

S271054
IN THE SUPREME COURT OF CALIFORNIA

DEBRA TURNER,

Petitioner,

v.

LAURIE ANNE VICTORIA, *et al.*

Respondents.

After a Decision by the Court of Appeal, Fourth Appellate District, Division One, Case
Nos. D076318, D076337

San Diego County Superior Court
Trial Court Case No. 37-2017-00009873-PR-TR-CTL
The Honorable Julia C. Kelety, Dept. 503
(Appeal No. D076318)

San Diego County Superior Court
Trial Court Case No. 37-2018-00038613-CU-MC-CTL
The Honorable Kenneth J. Medel, Dept. C-66
(Appeal No. D076337)

**APPELLANT DEBRA TURNER'S
REQUEST FOR JUDICIAL NOTICE**

SERVICE ON THE OFFICE OF THE ATTORNEY GENERAL CHARITABLE
TRUSTS SECTION AS REQUIRED BY PROBATE CODE §§ 17200, 17203,
CORPORATIONS CODE §§ 5142, 5223, and 5233 AND CRC 8.29(a)

COOLEY LLP

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Attorneys for Plaintiff and Appellant DEBRA TURNER

Appellant Debra Turner (“Turner”) respectfully requests that this Court take judicial notice of Exhibit A below pursuant to Evidence Code Section 452, subdivisions (d) and (h), and California Rule of Court 8.252(a).

As explained in the accompanying Declaration of Erin C. Trendera, Exhibit A is a true and correct file-stamped, public copy of the Attorney General’s Objection to Third Account and Report of Trustee and Petition for: (1) Settlement of Account; (2) Ratification of Prior Acts by Trustee; and (3) Order Authorizing Trustee’s Fees (the “Objection”), which was filed in the Superior Court of California, County of San Diego, Case No. 37-2017-00009873-PR-TR-CTL (the “Probate Court”) on December 16, 2020. The Attorney General filed this Objection in response to the trustee petition filings that Respondent Laurie Anne Victoria (“Victoria”) made in the Probate Court on September 8, 2020.

Exhibit A was not submitted for judicial notice before the trial court or the Court of Appeal because Victoria did not file her petition papers requesting \$35 million¹ in trustee fees with the Probate Court until September 8, 2020, and Exhibit A was not filed until December 16, 2020. Both dates are after briefing had already concluded in the consolidated appeal of the trial court matters brought by Turner (Appeal Nos. D076318, D076337).

Judicial notice of Exhibit A is relevant to establish that: (1) Victoria did not approve and then negotiate the challenged settlement as simply one of “four *volunteer* directors of

¹ While the Attorney General’s Objection contains certain references to \$34 million, the correct amount of \$35 million is reflected in the Attorney General’s first prayer for relief, which requests that “The Petitioner’s request for approval of \$35,000,000 be denied.” (Exh. A, at p. 5.)

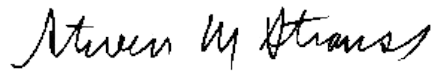
the Foundation and Trustee,” as she appears to suggest in her Answer Brief (Respondent Laurie Anne Victoria’s Answer Brief on the Merits, at p. 24 [emphasis added]); (2) Victoria seeks to profit as trustee from, among other acts, her hasty and wrongful diversion of charitable funds towards the challenged settlement; and (3) Turner’s suit would remedy past and ongoing injury to the Foundation, including Victoria’s pending request for \$35 million in trustee fees, which would be further deducted from the Foundation’s coffers.

