IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOAN MAURI BAREFOOT, Petitioner and Appellant, v. JANA SUSAN JENNINGS et al., Defendants and Respondents.	Supreme Court No. S251574 Court of Appeal No. F076395 Superior Court No. PR11414

APPEAL FROM THE SUPERIOR COURT OF TUOLUMNE COUNTY

Honorable Kate Powell Segerstrom, Judge

RESPONSE TO AMICUS CURIAE BRIEF FILED BY THE EXECUTIVE COMMITTEE OF THE TRUSTS AND ESTATES SECTION OF THE CALIFORNIA LAWYERS ASSOCIATION

After the Published Decision of the Court of Appeal, Fifth Appellate District

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INTRODUCTION

The amicus curiae briefs filed in this matter unanimously support Appellant. In the amici brief filed by the Trusts and Estates Section of the California Lawyers Association ("TEXCOM"), TEXCOM suggests that petitions by disinherited trust beneficiaries should be subject to demurrer-style evidentiary hearings at the pleading stage of the case. This response will provide additional analysis concerning TEXCOM's suggestion that demurrer-style evidentiary hearings can be used to test standing at the pleading stage of the case. Appellant wants to ensure that if the Court

adopts TEXCOM's suggestion, the standards and procedures applied are clear. For example, the term demurrer-style evidentiary hearing is confusing because a demurrer tests the legal sufficiency of the pleadings, not the evidence. No evidence is submitted to overcome a demurrer because the court must take the allegations in the pleadings as true. If the four corners of the petition establish a prima facie basis for relief then the petitioner is permitted to proceed.

It's routine for disinherited beneficiaries to have minimal evidence supporting their basis for relief based on undue influence, fraud and elder abuse at the pleading stage of the case. The full extent of the supporting evidence unfolds during the discovery process. Therefore, the Court should not impose additional barriers on disinherited trust beneficiaries by compelling them to prove ultimate issues of law or fact in an evidentiary hearing at the pleading stage of the case. For example, disinherited beneficiaries shouldn't be required to make a showing that they have enough evidence to invalidate the ill-gotten estate plan at the pleading stage of the case. This would needlessly complicate the process and create unnecessary barriers. If the petition establishes a prima facie basis for relief then the disinherited trust beneficiary should be permitted to proceed with discovery and litigate their claims in due course. Demurrers can be used to eliminate frivolous petitions that fail to allege a direct pecuniary interest in

the devolution of the trust that would be impaired or defeated by enforcement of the challenged estate plan.

If the Court imposes an evidentiary hearing solely on the issue of standing at the pleading stage of the case, then the Court should permit limited discovery solely on the issue of standing prior to the evidentiary hearing on standing. Furthermore, if the Court imposes an evidentiary hearing solely on the issue of standing, the Court should clarify that the only evidence needed to prove sufficient standing to proceed with the contest is that the contestant is who they say they are and that the contestant would have a direct pecuniary interest if the contest is successful. Finally, Appellant's position is that if the Court adopts any of these procedures the procedures should be optional to parties who wish to invoke the procedure to eliminate frivolous trust contests where the contestant has no direct pecuniary interest in the contest rather than requirements.

ARGUMENT

I. THE COURT SHOULD NOT REQUIRE AN EVIDENTIARY HEARING AT THE PLEADING STAGE OF THE CASE IF THE PETITION ESTABLISHES A PRIMA FACIE BASIS FOR RELIEF.

TEXCOM states, "If the allegations make a prima facie showing of standing, the court must hold an evidentiary hearing on the issue." (TEXCOM Amicus Curiae Brief hereinafter referred to as "AB" at 12). Appellant disagrees with the assertion that courts must hold evidentiary

hearings on the issue of standing even if the allegations make a prima facie showing of standing. Requiring this extra step would unnecessarily complicate the process. TEXCOM points to the procedures used in the *Estate of Plaut* and the *Estate of Lind* matters. The *Estate of Plaut* and the *Estate of Lind* both concerned will contests. In the *Estate of Plaut* the court required proof of the contestant's interest in the estate before proceeding with the trial on the underlying will contest. (*Estate of Plaut* (1945) 27 Cal.2d at 426.) The *Estate of Plaut* decision did not give an in-depth analysis regarding exactly what the contestant was required to prove to demonstrate standing. (Id at 425.) The *Estate of Plaut* decision simply stated that the contestant must offer proof that the contestant will be benefitted by setting aside the will. (*Id.*) Appellant notes that the *Estate of Plaut* does not stand for the proposition that a contestant must submit enough evidence to show that there is a reasonable likelihood that the underlying contest will succeed on the merits. Rather, the *Estate of Plaut* court seemed to imply that courts should focus on basic fundamental facts at the pleading stage to test standing such as whether the contestant is in fact who they claim to be and whether the contestant will in fact benefit from setting aside the will if successful. This procedure is consistent with a long line of United States Supreme Court cases requiring litigants to submit amendments to complaints or affidavits particularizing factual allegations

supportive of a plaintiff's standing that do not adequately appear from all materials in the record. (*Warth* v. *Seldin* (1975) 422 U.S. 490, 501-502.) If the Court is inclined to adopt the approach recommended by TEXCOM the Court should specify that the only evidence needed to prove standing at the proposed evidentiary hearing on standing are affidavits specifying factual allegations supportive of the petitioner's standing that do not adequately appear from all materials in the record. For example, that the petitioner is who they say they are and that they would in fact benefit by setting aside the ill-gotten estate plan.

