds that in carrying out their interim co-trusteeship, the Hitchmans performed consistent with Team Nancy's requests. Accordingly, the court finds that Team Hitchman turned their interim co-trusteeship into litigating for the sake of Team Nancy, notwithstanding that such litigation was detrimental to the Trust, its beneficiaries, and in breach of the Hitchmans' fiduciary duty.

The court further finds that in initiating the litigation against Thomas, the Hitchmans acted without proper consideration for Beverly's wishes as expressed in the Trust instrument she executed. As a matter of fact, when asked if he remembers having any discussions with the Hitchmans before filing their H-17200 Petition regarding the lawful intentions of Beverly in creating the Trust, Glowacki testified that he does not remember any such discussions. The court finds that a proper consideration of the express wishes of Beverly, as stated in the Trust, would have strongly and forcefully counselled the Hitchmans against filing their H-17200 Petition.

Regarding the false assertion by Bruce H. in a verified pleading regarding the June 13, 2017, *ex parte* application discussed in more details above (ROA 1493) claiming that Lamplighter Chino's $6 million CD was at risk, Glowacki gave testimony that the court finds very probative and very damaging to the Hitchmans' arguments and positions in this trial.

Thomas' attorney:	You agree with me that the message to the court with respect to the events in these Chino accounts was Tom has already moved 450 grand and if you don't do something, the $6 million certificate of deposit could be next?
Glowacki:	Yes, that was part of the message in the ex-parte application.

Thomas' attorney: And that message was untrue, wasn't it?

Glowacki: Which part?

Thomas' attorney: Didn't team Hitchman know before it even filed its ex-parte papers that that $6 million CD was safe and could not be touched?

Glowacki: **Maybe**.

Thomas' attorney: Okay.

Glowacki: I don't recall. I think I know what you're talking about. So the answer is maybe.

Thomas' attorney: Let's look at trial exhibit 231. … These are the Miami lawyers writing your now partner Mr. Benz; correct?

Glowacki: They were, I believe they were in Miami. They were Bank of America's outside counsel.

Thomas' attorney: Right. With a copy to you?

Glowacki: That's right.

Thomas' attorney: This is at 9:30 in the morning on June 13th; right?

Glowacki: Approximately, yes --

Thomas' attorney: Your ex-parte papers weren't filed until about an hour later on the same day?

Glowacki: It would have been a little less than an hour later, but that's right.

Thomas' attorney: Okay. And Bank of America tells you the CD cannot be released in whole or in part unless and until the line of credit is fully paid and satisfied and the loan terminated; therefore there is no risk of partial depletion of the CD at this time; correct?

Glowacki: That is what it said at this time, yes.

Thomas' attorney: All right. Tom Morgan wouldn't have no way of knowing what Bank of America told you about the CD, would he?

Glowacki: I don't know.

Thomas' attorney: You certainly didn't share that information with him?

Glowacki: With Mr. Morgan?

Thomas' attorney: Yes.

Glowacki: I don't recall sharing the substance of this e-mail with Mr. Morgan, that's true.

Thomas' attorney: **Or the court**?

Glowacki: In connection with this ex-parte, **I think that's true**.

Thomas' attorney: So when you said there was **nothing left to correct**, that was untrue. You could have told Judge Hubbard something you knew that Tom Morgan didn't that the CD was safe?

Glowacki: Well, I can't answer that question. You've stated two things in there that I don't know to be true. One, we weren't going to get a hearing. So I don't think I could have told Judge Hubbard this and, two, I don't know, and I don't think I have ever known whether or not Mr. Morgan had this information in that time frame.

Thomas' attorney: There was nothing to stop you from walking up to the clerk and going, you know, looking at everything and given when I know, we need to tell judge Hubbard there are things in our papers that are wrong, was there?

Glowacki: Well, there **was nothing to stop me** from telling the clerk that we had received this e-mail and would like to augment the record before the court with it.

Thomas' attorney: Okay.

Glowacki: That's true.

(Glowacki's testimony on May 31, 2024. Emphasis added.)

There was no *maybe* about it. The information Team Hitchman gave to Judge Hubbard as part of the June 13, 2017, *ex parte* application was that Thomas had already misappropriated $450,000 and unless Judge Hubbard grants the Hitchmans' *ex parte* application, another $6 million will be at risk of

Thomas getting his hands on it. The $6 million CD was not at risk. Bruce H. knew it and Glowacki knew it long before Judge Hubbard ruled. And they both did nothing about it because the Hitchmans wanted to get their hands on the $6 million CD. The court finds this conduct to be inexcusable and an egregious breach of the Hitchmans' fiduciary duty. Court appointed private professional fiduciaries owe more and better to the justice system, to the litigants, and to the court.

The court finds that this trial included an overwhelming and substantial amount of direct and circumstantial evidence showing how Team Nancy, at every step of the way, demanded *quick action*, obtained *quick action*, and directed the conduct of the Hitchmans in a manner always consistent with the best interest of Nancy, her daughters, and John, and contrary to Team Hitchman's fiduciary duty. The evidence introduced during the trial also fully establish that Team Hitchman was enthusiastically receptive to Team Nancy's requests, and repeatedly acted consistent with such requests, in breach of the Hitchmans' fiduciary duties to the Trust and to Thomas, as a one of the beneficiaries of the Trust.

Glowacki admitted that towards the end of the Hitchmans' interim co-trusteeship, and when it became clear to Team Hitchman that Thomas was not going to give the Hitchmans the release they wanted, he [Glowacki] told Team Nancy that if the dispute between the beneficiaries settles without the Hitchmans getting a release, he [Glowacki] expects Team Nancy to pay the Hitchmans anything that the Hitchmans end up having to pay to Thomas or the Trust. As amazingly unbelievable as it sounds, the evidence introduced during the trial proved that the lead attorney for the interim co-trustees told the beneficiaries who improperly demanded and received *quick action* from the interim co-trustees: *we expect you to pay up.*

The following testimony was elicited during Glowacki's testimony. "*Question by Thomas' attorney:* And what you're communicating to Nancy's lawyer and Nancy's family those two lawyers, if we've got to pay anything, we're looking to you to pay it; right? *Answer by Glowacki:* That's what I wrote. *Question by Thomas' attorney:* How many times in your career have you gone to a beneficiary or in this case a non-beneficiary and said if we've got to settle, we're going to look to you to pay our bill? *Answer by Glowacki:* Don't think I can think of another case that was the same structure or circumstances of this one." (Glowacki's testimony on March 22, 2024.) The court finds this testimony

to be exceptionally probative, exceptionally relevant, and exceptionally damaging to the Hitchmans' position that they were not allied with Team Nancy to the detriment of the Trust and Thomas as a beneficiary of the Trust. The court gave appropriate weight to this piece of evidence in finding that the Hitchmans breached the fiduciary duty they owed to the Trust and all its beneficiaries, mostly Thomas.

The Hitchmans' interim co-trusteeship had two troubling *bookends*. On one end, the *quick action* promised by Bruce H. before the Hitchmans were even appointed. On the other end, the plan to *squeeze a release* from Thomas. When it comes to court-appointed independent private professional licensed fiduciaries living up to the expectations of impartiality, reasonableness, fairness, and fidelity to the rule of law, this interim co-trusteeship, sadly, started on the wrong track and ended on a worst track.

William Benz

Benz started practicing law as an attorney in 2008. Benz and his law firm (Carico Glowacki MacDonald Kil & Benz LLP) stopped representing the Hitchmans in this case back in 2020. At the time of Benz's testimony in this case, the Hitchmans had a common interest agreement with him and his law firm so they can all present a joint defense with respect to Thomas' legal actions against the Hitchmans and their attorneys.

On March 6, 2019, the Hitchmans filed a second supplement to their accounting. (ROA 2029). This second supplement included the following prayer for the court to "instruct the Interim Co-Trustees whether or not to exercise their fiduciary duties and powers to pursue litigation over the breaches of fiduciary duty disclosed within the accounting and described in the Petition, First Supplement to the Petition, and hereinabove." (*Id.*, page 3, lines 9-13.) Benz was the Hitchmans' attorney who signed and filed this second supplement. (*Id.* at page 3, line 19.) The court finds the sequence of events following this filing by the Hitchmans to be astonishing, but very telling, regarding the extent of the Hitchmans' breaches of fiduciary duties.

A voice message from Team Nancy's lead attorney (McDermott) to Team Hitchman's lead attorney (Glowacki) regarding this request for instruction by the Hitchmans, filed by Benz, is one of

those significant and telling pieces of evidence in this case. Team Nancy did not like this request for instruction. So, McDermott picked up the phone in Seattle and called Glowacki in Orange County. Not able to immediately reach him directly, McDermott left the following message on Glowacki's voice mail. The court will refer to this message as the *bone to pick* message, using McDermott's words.

> Hi John, this is Bruce McDermott. Hope you are well. Umm, I've just read your, umm, a couple of things, number one is [indistinct: what the hell, okay hold on] One, is that, the response to your declaration filed by, whoever filed it, I can't remember – Bertzyk or Gold, um – I note that for all its fulminations about accuracy, they do not even attempt to rebut what was the central point of your declaration, which is, they're filing these damn things so they can get practically what they can't get legally, or what they're unlikely to get legally, or what they fear they can't get legally. So, there's that issue.
>
> Another issue though is, I'm not sure whether **bone to pick** is the right, um, thing to say here, but, **I remain baffled why** on occasion **you guys continue to file**, um, documents **requesting permission to litigate Tom's breaches of fiduciary duty** as disclosed in your accounting, when in fact your other briefs argue that Hubbard gave you those permissions, and in fact, you have been litigating them vigorously over the last several months, and in fact are arguing that you should go to trial on them in [in] May. Every time you do this, it just seems to me to **open the door** to [a] two things: Number one is some kind of wildcat judge deciding that you don't have permission. And number two is, an argument from Gold and Bertzyk that, "see, they even know that their permission is at issue and that all their arguments that they've already had permission are belied by the fact that they're asking for it again." It just seems to **risk a result that there's no reason to risk whatsoever**. So, would like to understand better what you're thinking in that regard. And also, further, what you think, if anything, the response to, uh, to your declaration should prepare us for, um, by way of argument wherever and whenever that happens. I look forward to hearing from you when you do have a chance, John. [redacted].[89] Bye.
>
> (Exhibit 984A. The actual audio of this message was introduced into evidence as exhibit 984.)

Not surprisingly based on all the other evidence introduced during the trial, but unfortunately nonetheless, after this *bone to pick* message was conveyed from McDermott to Glowacki, Team Hitchman amended their prayer for relief and deleted the complained-about portion that, according to Team Nancy, could have led a *wildcat judge* to tell Team Hitchman they could not continue to litigate

[89] Out of respect for his privacy, the court redacted McDermott's phone number.

against Thomas. A closer look at the timing of the sequence of events after McDermott left his message for Glowacki is very telling.

The second supplement containing the request for instructions was filed by the Hitchmans on March 6, 2019, at 11:08 AM. Seventy-one minutes later at 12:19 PM, McDermott left the above voice message for Glowacki. (Exhibit 981, page 5.) At 1:07 PM, Glowacki forwarded the voice message to Benz, Roehl, Carico, Bruce H., and Lee Ann, stating "Bruce, Lee Ann, Chris, Bill, just FYI, this is a message from McDermott. Bill, shall we plan to call him together?" (*Id.* page 3.) By 2:16 PM, less than 70 minutes later, Benz had already drafted and prepared a third supplement to the Hitchmans' accounting taking out the *bone* that Team Nancy wanted them to *pick*, namely, the request for the court to instruct the Hitchmans whether they should file more litigation against Thomas.