This Court may judicially notice Exhibit A on two independent grounds. First, Exhibit A is a filed “record” of the San Diego Probate Court—a “court of record of this state.” (Evid. Code, § 452, subd. (d).) Second, Exhibit A is judicially noticeable pursuant to Evidence Code, section 452, to the extent it reflects the “[f]act” (*id.*, subd. (h)) that Victoria has solicited from the Probate Court trustee’s fees in the amount of \$35 million (which would further decrease the charitable funds received by remainder beneficiary The Conrad Prebys Foundation (the “Foundation”)) for the period covered by Victoria’s first, second, and third petitions, which is inclusive of the period of her alleged misconduct and her ouster of Turner. (Exh. A.) The Objection at Exhibit A was filed by the Attorney General in response to petition filings made under penalty of perjury by Victoria, which were also objected to by the Foundation. (*Ibid.*) Victoria and the Foundation are Respondents in the present appeal before this Court. As a result, Exhibit A is “not reasonably subject to dispute” by Respondents and is “capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).)

For the foregoing reasons, Turner respectfully requests that this Court take judicial notice of Exhibit A.

Dated: June 13, 2022

COOLEY LLP

By: 
Steven. M. Strauss

Attorneys for DEBRA TURNER

DECLARATION OF ERIN C. TREND A

I, Erin C. Trenda, declare that:

1. I am an attorney licensed to practice law in the State of California. I am a partner with the law firm of Cooley LLP, counsel of record for Appellant Debra Turner. I have personal knowledge of the facts addressed in this Declaration, and, if called and sworn as a witness, I could and would testify competently about them.

2. Exhibit A is a true and correct, filed-stamped public copy of the Attorney General's Objection to Third Account and Report of Trustee and Petition for: (1) Settlement of Account; (2) Ratification of Prior Acts by Trustee; and (3) Order Authorizing Trustee's Fees, which was filed in the Superior Court of California, County of San Diego, Case No. 37-2017-00009873-PR-TR-CTL (the "Probate Court") on December 16, 2020.

3. Exhibit A was not submitted for judicial notice before the trial court or the Court of Appeal because Respondent Laurie Anne Victoria did not file her petition papers requesting \$35 million in trustee fees with the Probate Court until September 8, 2020, and Exhibit A was not filed in the Probate Court until December 16, 2020. Both dates are after briefing had already concluded in the consolidated appeal of the trial court matters brought by Turner (Appeal Nos. D076318, D076337).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 13, 2022, in San Diego, California.



Erin C. Trenda

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 4401 Eastgate Mall, San Diego, CA 92121. My email address is bdanziger@cooley.com. On June 13, 2022, I served the following:

1. APPELLANT DEBRA TURNER'S REQUEST FOR JUDICIAL NOTICE

as follows:

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Clerk
Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101
eservice@capcentral.org

- ☒ (BY EMAIL) I electronically filed the aforementioned documents with the clerk of this court, through the designated E-File Service Provider ImageSoft Inc.'s TrueFiling. TrueFiling's Service Notification system will forward a copy to all parties registered to receive such service.

and as follows:

San Diego County Superior Court
The Honorable Julia C. Kelety
1100 Union Street, Fifth Flr., Dept. SD-503
San Diego, CA 92101

San Diego County Superior Court
The Honorable Kenneth J. Medel
330 W. Broadway, Dept. SD-66
San Diego, CA 92101

- ☒ (BY MAIL) I served the documents by enclosing them in an envelope, with postage thereon fully prepaid for first-class mail, and deposited the sealed envelope with the United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Diego, California on June 13, 2022.



Brenda Danziger

EXHIBIT A

1 XAVIER BECERRA
Attorney General of California
2 TANIA M. IBANEZ
SENIOR ASSISTANT DEPUTY ATTORNEY GENERAL
3 JAMES M. TOMA
SUPERVISING DEPUTY ATTORNEY GENERAL
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8 *Attorneys for Attorney General, State of California*

EXEMPT FORM FEES PURSUANT
TO GOVERNMENT CODE §6103

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/16/2020 at 02:48:00 PM
Clerk of the Superior Court
By Hannah Snyder, Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 PROBATE DIVISION

12
13 **In re the**

14 **Trust Created by Declaration of Trust**
15 **dated December 17, 1982, as restated**
16 **on February 25, 2016, and amended**
17 **on April 14, 2016, known as the**
18 **CONRAD PREBYS TRUST**