The *Estate of Lind* matter provides further clarification regarding the procedure that can be used to avoid frivolous contests designed solely to delay the administration of an estate by parties with no interest in the outcome of the will contest. The *Estate of Lind* court specified that if a court holds an evidentiary hearing on the issue of standing a contestant should be permitted limited discovery solely on the issue of standing. (*Estate of Lind* (1989) 209 Cal.App.3d 1424, 1434.) Citing the *Estate of Plaut* decision, the *Estate of Lind* court held that although claims should be denied if they do not have even an appearance of validity or substance, claims should not be denied, even if the contestant may not ultimately receive any part of the estate, as long as the contestant establishes a prima facie interest in the estate. (*Id.*) Therefore, it appears from the holding in

the *Estate of Lind* matter that if the pleadings establish a prima facie basis for relief the contestant should be allowed to proceed. For example, the only evidence that needs to be submitted at the evidentiary hearing on standing is that the contestant is who they say they are and that the contestant has a direct pecuniary interest in the outcome of the contest. Not that there is a reasonably likelihood that the contestant will be successful based on the evidence they have at the pleading stage of the case. It should be noted that the *Estate of Lind* court confirmed that courts should employ the doctrine of liberal construction of pleadings to aid the contestant, especially where upholding weak pleadings will avoid a possible gross miscarriage of justice. (*Id.*) This statement further clarifies that the *Estate of Lind* court was focused on eliminating frivolous suits filed by parties with no direct pecuniary interest in the outcome of the contest rather than eliminating parties with weak pleadings or minimal evidence at the outset of the contest.

As such, the Court should not unnecessarily complicate trust contests filed by disinherited beneficiaries by requiring an evidentiary hearing on standing. However, if the Court is inclined to adopt this approach, the Court should clarify that the only evidence that must be proven at the evidentiary hearing on standing is that the contestant is who they claim to be and that the contestant has a direct pecuniary interest in the

outcome of the contest if the contest is successful. Finally, if the Court adopts this procedure, the Court should not require the procedure but rather confirm that the procedure is available to objectors defending against frivolous contests where the contestant cannot prove that they will have a direct pecuniary gain if the contest is successful.

A. IF THE COURT ADOPTS A DEMURRER STYLE REVIEW APPROACH TO TESTING STANDING UNDER SECTION 17200 THE COURT SHOULD CLARIFY THAT THE COURT IS ONLY TESTING THE LEGAL SUFFICIENCY OF THE ALLEGATIONS CONTAINED IN THE PLEADINGS AND NOT WHETHER THE CONTESTANT WILL BE ABLE TO PROVE THOSE FACTUAL ALLEGATIONS.

TEXCOM argues,

> "With the inevitable increase in the filing of multiple proceedings with different procedural requirements to accomplish the same litigation objective comes a corresponding increase in judicial inefficiency as well as increased risk of inconsistent rulings. Demurrer-style review of standing issues under section 17200 will help mitigate these risks by ensuring that would-be beneficiaries with valid claims can proceed in probate court."

(AB at 22.) In this paragraph TEXCOM suggests that the Court should adopt a demurrer style review approach to test the legal sufficiency of the petition filed by a disinherited trust beneficiary. Appellant notes that the purpose of a demurrer is to test the legal sufficiency of the factual allegations of a complaint or petition, not the truthfulness of the facts or the sufficiency or veracity of the evidence proffered at the pleading stage of the case. (*Klistoff* v. *Superior Court of Los Angeles* (2007) 157 Cal.App.4th

469, 473.) For example, in reviewing the sufficiency of a complaint or a petition against a general demurrer, the court must, "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank* v. *Kirwan* (1985) 39 Cal.3d 311, 318.) The court may also consider any matters which may be judicially noticed. (*Id* at 318.) Appellant's most important point to make here is that in considering a demurrer, a court cannot resolve factual issues.

> For purposes of a general demurrer to a complaint, all material fact allegations must be taken as true. Whether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer.