At 2:16 PM, on March 6, 2019, Benz responded to the email with a reply all stating the following: "Bruce and Lee Ann: I just spoke with Lee Ann about this and need signatures from Bruce and Lee Ann **ASAP** (i.e., **immediately**). Attached is the third supplement. Please sign the verification and return to me **as soon as you can**. We'd like to get this filed **as soon as possible**." (*Id.* at page 1. Emphasis added.) At 2:40 PM, on March 6, 2019, less than 213 minutes after the *offending* pleading was filed, and a mere 141 minutes after McDermott sent his *bone to pick* complaint to Glowacki, Team Hitchman had already decided to withdraw the request that Team Nancy did not like, draft the corresponding pleading, have the Hitchmans verify it, and then file it with the court. Certainly, that was consistent with Benz explaining in his email that **ASAP** means **immediately**. The third supplement, deleting the requested prayer for instruction that so offended Team Nancy, states that the third supplement is being filed "in order to correct an inadvertent inclusion in the Prayer for Relief filed in the Second Supplement to the Petition. Specifically, this Third Supplement is filed to **strike** the third paragraph of the Prayer for Relief contained in the Second Supplement, which was **inadvertently** contained in such prayer." (ROA 2031, page 3, lines 1-5. Emphasis added.)

The above message from McDermott, and Team Hitchman's response to it, based on all the evidence introduced during the trial and detailed in this statement of decision, warrants no further discussion. The court considered this evidence to be probative and relevant in reaching the findings

detailed in this statement of decision, especially when the record is very clear in establishing that there are no orders in this case directing or instructing the Hitchmans to file a single petition against Thomas. This amplifies why Team Nancy did not want the Hitchmans to ask the court for instructions or orders directing them to litigate against Thomas. Had the Hitchmans done so, many of the issues raised in this case would not have occurred.[90]

When confronted with the above listed evidence, Benz testified, similar to what he stated in the third supplement, that the inclusion of the request for instruction on whether the Hitchmans should pursue further litigation was inadvertent. The court, based on the totality of all the evidence including the consideration of Benz' demeanor, tone of voice, and body language while testifying, is not persuaded by the proffered reason. The court specifically finds that the reason given for the filing of the third supplement is not credible. The court finds that the third supplement was filed as a result of Team Nancy's complaint, and consistent with Team Nancy's request. The court further finds that the request for instruction included in the second supplement, and later deleted in the third supplement, was wise, reasonable, and appropriate.

The court compared Team Hitchman's reaction and response to McDermott *bone to pick* invalid concerns regarding the Hitchmans' **proper** action in seeking court instructions, with Team Hitchman's reaction and response to Pech's valid concerns, on behalf of Thomas, regarding the Hitchmans' **improper** actions in trying to secretly take over Lamplighter Chino.[91] The court considered this comparison in reaching the findings as listed in this statement of decision.

After Glowacki received McDermott's *bone to pick* call, it took him **48 minutes** to forward the message to Benz and the rest of Team Hitchman so they can respond to Team Nancy's call for action. On the other hand, it took Glowacki **16 hours** after he read Pech's urgent message before Glowacki

---

[90] The court is certainly not suggesting that there is no scenario where a trustee should or could file a petition without seeking court instructions and authorization first. However, in a case where the contemplated petition is against the main beneficiary of the trust, and the petition is going to allege that the very same instrument the court appointed the trustee to administer and protect was procured by fraud, and would not have been executed but for the fraud by the beneficiary, then seeking such authorization and instruction is prudent and almost required when considering the procedural background of this case before the H-17200 Petition was filed.

[91] As discussed earlier in this statement of decision in connection with exhibit 172.

sent the email to Benz to formulate Team Hitchman's response. After Team Hitchman received Team Nancy's improper and unfounded complaint, Bruce H. and Lee Ann were asked by their attorneys to act and approve the action Team Nancy wanted "**ASAP** (i.e., **immediately**)," and within **71 minutes** the Hitchmans were ready to do what Team Nancy wanted them to do. On the other hand, Thomas' attorney was told that Team Hitchman will be able to talk to him **24 hours** later.

Most telling is the comparison of the actual response and reaction of the Hitchmans to the two complaints. In response to Team Nancy's improper demand for Team Hitchman to stop asking the court for authorization to litigate against Thomas, the Hitchmans did exactly that: they withdrew their proper request for instruction and told the court it was an inadvertent mistake. On the other side of the universe, figuratively speaking, in response to Thomas' valid and reasonable concern about the Hitchmans' secretive conduct in taking over Lamplighter Chino, Team Hitchman decided to invoke the common-interest doctrine and do nothing to alleviate, or at least mitigate, the real concern about a possible default on loans guaranteed by Thomas, knowing that they caused this possible event of default. The court gave proper weight to this evidence in finding that the Hitchmans repeatedly breached their fiduciary duty to the Trust and to Thomas, including the duty of impartiality when dealing with all the beneficiaries of the Trust.

Benz confirmed that on June 13, 2017, at 9:33 AM, the attorney for Bank of America sent an email to Benz and Glowacki confirming that Lamplighter Chino's $6 million CD discussed above is safe, cannot be released, in whole or in part, and was not at risk. This information was provided to Team Hitchman an hour before Bruce H. and Glowacki filed their declarations with the court wrongly alleging the $6 million CD was at risk. (Exhibit 231, and ROA 1494 and 1496.)

Regarding the undisputed fact that at the June 28, 2017, hearing when Pech called Benz out by name (both first name and surname), on the record and in Benz's physical presence in the same courtroom, and Pech disclosed the existence of a litigation involving Lamplighter Chino by saying: "there **is litigation involving Chino**. … I've got litigation in October. … I've got a huge trial involving $30 million. Are they going to, what, take that over too? Put **Bill Benz** in charge of that? Are you kidding me? They have no idea what they've gotten into," Benz testified as follows: "*Question by*

Thomas' attorney: So you're present at this hearing and Mr. Pech specifically calls you out by name as being incapable of handling a huge $30 million trial involving litigation in October and your testimony is you didn't hear this? *Answer by Benz:* Correct." (Benz's testimony on June 3, 2024.)

The court does not find this testimony by Benz to be persuasive. Best case scenario for Benz is a conclusion that he just did not like, nor care about, anything Pech said, so he *willed* himself into not listening and not hearing anything Pech uttered, in open court and on the record, even when what Pech was saying included stating Benz's own full name. Even this best-case scenario in interpreting Benz's testimony is very damaging to the Hitchmans. A private professional fiduciary is obligated to have their lawyer**s** who appear in court in connection with the Trust pay attention to what is being said in court, on the record, by the attorney of the main beneficiaries of the Trust. Team Hitchman did not have to like or respect Pech, but they did not have the luxury to completely ignore him, or tune him out, and not even listen to what he tells the court in their presence.

In connection to Thomas' *Diaz claim* relating to the Chino lawsuit, Benz confirmed that in February of 2018, Thomas provided notice to the Hitchmans regarding the *Diaz claim*, and that Thomas' attorneys followed up twice with Team Hitchman regarding this claim. Nonetheless, Benz confirmed that the Hitchmans simply released the *Diaz claim* as part of the settlement agreement with the City of Chino and did so without even giving notice to Thomas and/or his attorneys. "*Question by Thomas' attorney:* Tom provided notice of the Diaz claim to your clients in February 2018. His lawyers followed up with you twice about the Diaz claim in the subsequent next few months and your clients simply released the claim as part of the settlement agreement without even mentioning it to Tom Morgan; right? *Answer by Benz:* Yes." (Benz's testimony on June 3, 204.) The court finds that this conduct by the Hitchmans, when viewed in light of how the Hitchmans took over Lamplighter Chino in the first place giving themselves authority over the settlement agreement with the City of Chino, constitutes breach of the duty the Hitchmans owed to the Trust and to Thomas as a beneficiary of the Trust. As discussed in this statement of decision, this breach is mitigated by Thomas' failure to object to the settlement agreement between the City of Chino and Lamplighter Chino on the ground that it gave a release to all claims, including the *Diaz* claim.

Benz confirmed that on January 9, 2019, he sent an email to the Hitchmans, and other attorneys on Team Hitchman, advising against releasing any potential malpractice claim by the Trust against Pech. (Exhibit 666.) Nonetheless, the court finds that the facts established during the trial show that the Hitchmans took no steps whatsoever to preserve the Trust's claim against Pech.

Benz described Pech as being abrasive and combative during the conference call involving Team Hitchman, Pech, and the attorneys for Bank of America. Benz also testified about Pech referring to Nancy's attorneys as *Nancy's Handlers*, and how such a term used by Pech was intended as an insult to Nancy because she was "fond of horses and it was kind of calling Nancy a horse." (Benz's testimony on June 5, 2024.) The court finds this testimony by Benz, viewed in light of the entirety of all the evidence introduced during the trial, to be credible. However, it still does not provide justification for the Hitchmans' conduct towards Thomas during their entire interim co-trusteeship.

In connection with the April 24, 2017, declaration he drafted for the Hitchmans to sign as the action by written consent relating to Country Hill where the Hitchmans asserted that Thomas is being removed as manager of County Hills for "gross negligence, incompetence, and/or fraud," Benz confirmed that during his deposition he admitted that he did not have any evidence to support such assertions by the Hitchmans.

In connection with the Avalara stocks, Benz's testimony, considered in light of all the evidence introduced during the trial, supports the conclusion that Team Hitchman's efforts to explore the duty to disclose information to the IRS did not start until after the April 8, 2019, mediation that resulted in the confidential settlement agreement on April 9, 2019. Based on the testimony of Benz and Carico, viewed in light of all the other evidence introduced during the trial, the court further finds that prior to the mediation that resulted in the settlement agreement, Team Hitchman did not serve discovery requests specifically tailored to discover information relating to a duty to disclose. The discovery that was propounded before the settlement agreement was reached was served for the purpose of trying to find a new Avalara related damage claim in support of the Hitchmans' previously filed H-17200 Petition. In reaching this conclusion, the court considered the lack of any written communication

between any members of Team Hitchman regarding a duty to disclose, until shortly after the beneficiaries had reached a settlement agreement.[92]

John Hartog

Hartog testified as an expert witness based on impressive and extensive knowledge and expertise in the legal field relating to trust, probate, and estate planning matters. (Exhibit 985.) Hartog testified that in his opinion, the Hitchmans' performance in this case as court appointed private professional fiduciaries fell below the standard of care. (Exhibit 796.)

Thomas Morgan

Thomas testified that his mother, Beverly, lost her father at a young age and became destitute. Beverly worked as a flight attendant, then a nurse. Wanting to pursue higher degrees, Beverly earned a medical degree as a cardiologist from Duke University. She then completed her residency at Stanford University and then Colombia University. Beverly's mother was the first to invest in real estate and mobile homes. Beverly followed in her mother's footsteps and started investing in mobile home parks.

After earning an MBA from UCLA in 1982, Thomas got into the family business and started working with Beverly on real estate and investments in mobile home parks.