Case No. 37-2017-00009873-PR-TR-CTL

ATTORNEY GENERAL'S OBJECTION
TO THIRD ACCOUNT AND REPORT
OF TRUSTEE AND PETITION FOR: (1)
SETTLEMENT OF ACCOUNT; (2)
RATIFICATION OF PRIOR ACTS BY
TRUSTEE; AND (3) ORDER
AUTHORIZING TRUSTEE'S FEES

18 Date: December 17, 2020
19 Time: 2:30 p.m.
20 Dept: 503
21 Judge: Hon. Julia C. Kelety
22 Trial Date: None Assigned
23 Action Filed: September 8, 2020

23 Attorney General Xavier Becerra ("Attorney General") hereby objects to the Third Account
24 and Report of Trustee and Petition for: (1) Settlement of Account; and (2) Ratification of Prior
25 Acts by Trustee ("Third Account Petition.") The Attorney General is charged with the general
26 supervision of all charitable organizations within this State and with the enforcement of the
27 obligations of trustees, nonprofits, and fiduciaries who hold or control property in trust for
28 charitable purposes. The Attorney General is authorized to enforce the provisions of the

Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code § 12580 et seq.)

In this matter, the residue of the Conrad Prebys Trust (“Trust”) will be distributed to charity, as such the Attorney General has an obligation to preserve the assets of the Trust. The Attorney General objects to the \$34 million in fees requested by the Petitioner, Trustee Laurie Anne Victoria (“Trustee”). The amount sought is arbitrary and bears no reasonable relationship to the value of the services rendered. The Attorney General objects to the payment of attorney’s fees and costs from the Trust, and seeks to enjoin the trustee from future payment of attorney’s fees and costs without prior Court order.

A. Attorney’s Fees should be denied.

1. The \$34 million requested trustee fee is in addition to the twelve law firms and \$3,803,776.74 in legal fees being requested in her three accounting petitions. The Attorney General objects to the Court approving Petitioner Laurie Anne Victoria’s (“Trustee”) legal fees, the bulk of which appear to have been generated in her defense against Debra Turner’s petition. The petition alleges Trustee misconduct and breach of fiduciary duties. Probate Code section 15684 provides that “[e]xpenditures that were properly incurred in the administration of the trust” and (b) expenditures that benefited the trust may be repaid to a trustee from trust property. In *People ex rel. Harris v. Shine* (2017), the Court held that if the “litigation is a benefit and a service to the trust” and not for the personal benefit of the trustee, it may be paid by the Trust, but “an award of pendent lite fees will seldom be justified where...the trust is silent on interim fees and the trustee’s misconduct is at issue.” (*People ex rel. Harris v. Shine* (2017) 16 Cal.App.5th 524, 534, 541, internal citations omitted.) As Turner’s standing is pending appellate review and her underlying case alleges misconduct by the Trustee, it would be premature to grant the Trustee’s attorney’s fees request until the matter is final.

2. The Attorney General agrees with the Foundation’s argument regarding Local Rule 4.16.2 requiring the Trustee provide a detailed declaration. (The Conrad Prebys Foundation’s Objections and Response to the Trustee’s Second Account and Report et. al., [the “Foundation’s Objections”], p. 8, ¶ 28 – p. 9, ¶ 30.)

1 3. The Attorney General also agrees with the Foundation's argument enjoining Trustee from
2 further payment of attorney's fees and costs without prior Court approval. (Foundation's
3 Objections, pages 10-11, ¶ 34.)