(*Stevens* v. *Superior Court* (*St. Francis Medical Center*) (1986) 180 Cal.App.3d 605, 609-610, citing *Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.) Furthermore, in considering a demurrer, not only should the factual allegations be accepted as true, a court should read the allegations of a complaint liberally. (*Shields* v. *County of San Diego* (1984) 155 Cal.App.3d 103, 113.) Therefore, if the Court adopts a demurrer style review to evaluate whether Appellant has standing to proceed with her trust contest under Probate Code 17200 the Court does not need to look further than the four corners of her petition and whether her petition stated a cause of action upon which relief could be granted if successful.

TEXCOM argues, "The trial court could, and indeed should, first require a petitioner to prove her standing before it allows her any rights to

intrude further into the internal affairs of the trust. For example, it could bar her, until her standing is proven, from petitioning for removal of the trustee or seeking an accounting, as Respondents fear." (AB at 29.) Appellant has two responses to this argument depending on if the Court adopts a demurrer style review approach to standing or a demurrer style evidentiary hearing. First, Appellant contends that if the Court adopts a demurrer style review of standing under 17200, all that must be done to overcome the demurrer and affirm standing is to establish a prima facie case in the four corners of the petition by alleging that the contestant has a direct pecuniary interest in the outcome of the contest if successful. Under this approach the court would take all allegations as true and not make any rulings on whether the facts can be proven or not. If Appellant meets this minimum threshold to prove standing, then she should be permitted to proceed with her petition to remove or suspend the trustee and to compel an accounting. Second, alternatively, Appellant responds that if the Court adopts a demurrer style evidentiary hearing to test standing, the Court should confirm that the only evidence needed to prove standing is that the contestant is who they claim to be and that they would stand to gain if successful. Not whether it is reasonably likely that the petitioner will be successful based on the evidence they have been able to compile at the pleading stage of the case based on limited to no discovery. If Appellant

meets this threshold by proving basic facts to show standing, then Appellant should be permitted to proceed with her petition to remove or suspend the trustee and compel an accounting. These points are very important because often allegations of trustee misconduct and breaches of fiduciary duties go hand in hand with trust contests filed by disinherited trust beneficiaries because the successor trustee is the party that allegedly procured the ill-gotten estate plan benefitting themselves. The trustee is free from judicial scrutiny during the trust contest if the court cannot order the trustee to provide an accounting or suspend the trustee until an accounting is provided if the trustee refuses to provide an accounting. This issue is important because it pertains to the preservation and protection of trust assets during the pendency of the trust contest while the court deliberates on who the rightful beneficiaries are. If the trustee steals all the trust funds before the disinherited beneficiary can ultimately prove that they are the rightful beneficiary, then the trust contest is futile. Therefore, if a petitioner meets the minimal threshold to prove standing, then the petitioner should be permitted to proceed with a petition to remove or suspend the trustee, compel an accounting and related causes of action against a trustee.

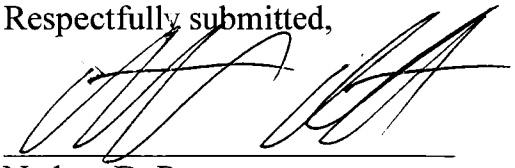
CONCLUSION

The Court should not unnecessarily complicate trust contests filed by disinherited beneficiaries by requiring an evidentiary hearing on standing.

However, if the Court is inclined to adopt this approach, the Court should clarify that the only evidence that must be proven at the evidentiary hearing on the issue of standing is that the contestant is who they claim to be and that the contestant has a direct pecuniary interest in the outcome of the contest if the contest is successful. If, on the other hand, the Court adopts a demurrer style review hearing and not a demurrer style evidentiary hearing, the Court should clarify that the allegations in the pleadings are taken as true and that if the allegations in the petition establish a prima facie basis for relief then the disinherited trust beneficiary should be permitted to proceed with discovery and litigate their claims in due course. Furthermore, if the contestant proves standing the Court should permit the contestant to proceed with a petition to remove the trustee, a petition to compel an accounting and other related cause of action against the trustee. Finally, if the Court adopts a demurrer style review or demurrer style evidentiary hearing approach, the Court should not make it a requirement in every case. Rather, the Court should simply confirm that these are options available to parties who wish to invoke the procedure to eliminate frivolous trust contests where the contestant has no direct pecuniary interest in the contest.

Dated: July 19, 2019

Respectfully submitted,



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CERTIFICATION OF WORD COUNT

I, Nathan D. Pastor, hereby certify in accordance with California Rules of Court, rule 8.504(d)(1), that this brief contains 2554 words as calculated by the Microsoft Word software in which it was written.

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

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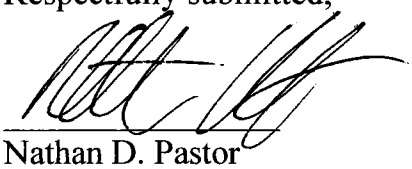

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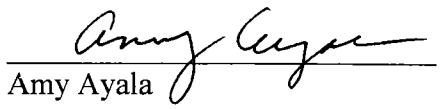

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