In the late eighties, Beverly, Thomas, Nancy, and John started MPI, and Thomas started working full time managing the family's businesses. When Thomas started managing the family businesses, they had four properties that he was running. At the peak of their family business, he was managing around fifteen separate properties. MPI started with four partners (Beverly and her three children), but after the Savings and Loans financial debacle of the mid-nineties, John and Nancy became nervous so Beverly and Thomas bought their interests in MPI.

[92] In denying Thomas' request, in one of his motions *in liminie*, to exclude evidence of after-acquired facts to prove the motivation behind before-acquired conduct, the court ruled that it is denying the motion because such evidence is relevant to assess the credibility of the Hitchmans' position, but that the court will not ignore common sense and logic by automatically concluding that a party acted based on information the party did not acquire until after he acted. The court is still of the same opinion 16 months after ruling on the motions *in liminie*.

Thomas testified that he was shocked by Judge Hubbard's response to Pech's March 2017 accounting, and he retained Gold to represent him in June of 2017. Regarding the Hitchmans' contention that he (Thomas) is on a vendetta against them, Thomas testified as follows: "I haven't done anything wrong. I have made a few mistakes, but they're not significant. They're just not significant. And we should not be here ten years and a half later after my mom has passed, I should not be here. millions of dollars have been spent. And I just said, if it's the last thing I do, I'm going to say this has got to stop because this is insanity. … Why doesn't someone step in and say this can't happen. So I said if it's the last thing I do, I'm going to say I'm going to make a point this cannot go on. People need to know what goes on. People in this state and in this county and -- need to be able to say this cannot go on." (Thomas' testimony on July 15, 2024.)

Thomas testified that the Hitchmans' conduct harmed him, the Trust, and all the Morgan family companies. As to the Hitchmans' assertions in pleadings they filed with the court in April 2019 objecting to the beneficiaries' settlement agreement by asserting that Thomas paid off his brother, sister, and nieces to buy their silence and to cover his financial elder abuse of Beverly, Thomas was adamant that he did not pay a penny to any family member to silence them or to "get rid" of any claims against him. The court finds this testimony to be persuasive and credible in light of all the evidence introduced during the trial, as well as based on the court's ability to firsthand observe, consider, and weigh Thomas' demeanor, tone of voice, and body language while testifying.

Thomas confirmed what other evidence also establishes, namely, that the Hitchmans never reached out to him at any time during their interim co-trusteeship to get his side of the story, even while making accusations against him.

Regarding the transfer of the $450,000 from Lamplighter Chino's Bank of America account, Thomas testified to the following sequence of events. On May 31, 2017, he started having problems seeing activities online regarding Lamplighter Chino's Bank of America account. This happened while MPI was still the lawful manager of Lamplighter Chino, and he thought there may be a network/hacking problem with Bank of America's online access. He then called Bank of America and a customer relations manager he knows was very guarded and told Thomas that there were no network/hacking

problems with the online access, that the money is safe, but that she can't discuss the matter with him. Thomas testified that at that time he started having some suspicion that the Hitchmans may have something to do with his ability to access the account online. An email Thomas sent to the Bank of America employee on May 31, 2017, at 11:29 PM corroborates this testimony by Thomas. (Exhibit 164.)

May 31, 2017, was a Wednesday. Thomas testified that he knew that on the following Monday, June 5, 2017, the mortgage for Lamplighter Chino was due to be automatically debited out of Lamplighter Chino's operating account out at Bank of America. To safeguard and ensure that Newport Pacific, Lamplighter Chino's property manager, is able to pay the mortgage and process other financial transactions, Thomas decided to start the transfer of the money to a Wells Fargo account in Lamplighter Chino's name and under the control of Newport Pacific. Thomas testified that he started the process of the transfer on June 1, 2017, after 3:49 PM. Thomas described the transfer process as follows:

> THOMAS: Because we could not confirm what was happening at Bank of America, we had to -- I always tell people to have a plan B maybe a plan C, we had to go to plan B which was set up an operating account for the operating funds for Lamplighter Chino by the property manager. And their bank of choice was Wells Fargo. So I asked them, I said, could you please set up an account then and transfer the money over so that you have uninterrupted ability to pay the mortgages, to pay the bills to continue to operate the property, deposit the checks, et cetera. They initially said they could do that. Then they called me back and said, no, we can't do that because there's not a signer in the office today. This was Thursday. So I said, okay, what else can we do? They said, if you couldn't deposit the money, we can open the account and you can -- I said, okay, we have a Wells Fargo [near] us. We don't bank there, but I can do that. So I said we're not writing to Lamplighter Chino, we don't have the account open at Wells Fargo, when will it be open? They said tomorrow. Okay. Then I will deposit it in Covina and then when you get the account open, we will move the fund and complete the transfer to Chino at Wells Fargo.
>
> (Thomas' testimony on July 16, 2024.)

The checks that Thomas used to effectuate the above stated plan were introduced into evidence and this evidence fully and completely corroborate Thomas' testimony, including time stamps showing the deposits of three of the four checks took place at 5:51 PM on June 1, 2017, and the fourth check was deposited at 3:11 PM on June 2, 2017. A memo that Thomas wrote to Newport Pacific on June 1, 2017, also further corroborates the persuasiveness of Thomas's testimony on this issue. (Exhibits 174 and 175.) Furthermore, email exchanges between Thomas and Newport Pacific dated June 2, 2017, starting at 3:13 PM further fully corroborate Thomas' testimony. (Exhibit 169.)

The court finds that all the evidence introduced during the trial, including Thomas' above listed credible testimony, clearly and fully establish that Thomas was never trying to misappropriate or abscond with the $450,000 that was moved from Lamplighter Chino's Bank of America account to Lamplighter Chino's Wells Fargo account. The court further finds that Thomas, through MPI, was lawfully allowed to make the above referenced transfers in his capacity as the lawful manager of Lamplighter Chino. The court further finds that the above listed information became known to the Hitchmans on June 13, and June 14, 2017, but nonetheless, they insisted on continuing to accuse Thomas of misappropriating, and absconding with, the $450,000.

The court is not persuaded by the Hitchmans' argument that Judge Hubbard's April 4, 2017, order rendered Thomas not authorized on June 1, 2017, and June 2, 2017, to act as the lawful manager of Lamplighter Chino. The court finds this argument to lack any merit.

The court further finds that the Hitchmans' attempt to rely on the defective and unlawful *action by written consent* (organizational document) they signed on April 24, 2017, to be without legal merit in arguing that Thomas, acting through MPI, was not the lawful manager of Lamplighter Chino on June 1, and June 2, 2017.

The court finds that the Hitchmans' attempt to rely on the retroactive application of the post June 2, 2017, *action by written consent* (organizational document) to be without legal merit in arguing that Thomas, acting through MPI, was not the actual lawful manager of Lamplighter Chino on June 1, and June 2, 2017.

The court finds that Thomas explanation for what took place and what he did regarding the transfer of the $450,000 to be credible and reasonable in showing that he was merely responding to the circumstances created by the Hitchmans acting secretly and surreptitiously in taking control over Lamplighter Chino, without giving proper notice to Thomas/MPI, the then lawful manager of Chino, or to Newport Pacific, the lawful property manager of Lamplighter Chino.

Based on the totality of all the evidence introduced during the trial, including the credible testimony and explanation given by Thomas, the court finds that Thomas' proposal to draw $1.5 million on Ontario's line of credit to provide a business loan to Covina Hills was reasonable and consistent with then existing Morgan family business plans. The court further finds that the Hitchmans' attempt to make an issue out of this conduct was not supported by any facts the Hitchmans' developed as part of their interim co-trusteeship. Accordingly, the court finds that the July 10, 2017, letter Glowacki sent to Thomas' attorney, with a carbon copy to Bank of America's attorneys, containing the Hitchmans' invalid concerns regarding this $1.5 million, to be relevant in determining Team Hitchman's frame of mind in dealing with Thomas, the main beneficiary of the Trust they were charged with protecting and administering. (Exhibit 286.)

When asked about the impact of Glowacki's July 10, 2017, letter on Thomas' relationship with Bank of America, Thomas stated: "Bank of America severed our relationship of between 50 and 70 years, banking relationship. They sent a gentleman from the special assets group in Boston and special assets does not mean in a positive way. That's not a term that banks use positively. … he came to terminate our banking relationship with Bank of America. And and they proceeded to wrap up our credit facilities, our borrowings, our CDs. And it was nothing short of catastrophic." (Thomas' testimony on July 16, 2024.) Thomas further testified that prior to the Hitchmans inserting themselves into his business relationship with Bank of America, no one from Bank of America ever expressed any concerns to Thomas about the impact of the Trust litigation on his relationship with Bank of America.

Thomas testified that he is still suffering from the impact of losing his long-standing business relationship with Bank of America. He further testified that in order for him to pay the cost of Litigation after the Hitchmans took over Lamplighter Chino and he lost his line of credit with Bank of America,

he had to sell some of his stock investments, including stocks he had in Avalara. (Exhibits 654, 708, 804, and 805.) Thomas testified that from late June 2017 to the end of June 2019, he spent close to $1.9 million to pay his attorneys' fees for legal services relating to the Hitchmans petitions against him. Thomas testified that he came up with this money from selling Avalara stocks he was not otherwise planning on selling.

When asked about the June 18, 2018, notice from PNC about the event of default resulting from the Hitchmans taking over Lamplighter Chino (exhibit 541), Thomas testified as follows: "*Question by Thomas' attorney:* You might recall this notice came about 16 days after Mr. Benz notified PNC on the change in managers? *Answer by Thomas:* Yes, which is immediate in the world of banking. *Question by Thomas' attorney:* They tend to move more with glacial speed? *Answer by Thomas:* That, they do. *Question by Thomas' attorney:* After this e-mail to you and counsel for the Hitchmans describing an event of default, did either the Hitchmans or their lawyers reach out to you or to your knowledge anyone on your side to express remorse for putting your guarantee at risk? *Answer by Thomas:* No. *Question by Thomas' attorney:* Did they reach out to you or to your knowledge anyone on your side to work on a plan of action to deal with this problem? *Answer by Thomas:* No. *Question by Thomas' attorney:* In this timeframe, did they provide you with copies of their communications of PNC? *Answer by Thomas:* No, I don't believe so, no." (Thomas' testimony on July 16, 2024.)

Comparing Team Hitchman's immediate, within minutes, reaction to Team Nancy's improper complaint about the Hitchmans' second supplement, as described above, with Team Hitchman's lack of reaction and lack of response to a legitimate notification they received from a bank letting them know that Thomas, the main beneficiary of the Trust, is being placed in jeopardy because of an event of default that they (the Hitchmans) caused on a $14 million loan, provides more of the evidence that the court relied upon in reaching the findings as detailed in this statement of decision.

Regarding the $6 million CD in Lamplighter Chino's account, Thomas testified that the CD was funded partially with $250,000 he lent Lamplighter Chino from his children's trust. He further testified that even though the Hitchmans knew all along that the CD contained pooled funds, and even though they cashed the CD in August of 2017, he was not notified that the CD was liquidated by the

Hitchmans until late November 2017. He further testified that his children's trust has still not yet been repaid the $250,000 it is owed.