4 **B. There is no reasonable basis for the amount of trustee fees requested.**

5 4. The Trustee has provided no reasonable basis for the amount of fees sought, except to state
6 in a declaration that she regularly worked between 8-10 hours a day, and the value of the Trust is
7 large. (Third Account Petition p. 21:3-5; p. 40:18.) The Trustee states that she kept "daily logs" of
8 her work, but fails to include these or any other type of hourly break-down of her time regarding
9 the claimed extraordinary tasks performed on behalf of the Trust to justify \$34 million in
10 compensation. (Third Account Petition, p. 29, ¶ 22.) Further, the administration of the Trust is
11 expected to continue, which the Trustee has stated she "reserves the right to seek additional
12 reasonable compensation." (Third Account Petition, p. 29, ¶ 21.) While the Trustee is entitled to
13 reasonable compensation for trust administration, the Trustee's request for \$34 million is arbitrary
14 and lacks justification.

15 **1. Corporate fiduciary fee schedules are not applicable to determine the**
16 **reasonable compensation of the Trustee.**

17 5. The Trustee is not a corporate fiduciary, and, as such, proposing the fee schedules of
18 financial institutions such as Wilmington, Boston Private, PNC Bank, US Trust, and Northern
19 Trust to determine reasonable compensation is inappropriate and should be disregarded by the
20 Court. The Trustor appointed the Trustee knowing that she was not a corporate fiduciary.

21 **2. The fees requested are gratuitous and do not reflect the fair market**
22 **value for the services rendered.**

23 6. The Attorney General is informed and believes that the Trustee received significant and
24 market-appropriate compensation as CEO of Progress Construction Co., Inc. ("Progress") during
25 this time. The Attorney General is informed and believes that Progress's shares and assets are to
26 be distributed to the Foundation. As the Trustee is requesting \$34 million as compensation for her
27 role as Trustee, it would be inappropriate if she is requesting compensation for work that is
28 covered by her compensated role as CEO of Progress.

1 7. The Trustee claims she often worked “8 to 10 hours a day” and on weekends during the
2 Trust administration. (Third Account Petition p. 21:3-5.) An average of 50 hours per week solely
3 dedicated to trust administration would be 10,450 hours for three years. (Notably, the Trustee was
4 working as full-time CEO of Progress at the same time.) With her request of \$34 million, the
5 Trustee’s hourly would be approximately \$3,349.38 *per hour*. (The Conrad Prebys Foundation’s
6 Objections and Response to the Trustee’s Third Account and Report of Trustee and Petition et al.
7 [“Foundation’s Objections”] p. 19, ¶ 60 – p. 20, ¶ 61.) This hourly rate is in addition to her CEO
8 Progress salary. An hourly fee of \$3,349.38 is unreasonable, as it bears no reasonable relationship
9 to the actual value of the services rendered by the Trustee.

10 8. The Attorney General agrees with the Foundation’s argument regarding local Rule 4.16.2
11 requiring significant more details in the Trustee’s declaration to support her claim that \$34
12 million is justified. (Foundation’s Objections, p. 12, ¶ 41 – p. 13, ¶ 43.)

13 9. The Attorney General agrees with the Foundation’s argument regarding the California
14 Rules of Court 7.776 factors. (*Id.*, p. 14, ¶ 47 – p. 16, ¶ 53; p. 17, ¶ 55- p. 23, ¶ 66.)

15 10. The Attorney General agrees with the Foundation’s argument that the Trustee’s fees should
16 be reduced by the damage the Trustee has committed against the Trust, notably her unilateral
17 decision to reform the Trust and distribute vehicles and money to individuals not named in the
18 Trust. (Foundation’s Objections, p. 25, ¶ 73- p. 26, ¶ 75.) These are outlined in the Attorney
19 General’s Objections to First Account and Report of Trustee and Petition for: (1) Settlement of
20 Account and (2) Ratification of Prior Acts by Trustee.