Thomas testified that the dispute between him and Nancy was always because she did not like the way he ran the family businesses. Thomas testified that from the start of the dispute between him and Nancy, Team Nancy always claimed that he was not making proper distributions from Lamplighter Chino, and that such claims were false. Thomas testified that his accountings clearly show that he always made distributions.

Thomas confirmed that when the Hitchmans' co-trusteeship ended, they turned over to him as the Trustee of the Trust less than $50,000 in cash.

After weighing the credibility of all the witnesses who testified, and after considering all the evidence introduced during the trial, the court finds that Team Hitchman made Thomas to be someone other than what the evidence proved during the trial. It is very clear to the court that Team Hitchman bought into everything Team Nancy said about Thomas. By doing so, the Hitchmans breached their fiduciary duties, including the duty of impartiality, and they allowed such breaches to color every aspect, of every step and every action they took as interim co-trustees.

Thomas testified that Pech never advised him before filing the March 2017 *lip service* accounting that the payment of attorney fees had to be broken down, and paid separately, between Trust related legal services and personal legal services. Thomas testified that Pech specifically told him that it was appropriate for the Trust to pay all of Pech's legal fees. "Every time he submitted a bill, he said, pay -- yeah, here they are; here's the bill. And I said -- and they're to be paid from? He said pay them out of the trust." (Thomas' testimony on July 18, 2024.) This testimony by Thomas is contrary to Pech's testimony during the trial. During his testimony, Pech stated that he told Thomas, by email, that Thomas could not use Trust funds to pay Pech for legal services provided to Thomas in his personal capacity. The court finds, based on the totality of all the evidence, including the court's ability to observe firsthand the demeanor, body language, and tone of voice of both Thomas and Pech, that Thomas' testimony on this issue is credible and persuasive, whereas Pech's testimony on this issue is not credible and not persuasive.

Thomas admitted that during his 2016 deposition by Team Nancy, he was asked if he ever attempted to segregate the attorney fees incurred for personal claims from the attorney fees incurred for Trust related claims. Thomas testified that this line of questioning by Nancy's attorneys did not cause him to appreciate and understand that the Trust could not pay for his personal attorney fees. Thomas insisted that it was not until late 2017 when he learned that he could not use Trust funds to pay for personal legal representation. The court is not persuaded. The court found Thomas to be a smart, sophisticated, knowledgeable, successful, and experienced business executive. The court finds that Thomas knew or should have known, during his initial trusteeship, that he could not use Trust funds to pay for his personal legal representation. However, that by itself is not the end of the legal inquiry regarding Thomas' claim that the Hitchmans breached a fiduciary duty they owed to the Trust by not pursuing a claim against Pech for malpractice.

Regarding his relationship with Pech, Thomas testified that Pech started representing Thomas around 1998. Thomas testified that Pech could be a challenging person to deal with because of his (Pech's) *big ego* and because Pech is opinionated and "does not play well with others." Thomas confirmed that he liked Pech's style of practicing law.

Thomas admitted that in September 2024, after Beverly passed away, he signed documents relating to the Avalara stocks, trying to present himself as the executor of Beverly's estate when he was not the appointed executor. (Exhibit 1009.) Thomas testified that he was named as her executor in her testamentary documents, including the Trust. Thomas explained that he signed the documents based on the advice of Pech. The court considers this evidence probative and relevant in assessing the credibility of Thomas, however, the court finds that this information was **not** known to Team Hitchman when they made their allegations of tax related wrongdoing against Thomas in connection with the Avalara transactions. Therefore, in assessing the frame of mind of the Hitchmans when they made their tax fraud and tax wrongdoing allegations against Thomas, the court does not find much relevance or much probative value to the above listed evidence.

After-discovered-facts by the Hitchmans do not justify their pre-discovered biased and partial actions. This evidence was considered by the court before making the above stated findings relating to

the Hitchmans' plan to squeeze a release from Thomas without fact-based evidence supporting their allegations of tax fraud. The court also considered this evidence is assessing Thomas' credibility as a witness.

Regarding the Avalara stocks, Thomas testified that around 2012 he talked with Beverly regarding the Avalara stocks, and she suggested giving him the stocks as a gift. Thomas testified that he told Beverly that they should not do that because of lack of available liquid fund to pay the gift tax, and he suggested that he buys her share of the Avalara stocks by way of a promissory notes since doing so will not create a taxable event. According to Thomas, Beverly agreed to this plan. Based on the totality of all the evidence introduced during the trial, including the court's ability to firsthand evaluate Thomas' demeanor, body language, and tone of voice while testifying, the court finds this testimony by Thomas to be credible and persuasive.

Thomas testified that Nancy sued him over the Avalara stocks, and that she asked him questions about the Avalara transaction during his 2016 deposition before the Hitchmans were appointed as interim co-trustees.

Thomas confirmed that after he was reinstated as Trustee of the Trust, he filed a claim against Pech to recover money the Trust paid Pech for personal representation. However, the claim was dismissed as untimely.

In connection with the *Diaz claim* relating to the *taking lawsuit* between the City of Chino and Lamplighter Chino, Thomas admitted that when he filed his objections to the Hitchmans' petition to approve the settlement, he (Thomas) did not raise the *Diaz claim* as one of the grounds for his objection. The court considers this failure on Thomas' part to be a knowing failure, or at least a *should-have-known* failure, since the settlement agreement contained a release of all claims, which necessarily and logically includes the *Diaz claim*. The court finds, based on the totality of all the evidence introduced during the trial, including the undisputed fact that Thomas filed limited objections to the petition to approve the settlement agreement between the City of Chino and Lamplighter Chino without objecting specifically to the release of claims, that no damages are warranted based on the Hitchmans' breach of fiduciary duty relating to the *Diaz claim*.

Thomas argues that the settlement agreement between Lamplighter Chino and the City of Chino was signed by Bruce H. on June 13, 2018, in his capacity as the manager of Lamplighter Chino, and the Mayor of the City of Chino signed the settlement agreement on June 21, 2018, (exhibit 1111), however, on June 21, 2018, the Hitchmans only sent to Thomas the unsigned copy of the settlement agreement. Thomas argues that this conduct by the Hitchmans shows that the "die was cast," and the Hitchmans were merely misdirecting. Thomas also argues that he notified the Hitchmans about the *Diaz claim* in February 2018, long before the settlement agreement was reached. Thomas is correct regarding his chronology of events.

However, the court finds that when the Hitchmans filed their petition to approve the settlement agreement in July of 2018, Thomas was on notice about their agreement to resolve the *taking lawsuit* without pursuing or preserving the *Diaz claim*, and he did not object to the settlement agreement before the court approved it. Certainly, the court is satisfied that the Hitchmans did not do as Thomas asked them, namely, to seek to preserve the *Diaz claim*. However, by failing to object to the settlement agreement based on this failure, Thomas lost the ability to obtain damages from the Hitchmans relating to the *Diaz claim*, especially when considering that Thomas benefited from the approval of the settlement agreement in the *taking lawsuit*.

During his testimony, Thomas confirmed that in August of 2014, as the Trustee of the Trust he transferred $1 million from the Trust to his children's trust. Thomas also confirmed that he is the lifetime beneficiary of his children's trust. Toward the end of 2015, over a year after this transfer, Thomas restored the $1 million to the Trust without paying the Trust any interest. Thomas confirmed that in his deposition he testified that this transfer was a mistake that he corrected as soon as he discovered it. Thomas testified similarly during the trial.

The Hitchmans attempted to attack Thomas' credibility by showing that (1) Pech's time entries from August 2014 could be interpreted to show that Thomas transferred the $1 million to be used as a collateral for a line of credit; (2) a declaration submitted by Thomas in December 2016 claims that he made the transfer to pay estate taxes; and (3) Thomas alleged in his objections to the Hitchmans' H-

17200 Petition that the transfer was not a loan to the children's trust and that he made it temporarily to protect the Trust from a then existing risk of a freeze of Trust assets (exhibit 866, page 20, lines 1-14).

The court finds the Hitchmans' attempt to impeach Thomas' credibility as listed above to be probative and relevant to assessing Thomas' credibility. Accordingly, the court gave appropriate weight to this evidence in reaching all the findings as listed in this statement of decision. However, as far as giving this testimony weight in connection with the Hitchmans' attempt to justify their conduct in filing the H-17200 Petition, the court finds this testimony to have a much less probative value and relevancy in light of the totality of all the evidence introduced during the trial, not the least of which is the fact that the Hitchmans never took the time to actually ask Thomas for his side of the story regarding this issue before they filed their H-17200 Petition.

Family disputes are never pleasant, especially when money is involved. The court is not passing judgment on how each of the siblings felt about each other, or about who was right and who was wrong between Nancy, John, and Thomas. Doing so is not necessary to resolve the issues before the court. However, in assessing how the Hitchmans did their job as interim co-trustees after finding that they were fully on board with carrying out Team Nancy's wishes, the court had to give appropriate weight, as little as it may be, to the following exchange between Nancy and John talking about Thomas in November 2013, while Beverly was still alive.

John tells Nancy: "Oh well. Look on the bright side. He'll kill her off and do them both a favor. What a pathetic shell of a woman she was, no?" Nancy responded: "Yeah, it's pretty sad to watch her decline. Thanks, John; you made me feel better. Mike and I had the thought today that maybe he is going down there so frequently because he's poisoning her." (Exhibit 996.)

The court finds that this strong negative view that Nancy and John had towards Thomas was transferred, figuratively speaking, from Nancy and John to their attorneys, and subsequently to the Hitchmans through the close relationship between Team Nancy and Team Hitchman. The job of a court appointed private professional fiduciary is hard, demanding, and sometimes thankless. Especially so when the court appointed private professional fiduciary must navigate turbulent, blustery, and rough

waters resulting from long simmering disputes between siblings. Nonetheless, that should never be an excuse for a court appointed trustee's breaches of fiduciary duties.

ADDITIONAL FINDINGS

The court finds that during their interim co-trusteeship the Hitchmans, either jointly or separately, breached the following fiduciary duties: duty to administer the Trust according to the Trust instrument (section 16000), duty of loyalty to the beneficiaries (section 16002), duty of impartiality (section 16003), duty to take reasonable steps to preserve Trust property (section 16006), duty not to improperly delegate (section 16012), duty to participate in the administration of the Trust (section 16013), duty to apply skills (section 16014), and the duty to administer the Trust with reasonable care (section 16040). The court further finds that the Hitchmans breached their general duty of candor.

The court finds that the Hitchmans promised to provide *quick action* if appointed as interim co-trustees of the Trust, and that after they were appointed, the Hitchmans did in fact repeatedly provide *quick action* mostly in support of Team Nancy's positions. The court finds that this constitutes a breach of the Hitchmans fiduciary duties to the Trust and to Thomas in his capacity as a beneficiary of the Trust.

The court finds that in filing their H-17200 Petition, including the fraud cause of action, the Hitchmans for all practical purposes filed a Trust contest challenging the validity the very same instrument they were appointed by the court to administer and protect. The court finds this conduct to constitute a breach of the Hitchmans' fiduciary duties.

The court finds that before deciding to file any of their petitions against Thomas, especially the H-17200 Petition, Team Hitchman did not conduct anything close to resembling a legitimate good faith investigation of the facts. In reaching this conclusion, the court considered the totality of all the evidence introduced during the trial, including the invoices and billing records of Team Hitchman's attorneys and the testimony of Glowacki, Carico, and Benz regarding the very little amount of time they spent reviewing records and documents before the decision to file a petition against Thomas was made.

The court finds that Thomas failed to introduce sufficient evidence to establish that the Hitchmans knowingly failed to disclose to Team Thomas the Hitchmans' relationship with Mr. Coombs. Accordingly, the court finds that the Hitchmans did not breach any fiduciary duty to the Trust and/or to Thomas in connection with their business relationship with Mr. Coombs.

The court finds that the Hitchmans had sufficient information to be put on notice about their fiduciary duty to either (1) file a statute of limitations compliant claim against Pech for malpractice in Pech's representation of Thomas in his capacity as the trustee of the Trust, or (2) to take reasonable action to preserve the statute of limitations in connection with this claim. The court further finds that the intentional conduct of Thomas and Pech in not providing to the Hitchmans relevant documents in Thomas/Pech's possession, when ordered to do so by the court, contributed to the Hitchmans' failure to file the malpractice claim for the total amount of damages inflicted on the Trust. However, notwithstanding this contribution by Thomas and Pech, the court finds that the Hitchmans were fully aware and had evidence to initiate, attempt to preserve, or at least further investigate a malpractice claim against Pech for damages in the amount of $256,650. (ROA 1340.)

The court finds that Thomas and Pech's litigation strategy contributed to the damages caused by the Hitchmans' failure to file or preserve the malpractice claim. The court finds that by Thomas and Pech withholding from the Hitchmans different relevant documents and invoices, until after intervention by the Supreme Court resulting in the Court of Appeal's opinion, and even more withholding after the opinion was issued, Thomas and Pech contributed to the Hitchmans' failure to file and preserve the **full** extent of Pech's malpractice.

The court finds that based on applicable legal principles, including equity considerations, this contribution by Thomas and Pech mitigates the amount of damages to be assessed against the Hitchmans under this specific claim. In reaching this finding regarding mitigating the Hitchmans' liability, the court also considered the evidence relating to Thomas' deposition testimony in 2017 regarding Thomas' discovery of this malpractice by Pech.

In reaching this conclusion, the court considered and gave weight to the undisputed fact that after reviewing Pech's legal invoices, the Hitchmans calculated the correct amount that should have

been designated for legal fees paid by the Trust to Pech for his personal representation of Thomas to be "a minimum of $1 million." Nonetheless, since many of these legal invoices were kept from the Hitchmans until after the Court of Appeal issued its opinion, this court concludes that equity and fairness principles mandate that the damages assessed in connection with this claim be based on the $256,650 discussed above.

The court finds that the Hitchmans breached their fiduciary duty as interim co-trustees by failing to file or preserve a legal malpractice claim, on behalf of the Trust and against Pech in his capacity as the Trust's attorney. In reaching this conclusion, the court considered the entirety of all the evidence introduced during the trial, including the June 6, 2019, entry in exhibit 792.[93]

In connection with all the breaches of all the fiduciary duties detailed in this statement of decision, the court considered the impact of Pech's behavior, as Thomas' attorney, on the Hitchmans and their attorneys. The evidence introduced during the trial proved convincingly that members of Team Hitchman did not respect Pech as an attorney, did not like him, and saw him as incompetent, condescending, obstructionist, patronizing, and lacking trustworthiness. This certainly made the job of members of Team Hitchman much harder and less pleasant. Nonetheless, the court finds that none of that provides an excuse, a defense, or any significant mitigation to the Hitchmans' breaches of fiduciary duties.

Based on all the evidence introduced during the trial, the court finds that in June 2017 the Hitchmans did not possess any of the requisite experiences to manage Lamplighter Chino, and that their action in taking over Lamplighter Chino was not the result of uncovering any malfeasance or negligence by MPI and/or Thomas, but it was solely done for the purpose of the Hitchmans controlling the money generated by Lamplighter Chino. The court gave appropriate weight to the fact that Lamplighter Chino was not a Trust asset, rather, it was an independent business entity that the Trust held an interest in. The court finds that the Hitchmans' conduct in taking over Lamplighter Chino was

[93] An entry on the Hitchmans' billing/time records dated June 6, 2019, indicates the following activity by Bruce H.: "Conference with attorney Roehl regarding tolling agreement, strategy for lawsuit against Attorney Pech." (Exhibit 792, page 198.)

not for the benefit of the Trust. The evidence introduced during the trial also established that the Hitchmans mismanaged Lamplighter Chino resulting in harm and damage to the Trust.

The court finds that the Hitchmans breached their fiduciary duty to the Trust and to Thomas, as a beneficiary of the Trust, by accusing Thomas of misappropriating, and absconding with, $450,000 from Lamplighter Chino's bank account.

The court finds that the Hitchmans breached their fiduciary duty to the Trust and to Thomas, as a beneficiary of the Trust, by knowingly repeating the accusation that Thomas misappropriated, or absconded with, $450,000 of Lamplighter Chino's money while actually and fully knowing that such accusation was false, and by knowingly falsely representing to the court that a prior court order confirms that Thomas had absconded with $450,000 of Lamplighter Chino's funds. The court finds that this breach of fiduciary duties by the Hitchmans satisfies, by clear and convincing evidence, the legal requirement under Civil Code section 3294 triggering the availability of potential exemplary damages for Thomas against the Hitchmans.

The court finds that Team Hitchman and Team Nancy had at a minimum an informal common interest agreement whereby members of both teams would communicate and have this common interest component of their relationship as the mechanism to keep their communications confidential and secret from Team Thomas. The court finds that by having this common interest relationship with Team Nancy, the Hitchmans breached their fiduciary duty to the Trust and to Thomas, as a beneficiary of the Trust, which caused harm and damage to the Trust and to Thomas.

In connection with the H-17200 Petition, the court addressed at length in this statement of decision the sixth cause of action (fraud), and some of the other causes of action, but the court did not address all of the causes of action. However, the court considered and gave appropriate weight to the entirety of the H-17200 Petition, and the court also considered and gave appropriate weight to the fact that the Hitchmans, in filing the April 2018 supplemental 706, did not list nor did they disclose any of the claims they filed against Thomas in their November 2017 H-17200 Petition.

In connection with the Hitchmans' First and Final Accounting Petitions that are before the court, Thomas is not disputing the accuracy of the entries in the relevant accountings, rather, he is

objecting to all the Hitchmans' fees, whether ordinary or extraordinary, including fees the Hitchmans previously paid themselves or still asking to be paid. Thomas is also objecting to the majority of the Hitchmans' attorneys' fees previously paid or still pending a request for payment. Thomas is also objecting to various expenses, including expert witness fees, incurred by the Hitchmans in pursuit of litigation.

Bruce H. testified that if the court was to find that the Hitchmans pursued a litigation with bias, that they did not act impartially, and they did not communicate with the beneficiaries, then the court should hold the Hitchmans accountable. Based on the totality of all the evidence introduced in the trial, the court finds that the Hitchmans' decision to pursue litigation against Thomas was a biased decision, and that the Hitchmans did not communicate nor act impartially in their dealings with Thomas as compared with Team Nancy.

Based on the totality of all the evidence introduced during the trial, the court finds that the Hitchmans' conduct in pursuing **any and all litigation** against Thomas to be the result, and the byproduct, of the multiple and repeated breaches of the Hitchmans' fiduciary duties to the Trust and to Thomas, as detailed in this statement of decision. Accordingly, the court sustains all of Thomas' objections to the Hitchmans' trustee fees, attorney fees, costs, and expenses relating to any aspect of any litigation, filed or contemplated, by the Hitchmans against Thomas. This finding does not apply to the Hitchmans' work on the supplemental 706 tax return, and it does not apply to the Hitchmans' work to settle the *taking lawsuit*, and to seek the court's approval of the resulting settlement agreement.

As to all the money spent or claimed by the Hitchmans, in their capacity as interim co-trustees and former interim co-trustees, for any and all expenses, costs, and fees (including attorney fees) relating to any litigation against Thomas, the court finds that such expenditure of money did not benefit the Trust and was not spent for the benefit of the Trust.

The court finds that the Hitchmans' conduct after the beneficiaries reached the confidential settlement agreement was laser focused on putting unfair and unwarranted pressure on Thomas to get him to give the Hitchmans a release. The court specifically finds that all the tax fraud and tax wrongdoing related allegations that the Hitchmans levied against Thomas were knowingly made by the

Hitchmans for the sole purpose of obtaining a release from Thomas, and without the Hitchmans having a valid, proper, and good faith belief that Thomas committed tax fraud and/or wrongdoing. The court finds that this breach of fiduciary duties by the Hitchmans satisfies, by clear and convincing evidence, the legal requirement under Civil Code section 3294 triggering the availability of potential exemplary damages for Thomas against the Hitchmans.[94]

Based on the totality of all the evidence introduced during the trial, the court finds that any and all expenses, trustee fees, attorney fees, and costs incurred by the Hitchmans in connection with the preparation and filing of the supplemental 706 estate tax return to be proper and lawful expenses, fees, and costs. The court specifically finds that the Hitchmans' conduct in pursuing and working on the supplemental 706 tax return to not have been tainted by any of the breaches of fiduciary duty described in this statement of decision. However, this finding does not apply to any expenses, costs, or attorney fees incurred by the Hitchmans in pursuing a claim of failure to disclose to the IRS in connection with the Avalara stocks.

Notwithstanding the repeated and multiple breaches of fiduciary duty described in this statement of decision, the court finds that it is fair and reasonable to approve all expenses, fees, and costs, incurred by the Hitchmans in administering the Trust starting from the date Judge Hubbard appointed them on March 29, 2017, and up until the beneficiaries reached a settlement agreement on April 9, 2019.

However, any costs, fees, or expenses incurred by the Hitchmans and/or their attorneys, starting on April 9, 2019, is ordered disallowed and/or surcharged even if it could potentially be characterized as being related to the administration of the Trust. The court is specifically making a finding that because of the severity and extent of the breach of fiduciary duty in connection with the Hitchmans'

[94] Thomas takes the position that the Hitchmans' conduct amounts to the Hitchmans committing attempted extortion, a crime. Thomas cites Penal Code section 523 and *Flatley v. Mauro* (2006) 39 Cal. 4th 299 in support of this position. The court declines the invitation to decide if the Hitchmans' conduct amounts to a crime because doing so is not necessary to resolve the issues before the court. Furthermore, doing so will deprive the Hitchmans of due process of law because they have constitutional rights applicable when a court is determining criminality, but not applicable in a civil trust-related dispute where the parties are fighting over money. Accordingly, no one should interpret the court's findings in this case as an indication, in any way, shape, or form, one way or the other, regarding Thomas' accusation that the Hitchmans committed a crime.

conduct in trying to squeeze a release from Thomas by falsely alleging that he engaged in tax fraud and tax wrongdoing, the court finds that it will be almost impossible to segregate any of the Hitchmans' administrative actions from their tainted actions starting on April 9, 2019. The court finds that everything the Hitchmans' did starting on April 9, 2019, was fully tainted and colored by the breach-infested-plan to pressure Thomas into giving them a release.