21 CONCLUSION

22 11. Trustor took great lengths to donate the bulk of his estate to charity – it would be
23 against his intentions for the Trustee, not charity, to benefit from the Trust. There is no reasonable
24 basis for the \$34 million trustee fee request. The Trustee has provided little to no substantiation
25 for her request. The fee requested is to capitalize on the large size of the Conrad Prebys Trust and
26 bears no logical relationship to the actual value of the service rendered by the Trustee, and if
27 granted would result in a large windfall to the Trustee. As for trustee’s attorney’s fees, it would be
28

1 premature to grant the Trustee's attorney's fees request until the matter alleging her misconduct is
2 final.

3 WHEREFORE, the Attorney General prays for an order of this Court:

- 4 1. The Petitioner's request for approval of \$35,000,000 be denied;
 - 5 2. The Petitioner be ordered to file complete declarations required by local Rule 4.16.2;
 - 6 3. The Court determine reasonable trustee compensation for an amount determined at
7 trial;
 - 8 4. Any grant of Trustee's fees be reduced by the damage Trustee committed against the
9 Trust to be determined at trial;
 - 10 5. The Petitioner's request for approval of attorney's fees be denied;
 - 11 6. The Petitioner be enjoined from paying attorney's fees from the Trust without prior
12 Court order; and
 - 13 7. For such other orders as the Court may deem proper.
- 14
15

16 Dated: December 16, 2020

Respectfully Submitted,

17 XAVIER BECERRA
18 Attorney General of California

19 

20 CAROLINE K. HUGHES
21 Deputy Attorney General
22 *Attorneys for Attorney General, State of*
23 *California*

24 LA2017605267
25
26
27
28

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: CONRAD PREBYS TRUST
No.: 37-2017-000098773-PR-TR-CTL

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 16, 2020, I served the attached **ATTORNEY GENERAL'S OBJECTION TO THIRD ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR: (1) SETTLEMENT OF ACCOUNT; (2) RATIFICATION OF PRIOR ACTS BY TRUSTEE; AND (3) ORDER AUTHORIZING TRUSTEE'S FEES** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

<u>VIA EMAIL & U.S. MAIL</u> DLA Piper, LLP S. Andrew Pharies, Esq. Erin E. Norberg, Esq. Michelle c. Glasser, Esq. 4365 Executive Drive, Suite 1100 San Diego, CA 92121 E-mail Address: Andrew.pharies@us.dlapiper.com erin.norberg@us.dlapiper.com michelle.glasser@us.dlapiper.com Attorney for Respondent, The Conrad Prebys Foundation	<u>VIA EMAIL & U.S. MAIL</u> Shepard Mullin, Richter & Hampton LLP Adam, F. Streisand Esq. Golnaz Yazdchi, Esq. Tomasene A. Knight, Esq. 1901 Avenue of the Stars, Suite 1600 Los Angeles, CA Email Address: ASTreisand@sheppardmullin.com Attorney for Laurie Anne Victoria, Trustee
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Laurie Anne Victoria 7551 Hazard Center Drive San Diego, CA 92108 <i>Trustee of Conrad Prebys Trust</i>	Shepard Mullin, Richter & Hampton LLP Alejandro E. Moreno, Esq. 501 West Broadway, 19th Floor San Diego, CA 92101-3598 <i>Attorneys for Laurie Anne Victoria Trustee</i>
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Bond Services of California Insurance Agency and Brokerage, LLC 523 W. 6 th Street, 242 Los Angeles, CA <i>Bonding Company</i>	

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **December 16, 2020**, at Los Angeles, California.

Teresa De Paz

Declarant

/s/ Teresa De Paz

Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **TURNER v.
VICTORIA**

Case Number: **S271054**

Lower Court Case Number: **D076318**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **sms@cooley.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	Appellant Debra Turner's Application to File Overlength Consolidated Reply Brief
BRIEF	Appellant's Consolidated Reply Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Appellant Debra Turner's Request for Judicial Notice

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Person Served	Email Address	Type	Date / Time
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

6/13/2022

Date

/s/Steven Strauss

Signature

Strauss, Steven (099153)

Last Name, First Name (PNum)

Cooley LLP

Law Firm