Based on the totality of all the evidence introduced during the trial, the court finds that any and all expenses, trustee fees, attorney fees, and costs incurred by the Hitchmans in connection with everything they and their attorneys did relating to secretly taking over Lamplighter Chino to be the result and the byproduct of the Hitchmans' breaches of fiduciary duty as detailed in this statement of decision. Accordingly, expenses, fees, and costs incurred by the Hitchmans, including their attorney fees, relating to the taking over of Lamplighter Chino are ordered disallowed/surcharged.

In connection with Thomas' claim for damages based on his loss of appreciation in the Avalara stocks because, according to him, he was forced to sell the Avalara stocks to pay his attorneys to defend himself against the Hitchmans' breach-infused litigation against him, the court finds this argument to be an interesting example of *thinking outside the box with a clever twist*.[95]

Thomas cites Civil Code section 3333 in support of his position that this measure of damages is compensable. Civil Code section 3333 provides that for the "breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the **detriment proximately caused** thereby, whether it could have been anticipated or not." (Emphasis added.) The court is accepting Thomas' position that the amount of money he had to pay his lawyers to defend against the Hitchmans' breaches of fiduciary duty is a compensable damage. However, Thomas is trying to carry this principle one step further by arguing that the loss of potential future appreciation in the Avalara stocks that he had to sell to pay the attorney fees is also a compensable damage. The court can envision a fact pattern where Thomas'

[95] The court does not imply anything negative by using this description, the court merely finds this request to be an interesting request in this type of probate litigation.

argument will carry the day, but the court is not convinced the facts of this case, as presented during this trial, are sufficient to meet Thomas' burden of proof.

Even if the court is to assume that Thomas convinced the court that selling the Avalara stocks was the only way for him to pay his attorneys, the court finds the logic behind this request for damages, in this specific case, to be too speculative to carry the day. In order for Thomas to prevail on this claim for damages, the court has to assume that *but for* this litigation, Thomas would have kept the Avalara stocks long enough for their value to substantially increase. Even if the court accepts Thomas' position that this was his plan, it is too speculative for the court to just assume he would have stuck with this plan *but for* this litigation. Thomas is a smart and sophisticated business executive with many investments. Maybe, just maybe, even if this litigation did not happen, Thomas may have had a business opportunity come up that would have caused him to sell the Avalara stocks, around the same time and for the same price, as he did to pay his attorneys.

Also, if the court adopts Thomas' above listed theory for calculating damages as a proper way to calculate damages in a case like this one, what would the court do if after Thomas had sold the Avalara shares, contrary to his plans, the price of the Avalara shares tumbled and substantially fell. Could the Hitchmans ask to be reimbursed for causing Thomas to save money by selling his stocks contrary to his plans. The court is not persuaded that Thomas's theory for calculating damages relating to his sale of the Avalara stocks is a proper theory to calculate damages in this specific case.

The court finds that Thomas' reputation with Bank of America was damaged as a result of the Hitchmans' conduct in connection with the Hitchmans telling Bank of America Bank that Thomas misappropriated $450,000 out of one of Lamplighter Chino's accounts with Bank of America. In reaching this conclusion, the court took into account the entirety of all the evidence introduced during the trial, including the substantial evidence showing that within weeks of the Hitchmans accusing Thomas of misappropriating $450,0000, Bank of America started the process of calling/ending all lender-borrower relationships between Bank of America and business entities connected to Thomas. (Exhibits 311, 294, 295, 317, and 386.)

The Hitchmans argue that Thomas "has no pleaded a cause of action for defamation, libel *per se*, or slander *per se*," and that Thomas' pleadings "fail to identify the specific statements that Tom contends are defamatory." (Hitchmans' closing written brief, pages 165 – 166.) The court respectfully disagrees. In his Amended Petition, Thomas specifically alleges that the Hitchmans "spent still more funds preparing an Affidavit that Bruce Hitchman filed with Bank of America making" the false allegation that Thomas misappropriated $450,000. In addition, and more importantly, Thomas attached to his Amended Petition the alleged false written statement submitted by the Hitchmans to Bank of America. Thomas' Amended Petition specifically states that the true "and correct copies of the Declarations and **false Affidavit** are **attached** hereto." (ROA 2590/exhibit 887, pages 39 – 40. Emphasis added. Also ROA 2591 and 2592.)

Accordingly, the court finds that Thomas' Amended Petition complies with the requirements as set forth above regarding the applicability of defamation *per se*, specifically, the court finds that Thomas' Amended Petition specifically identified the description of the allegedly defamatory statements made by the Hitchmans to Bank of America and included a verbatim recitation of what he claimed to be the defamatory statements made by the Hitchmans.

In connection with the defamatory statements the Hitchmans made to Bank of America accusing Thomas of misappropriating $450,000, the court expressly finds, based on the totality of all the evidence introduced during the trial, that such accusation constitutes defamation *per se* for which damages are conclusively presumed consistent with the legal principles detailed in this statement of decision. In reaching this conclusion, the court considered that while asking to freeze one of the bank's accounts, when a court appointed fiduciary informs the bank that one of their customers **misappropriated** close to half a million dollars from one of the banks' accounts, this allegation comes very, very, close to accusing this customer of a crime called theft or embezzlement. As the Court of Appeal teaches us in *Barnes-Hind, supra,* the clearest example of defamation *per se* is an accusation of a crime.

In connection with the court's findings and orders relating to the defamatory statements made by the Hitchmans to Bank of America and the damages assessed for the reputational damage suffered

by Thomas, the court is not imposing any such reputational damages for any privileged statements/publication made by the Hitchmans and/or their attorneys to the court or in court pleadings, consistent with Civil Code section 47 (b).[96]

In connection with the Hitchmans' reliance on the advice of counsel defense in the face of Thomas' allegations of repeated breaches of fiduciary duty, and notwithstanding the excellent legal arguments advanced by the Hitchmans' excellent trial attorneys, the court finds that the evidence introduced during the trial is devoid of either Bruce H. or Lee Ann persuasively justifying any alleged specific complained-about-conduct based upon their joint or separate genuine reliance on a specific legal advice they received from any of their attorneys. One example of such lack of persuasive evidence is the Hitchmans' attempt to say that they did not do anything wrong by signing organizational documents (actions by written consent) without having any factual basis to support what they signed (namely attacks on Thomas) and then sending the signed documents to their attorney while telling the attorney to "feel free to use **whichever ones** you [the attorney] find acceptable." (Exhibit 138. Emphasis added.)

In weighing the evidence introduced during the trial relating to the defense of advice of counsel and its applicability, if any, the court gave appropriate weight to the fact that when the Hitchmans received the advice from two of their most experienced counsel in the area of taxation, namely, MacDonald and Morris, stating that there is no duty to disclose relating to the IRS and the supplemental 706 return, the Hitchmans ignored this advice to counsel that was not in line with the singular objective of the Hitchmans at the time to try to squeeze a release from Thomas. This evidence of the Hitchmans deciding to ignore the advice of their counsel, when such advice was beneficial to Thomas, was not dispositive on this issue, but it was relevant and probative.

The court finds that the Hitchmans failed to introduce sufficient competent and persuasive evidence to show that the *advice of counsel* defense is successfully established to defeat any of the breaches of fiduciary duty that they committed in this case. In assessing all the evidence introduced

[96] Civil Code section 47 (b) provides, in relevant parts, that a "privileged publication … is one made … In any … judicial proceeding."

during the trial regarding the applicability of this defense, and whether the Hitchmans met their burden of proving it, the court took into account and considered that the Hitchmans, and the attorneys upon their advice they are seeking to rely as a defense to their breaches, have entered into a common interest agreement in connection with this litigation. This piece of evidence was not dispositive on this issue, but it was relevant and probative. Furthermore, before deciding that this defense is not sufficiently established to relieve the Hitchmans from liability, the court considered and gave proper weight to the terms of the Trust allowing the trustees to rely on the advice of experts, including attorneys. (Exhibit 23, including section 10.12.)

The court finds that as result of the allegations the Hitchmans submitted to Bank of America against Thomas, Bank of America submitted a bill to be reimbursed in the amount of $28,112 for their costs after they were "embroiled in the various claims" relating to the Hitchmans' allegations. (Exhibit 417.) Thomas paid $4,281.50 in connection with this request for reimbursement.

As to all the findings of breach of fiduciary duties as detailed in this statement of decision, the court specifically finds that based on the totality of all the evidence introduced during the trial, Thomas met his initial burden of proving the existence of each relevant fiduciary duty, and that the Hitchmans failed to perform it. Furthermore, the court expressly finds that thereafter, and as to all the breaches of fiduciary duty that Thomas proved as detailed in this statement of decision, the Hitchmans failed their burden to justify their actions. In making these findings as to all the breaches of fiduciary duty detailed in this statement of decision, the court considered and weighed the facts and circumstances as they reasonably appeared at the time of the conduct constituting each of the breaches of fiduciary duty, and **not** in hindsight based on any after-acquired fact.

The Hitchmans argue that they did not breach any of their fiduciary duties. They also argue that even if the court is to find that they did in fact breach any of their fiduciary duties, they should be relieved of liability pursuant to section 10.4 of the Trust. (Exhibit 23.) Section 10.4 is titled *Right of Indemnification and Reimbursement*, and it provides the following, with emphasis added.

> A Trustee shall be entitled to indemnification and reimbursement from the trust estate of which that person serves as Trustee for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in **good faith**, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner **reasonably** believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust **and** its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of trust, by acts or omissions, committed **intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries**.

Thomas argues that the Hitchmans, as private professional fiduciaries appointed by the court, are not entitled to the protections afforded in section 10.4 because, Thomas asserts, the language of section 10.4 when read in conjunction with the entirety of the Trust should be interpreted to only apply to the successor trustees (family members) named in the Trust instrument, and not to strangers/PPF appointed by the court. The Hitchmans, on the other hand, argue that no such distinction is made in the Trust, and they are entitled to the exculpatory protection of section 10.4. The court need not reach this issue to resolve the matters pending before the court.

The court finds that even if section 10.4 applies to the Hitchmans, this section does not relieve them of liability for any of the breaches of their fiduciary duties detailed in this statement of decision. The court reaches this conclusion because based on the totality of all the evidence introduced during the trial, the court finds that the Hitchmans are not relieved of liability based on the specific language of section 10.4. More specifically, the court finds that as to each and every single one of the breaches of fiduciary duties detailed in this statement of decision, the Hitchmans did **not** act in a manner **reasonably** believed by the Hitchmans to be within the scope of their authority **and** in the best interest of the Trust and at least one of its beneficiaries, namely Thomas.[97]

Furthermore, the court finds that as to each and every single one of the breaches of fiduciary duties detailed in this statement of decision, the Hitchmans' actions and omissions, giving rise to said

[97] Certainly, the evidence proved that what the Hitchmans did was in the best interest of Nancy, John, and Nancy's daughters. That' not good enough to trigger the protection of section 10.4.

breaches, were **intentional**, with **gross negligence**, or with **reckless indifference** to the interests of a at least one of the beneficiaries of the Trust, namely, Thomas.[98]

The court finds that other than what is included in this already *very long* statement of decision regarding material inconsistencies between what the Hitchmans and their witnesses testified about in court during the trial, and what they said during their respective depositions or in their internal communications, there are many additional material inconsistencies that the court did not list in this statement of decision. Nonetheless, the court considered and gave appropriate weight to **all** the evidence of such inconsistencies in reaching all the findings and issuing all the orders listed in this statement of decision. This large number of inconsistencies not listed in this statement of decision is obviously reflected in the reporter's official transcript of the trial and discussed in Thomas' 108-page closing brief and 734 PowerPoint slides. Argument is not the same as evidence, and the court only considered evidence introduced during the trial, and arguments based on such evidence.

In connection with the Hitchmans' action in filing a petition seeking the court's approval of the settlement reached between the City of Chino and Lamplighter Chino relating to the *taking lawsuit*, the court finds that the Hitchman did not breach any fiduciary duty by filing this petition seeking court approval. The court does not find persuasive Thomas' argument that since all the members of Lamplighter Chino agreed to the settlement, the Hitchmans should not have filed a petition seeking court approval. This position may be reasonable in a different case where all the beneficiaries are in agreement, but not in this case and not in light of all the facts introduced during the trial. The Hitchmans did exactly the prudent thing by seeking court approval of the settlement agreement. If they had done the same in connection with all the other litigation they prepared for and initiated, the Hitchmans would most likely not be in the situation they find themselves in as a result of this trial.

---

[98] Acting with reckless indifference, or with reckless disregard, is present when the trustee shows a disregard for the interest of a beneficiary. (*Estate of Collins* (1977) 72 Cal. App. 3rd 663.) Gross negligence is defined as either want of even scant care or an extreme departure from the ordinary standard of conduct. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal. 4th 747.)

The court finds that by liquidating the $6 million certificate of deposit belonging to Lamplighter Chino and not reimbursing the $250,000 belonging to Thomas' Children Trust, the Hitchmans breached their fiduciary duty as interim co-trustees causing damages as listed in the orders below.

In connection with the court's findings relating to the breaches of fiduciary duties as detailed in this statement of decision, the court considered, as to each one of these alleged breaches of fiduciary duty, the applicability of the good faith defense. The court finds that this defense was not established as to relieve the Hitchmans of liability for any of the alleged breaches found to be true in this statement of decision.

In connection with the court's orders listed in this statement of decision regarding the Hitchmans' fee petitions, namely, the First Accounting Petition and the Final Accounting Petition, the court notes the following:

(1) The court gave the Hitchmans the benefit of the presumption of regularity and good faith.

(2) The court accepted the correctness of all the numbers as listed in the Hitchmans' two petitions.

(3) The court assigned to Thomas the burden of proving all his specific objections, including the burden of proving all his alleged breaches of fiduciary duty, and Thomas met his burden of proof as detailed in this statement of decision.

(4) All the costs and fees submitted by the Hitchmans relating to all their litigations against Thomas was not a benefit and a service to the Trust, therefore there is no proper and legal basis for the Hitchmans' recovery of such expenses, fees, or costs out of the Trust.

(5) The Hitchmans litigated in this case without impartiality and for the benefit of Team Nancy against the benefit of, and with bias against, Thomas.

(6) The Hitchmans failed in most instances to keep proper records distinguishing fees, costs, and expenses that are only related to the administration of the Trust, versus fees, costs, and expenses

related to the litigations against Thomas that the Hitchmans were preparing for and they initiated. Such failure was resolved by the court against the Hitchmans, as required by law.[99]

(7) The Hitchmans' costs and attorneys' fees incidental to their preparation for, and filing of, litigation was not a benefit and a service to the Trust, and it was not necessary for the proper administration and/or the preservation of the Trust.

(8) Thomas' objections to the Hitchmans' accounts were **not** without reasonable cause and were **not** in bad faith.

In connection with the Hitchmans attempt to use their after-acquired-facts relating to Avalara to try to justify their pre-acquired-action in alleging a failure to disclose to the IRS, the Hitchmans took ample time during the trial to try to convince the court that towards the end of Beverly's life and shortly thereafter, Thomas engaged in wrongful conduct relating to Avalara. The Hitchmans' trial attorneys did an excellent and honorable job in trying to paint a sinister picture of this conduct based on the available evidence. This picture, however, would have been more relevant and probative in the Trust contest between Team Nancy and Thomas, if such contest had to be tried.

Having said that, Thomas also introduced relevant persuasive evidence that paints a less sinister picture, and actually paints a picture consistent with the long-lasting business relationship between Thomas and Beverly that was unfortunately distorted towards the end of Beverly's life by what appears to be, again, bad advice Thomas received from Pech.

The core of the Hitchmans' argument that Thomas acted improperly after Beverly's death regarding the transfer of the Avalara stocks centers around the position that by not having Avalara update its records of ownership of the stocks in question until after Beverly died, Thomas must be lying and acting improperly. This argument ignores and discounts the evidence introduced during the trial regarding the plan/agreement Thomas and Beverly had before she died regarding the ownership of their jointly purchased Avalara stocks. Namely, Thomas' testimony that he bought Beverly's shares and gave her promissory notes for the purchase. Certainly, there is support for the legal position that such

[99] As stated above, Bruce H. testified that when he refers to fees, costs, and expenses relating to the administration of the Trust, he includes litigations related fees, expenses, and costs.

a transfer is valid despite the fact the certificate for the stock transfer was not issued and delivered until after the death of the seller.

Before reaching the findings detailed in this statement of decision, the court gave proper weight and consideration to all the evidence introduced by both sides regarding the Avalara shares.

In connection with Thomas' request for exemplary damages, the Hitchmans argue that Thomas failed to introduce a necessary and required element for the imposition of such damages, namely, evidence regarding the Hitchmans' net worth. Thomas argues that if the court finds that he satisfied the legal requirement of oppression, fraud, or malice by clear and convincing evidence, the court should allow him to conduct more discovery and re-open the evidence-taking-portion of the trial so he can introduce evidence relating to the Hitchmans' net worth. It appears that Thomas wants to proceed on a bifurcated trial schedule, however, no pre-trial order for bifurcation is in place. The court finds the Hitchmans' position to be well-taken. In order to preserve the due process rights of both sides, the court is issuing the orders listed below relating to the issue of exemplary damages.

The court finds that Thomas met his burden of establishing that he is entitled to damages relating to his expenditure of $1,899,309.34 to retain attorneys that were necessary to attempt to avoid or minimize the consequences of the Hitchmans' breaches of fiduciary duties, pursuant to *Oasis W. Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811. To reach this conclusion, the court relied on the entirety of all the evidence introduced during the trial, including Thomas' testimony and the legal invoices admitted into evidence as trial exhibits.

In this case, Thomas is the prevailing party for purposes of determining issues relating to cost of litigation and attorney fees. Based on the totality of all the evidence introduced during the trial, and factoring equity considerations, the court exercises its discretion, based on the record presented, to order Thomas' reasonable costs of litigation and attorney fees to be paid by the Hitchmans as directed below.

ORDERS AND JUDGMENT ON THE MATTERS DECIDED HEREIN

Having now considered and weighed all the testimonial and documentary evidence admitted during the trial, all argument presented, and based on the applicable legal standards, the court announces its Tentative Orders after Trial:

1. The Hitchmans' request for a court order approving, allowing, and settling their accounts and reports attached to their First Accounting Petition (ROA 1784) is **DENIED**.

2. The Hitchmans' request for a court order approving all their acts and transactions as interim co-trustees of the Trust relating to matters set forth in their First Accounting Petition is **DENIED**.

3. The Hitchmans' request in their First Accounting Petition for a court order ratifying their payment of attorneys' fees and costs to Roehl & Glowacki, P.C., in the amount of $252,172.99 is **DENIED**.

4. The Hitchmans' request in their First Accounting Petition for a court order ratifying their payment of attorneys' fees and costs to Carico MacDonald Kil & Benz, LLP, (formerly Carico Johnson Toomey, LLP) in the amount of $428,080.60 is **DENIED**.

5. The Hitchmans' request in their First Accounting Petition for a court order ratifying their payment of $96,753.41 to Hitchmans Fiduciaries in ordinary interim co-trustees' fees is **DENIED**.

6. The Hitchmans' request in their First Accounting Petition for a court order ratifying their payment of $19,587.00 to Hitchmans Fiduciaries in extraordinary interim co-trustees' fees

for services rendered in connection with managing Lamplighter Chino (Chino Entities) is **DENIED**.

7. Thomas' objections to the Hitchmans' First Accounting Petition are **SUSTAINED** to the extent reflected in this statement of decision.

8. The Hitchmans' request for a court order approving, allowing, and settling their accounts and reports attached to their Final Accounting Petition (ROA 2598) is **DENIED**.

9. The Hitchmans' request for a court order approving all their acts and transactions as interim co-trustees of the Trust relating to matters set forth in their Final Accounting Petition is **DENIED.**

10. The Hitchmans' request in their Final Accounting Petition for a finding that they reserve the right to seek additional payments of fees and costs incurred for services rendered in their capacity as interim co-trustees and their capacity as former interim co-trustees, is **DENIED**.

11. The Hitchmans' request in their Final Accounting Petition for a finding that Roehl & Glowacki, P.C., in their capacity as the Hitchmans' attorneys, reserve the right to seek additional payments of fees and costs incurred for services rendered is **DENIED**.

12. The Hitchmans' request in their Final Accounting Petition for a finding that Carico MacDonald Kil & Benz, LLP, in their capacity as the Hitchmans' attorneys, reserve the right to seek additional payments of fees and costs incurred for services rendered is **DENIED**.

13. The Hitchmans' request in their Final Accounting Petition for a court order ratifying their payment of attorneys' fees and costs to Roehl & Glowacki, P.C., in the amount of $209,908.87 is **DENIED**.

14. The Hitchmans' request in their Final Accounting Petition for a court order ratifying their payment of attorneys' fees and costs to Carico MacDonald Kil & Benz, LLP, (formerly Carico Johnson Toomey, LLP) in the amount of $556,169.75 is **DENIED**.

15. The Hitchmans' request in their Final Accounting Petition for a court order ratifying their payment to Hitchmans Fiduciaries of $158,355.40 in ordinary interim co-trustees' fees is **DENIED**.

16. The Hitchmans' request in their Final Accounting Petition for a court order ratifying their payment to Hitchmans Fiduciaries of $47,696.50 in extraordinary interim co-trustees' fees for services rendered in connection with managing Lamplighter Chino (Chino Entities) is **DENIED**.

17. The Hitchmans' request in their Final Accounting Petition for a court order approving fees and costs to the Hitchmans in their capacity as interim co-trustees for the period of April 1, 2019, through June 21, 2019, in the amount of $28,538.77 is **DENIED**.

18. The Hitchmans' request in their Final Accounting Petition for a court order approving fees and costs to the Hitchmans in their capacity as former interim co-trustees for the period of June 22, 2019, through November 30, 2019, in the amount of $9,250.00 is **DENIED**.

19. The Hitchmans' request in their Final Accounting Petition for a court order approving payment of the Hitchmans' attorneys' fees and costs to Roehl & Glowacki, P.C., for the period of April 9, 2019, through June 21, 2019, in the amount of $57,252.72 is **DENIED**.

20. The Hitchmans' request in their Final Accounting Petition for a court order approving payment of the Hitchmans' attorneys' fees and costs to Roehl & Glowacki, P.C., for the period of June 22, 2019, through November 30, 2019, in the amount of $30,488.49 is **DENIED**.

21. The Hitchmans' request in their Final Accounting Petition for a court order approving payment of the Hitchmans' attorneys' fees and costs to Carico MacDonald Kil & Benz, LLP, (formerly Carico Johnson Toomey, LLP), for the period of April 9, 2019, through June 21, 2019, in the amount of $83,636.83 is **DENIED**.

22. The Hitchmans' request in their Final Accounting Petition for a court order approving payment of the Hitchmans' attorneys' fees and costs to Carico MacDonald Kil & Benz, LLP, (formerly Carico Johnson Toomey, LLP), for the period of June 22, 2019, through November 30, 2019, in the amount of $136,906.13 is **DENIED**.

23. The Hitchmans' requests in their Final Accounting Petition for the court to enter judgments against the current Trustee of the Trust for amounts reflecting fees and costs incurred but not yet paid is **DENIED**. This section applies to fees and costs alleged in the Final Accounting Period to have been incurred by, but not yet paid to, (a) the Hitchmans in both their interim and former interim co-trustees capacities, (b) Roehl & Glowacki, P.C., and (c) Carico MacDonald Kil & Benz, LLP, (formerly Carico Johnson Toomey, LLP).

24. The Hitchmans' request for an order exonerating their bond is **DENIED**.

25. Thomas' objections to the Hitchmans' Final Accounting Petition are **SUSTAINED** to the extent reflected in this statement of decision.

26. Accordingly, in connection with the interim co-trustees/former interim co-trustees' First Accounting Petition and Final Accounting Petition, the Hitchmans are hereby **SURCHARGED**, with interest in the amount of 10% per annum, for the benefit of the Trust, the total amount of the **55** separate payments listed in Thomas' amended proposed order after trial, lodged with the court on or about November 26, 2024, **REDUCED** by $59,741.50,[100] and also **REDUCED** by any of the Hitchmans' fees and costs allowed by the court as detailed in this statement of decision.

27. Notwithstanding the above listed orders finding the Hitchmans not entitled to the vast majority of the fees and costs they requested in their First Accounting Petition and Final Accounting Petition, the court **APPROVES** the following fees, expenses, and costs incurred by the Hitchmans:

a. Any ordinary fees, expenses, and costs, including attorney fees and costs, incurred by the Hitchmans and their attorneys for the **sole** purpose of Trust administration starting from March 29, 2017, and up until the beneficiaries reached a settlement agreement on April 9, 2019. This category of approved fees, costs, and expenses, include expenditures relating to paying Trust accountants, bond premiums, and payments to the Internal Revenue Service relating to the Trust.

    i. This approval does not include any fees or costs associated, directly or indirectly, with any of the petitions the Hitchmans filed against Thomas.

[100] This is the amount that Thomas concedes as accurately reflecting fees and costs relating to proper Trust administration.

ii. This approval does not include any fees or costs associated, directly or indirectly, with any petition or litigation the Hitchmans were contemplating filing, but did not file, against Thomas.

iii. This approval does not include any fees or costs associated, directly or indirectly, with any of the Hitchmans' and their attorneys' work relating to the management of Lamplighter Chino and/or to effectuate the Hitchmans' taking-over of Lamplighter Chino.

b. Any ordinary fees, expenses, and costs, including tax expert(s) and attorney(s) fees and costs, incurred by the Hitchmans and their attorneys, experts, and/or accountants for the **sole** purpose of preparing and filing the supplemental 706 estate tax return.

i. This approval does not include any fees or costs associated, directly or indirectly, with any of the petitions the Hitchmans filed against Thomas.

ii. This approval does not include any fees or costs associated, directly or indirectly, with any petition or litigation the Hitchmans were contemplating filing, but did not file, against Thomas.

iii. This approval does not include any fees or costs associated, directly or indirectly, with any of the Hitchmans' and their attorneys' work relating to the management of Lamplighter Chino and/or to effectuate the Hitchmans' taking-over of Lamplighter Chino.

c. Any ordinary fees, expenses, and costs, including attorney fees and costs, incurred by the Hitchmans and their attorneys, experts, and/or accountants for the **sole** purpose of

negotiating and effectuating the settlement agreement between the City of Chino and Lamplighter Chino in the *taking lawsuit*. The court considers the Hitchmans' filing of the petition seeking court approval of the settlement agreement between Lamplighter Chino and the City of Chino as part of the Hitchmans' hereby approved efforts to effectuate the settlement agreement and is therefore included in this section approving specific fees and costs.

i. This approval does not include any fees or costs associated, directly or indirectly, with any of the petitions the Hitchmans filed against Thomas.

ii. This approval does not include any fees or costs associated, directly or indirectly, with any petition or litigation the Hitchmans were contemplating filing, but did not file, against Thomas.

d. To the extent the Hitchmans decide to request the court's approval of any fees, expenses, and/or costs under the above listed subsections (a), (b), and/or (c), and assuming such additional fees and/or costs are not already accounted for in the approved $59,741.50 listed above, the Hitchmans are ordered to submit to the court a pleading of no more than 10 pages detailing the specific amounts requested under subsections (a), (b), and/or (c), **and** the corresponding invoices/bills for the requested amounts and no other amounts. The 10-page limitation does not include the invoices/bills. The Hitchmans are to file and serve this pleading by February 28, 2025. Thomas is to file any objection, not to exceed 10 pages, by March 10, 2015.

28. Thomas' request that the Lido Condo be released as security is **GRANTED**. The court orders the current Trustee of the Trust to distribute the Lido Condo consistent with the terms of the Trust, and subject to any term(s) of the Trust that limit(s) such distribution.

29. As to Thomas' First Claim for Relief (first cause of action), as reflected in Thomas' Petition (ROA 2590), the court **FINDS IN FAVOR** of the Trust / Thomas in his capacity as the Trustee of the Trust. This first cause of action has been established based on the breaches of fiduciary duties as listed in this statement of decision, and the fact that these breaches caused damage to the Trust. The Hitchmans are hereby **SURCHARGED** and **ORDERED** to pay the Trust, with interest in the amount of 10% per annum, the total amount of the **55** separate payments listed in Thomas' amended proposed order after trial, lodged with the court on or about November 26, 2024, **REDUCED** by $59,741.50,[101] and also **REDUCED** by any of the Hitchmans' fees and costs allowed by the court as detailed in this statement of decision. This surcharge and order relating to Thomas' First Claim for Relief, as reflected in this section, is **not a double** recovery with the equal amount of surcharge ordered above in connection with the Hitchmans' First Accounting Petition and Final Accounting Petition. Rather, this order in this section is reflecting a second separate theory of recovery by the Trust for the same amount of money as the one ordered in the separate section (26) above.

30. As to Thomas' Second Claim for Relief (second cause of action), as reflected in Thomas' Petition (ROA 2590), the court **FINDS IN FAVOR** of the Trust / Thomas in his capacity as the Trustee of the Trust. The Hitchmans are hereby **SURCHARGED** and **ORDERED** to pay the Trust, with interest in the amount of 10% per annum, the total amount of $254,650.00 for their failure to file or preserve a malpractice claim against Pech. The interest is to start accruing on the date the statute of limitations expired in connection with the malpractice claim, namely, March 29, 2018.

31. As to Thomas' Third Claim for Relief relating to the allegation of failure to disclose the Hitchmans' relationship with Mr. Coombs (third cause of action) as reflected in Thomas' Petition (ROA 2590), the court **FINDS AGAINST** Thomas in his capacity as the Trustee

[101] This is the amount that Thomas concedes as reflecting fees and costs relating to proper Trust administration.

of the Trust. The court hereby **SUSTAINS** the Hitchmans' objections to this Third Claim for Relief, to the extent reflected in this statement of decision.

32. As to Thomas' Fourth Claim for Relief (fourth cause of action), as reflected in Thomas' Petition (ROA 2590), the court **FINDS IN FAVOR** of Thomas in his capacity as a beneficiary of the Trust. This fourth cause of action has been established based on the breaches of fiduciary duties as listed in this statement of decision, and the fact that these breaches caused damages to Thomas in his capacity as a beneficiary of the Trust. In connection with this Fourth Claim for Relief, the following orders are hereby issued:

a. The Hitchmans are hereby **SURCHARGED** and **ORDERED** to pay Thomas, with interest in the amount of 10% per annum starting on the first day of trial in this case, the amount of $1,139,585.60. This amount is calculated by adding the total damages sustained by Thomas as a result of having to hire attorneys to counter the Hitchmans' breaches of fiduciary duties ($1,899,309.34) mitigated by 40% as a result of the allowed deduction in the supplemental 706 that was approved by the IRS. The court **DENIES** Thomas' request for an additional $1,629,829.10 in damages due to his asserted opportunity cost resulting from his sale of Avalara shares to pay his attorneys.

b. The Hitchmans are hereby **SURCHARGED** and **ORDERED** to pay Thomas, with interest in the amount of 10% per annum, the total amount of $4,281.50 as damages resulting from the Hitchmans' breaches of fiduciary duty necessitating the payment of this amount by Thomas to reimburse Bank of America for their legal costs. The interest is to start accruing on the date that Thomas paid the $4,281.50.

c. The Hitchmans are hereby **SURCHARGED** and **ORDERED** to pay Thomas, with interest in the amount of 10% per annum, the total amount of $250,000 as damages

resulting from the Hitchmans' breaches of fiduciary duty by not accounting for the $250,000 in pooled funds within Lamplighter Chino's $6,006,250.63 CD that the Hitchmans liquidated. The interest is to start accruing on August 31, 2017, the last day of the month during which the Hitchmans liquidated the CD.

d. The Hitchmans are hereby **SURCHARGED** and **ORDERED** to pay Thomas, with interest in the amount of 10% per annum, the total amount of $450,000 as damages resulting from the Hitchmans' breaches of fiduciary duty resulting in defamation *per se* and reputational damages to Thomas. The interest is to start accruing on the date that Bruce H. submitted his declaration in question to Bank of America, namely, June 12, 2017.

33. In connection with the court's above listed findings relating to the issue of exemplary damages, the parties are ordered to submit Points and Authorities regarding Thomas' request to re-open discovery and schedule a future date for a hearing on the issue of the Hitchmans' net worth and the appropriate amount, if any, of exemplary damages. Each party's Points and Authorities should not exceed 10 pages on the following legal question: *Should Thomas be allowed to conduct further discovery and re-open the evidence-taking portion of the trial even though there was no pre-trial order or stipulation to bifurcate or sever the issue of exemplary damages*. Thomas is to file his Points and Authorities by February 28, 2025. The Hitchmans are to file their Points and Authorities by March 10, 2015.

34. Thomas is awarded the reasonable costs associated with this litigation, to be paid by the Hitchmans. Such costs are to be requested by Thomas pursuant to the process, and within the deadlines provided by, California Rules of Court, Rule 3.1700(a). The Hitchmans may challenge any costs requested pursuant to the process, and within the deadlines provided

by, Rule 3.1700(b). The court will rule on future fee petitions for costs and attorney fees consistent with the above listed authorities and all other legal principles specifically applicable to post-trial petitions for attorney fees. The order as detailed in this section should not be interpreted as allowing Thomas to seek a double recovery for any portion of his attorney fees awarded to him as damages resulting from the Hitchmans' breach of fiduciary duties as discussed and ordered above in section 32(a).

The Clerk is directed to serve a copy of this tentative ruling on all parties. Thomas is directed to give notice.

Dated: February 20, 2025

JUDGE EBRAHIM BAYTIEH
Superior Court of California
County of Orange