

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

_____	)	S271483
Brianna McKee Haggerty,	)	
	)	
Plaintiff and Appellant,	)	4th Civ. No. D078049
	)	
v.	)	
	)	San Diego County
Nancy F. Thornton et al.	)	Superior Court
	)	No. 37-2019-
Defendants and Respondents.	)	00028694.PR.TR.CTL
_____	)	

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**Notice of Supplemental Authority**

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Appeal from the Superior Court of  
San Diego County  
Hon. Julia C. Keley, Judge

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July 24, 2023

California Supreme Court  
350 McAllister St.  
San Francisco, CA 94102

**Notice of Supplemental Authority**

*Diaz v. Zuniga* (2023) 91 Cal.App.5th 916

Chief Justice Guerrero and Honorable Associates:

Appellant Brianna McKee Haggerty invites this Court to consider the recent decision in *Diaz v. Zuniga* (2023) 91 Cal.App.5th 916. A panel of the Second Appellate District, Division Four, joined fellow justices from the Fifth Appellate District [*King v. Lynch* (2012) 204 Cal.App.4th 1186], the Third Appellate District [*Pena v. Dey* (2019) 39 Cal.App.5th 546], and the First Appellate District [*Balistreri v. Balistreri* (2022) 75 Cal.App.5th 511], in finding the textual differences between Probate Code section 15401 and 15402 establish a different framework for regulating revocations and for regulating amendments.

*Diaz* observed that section 15401 provides that the trust's prescribed method for *revocation* must be explicitly exclusive for it to preclude the fallback method available under section 15401, subdivision (a)(2); by contrast, there is no explicit exclusivity requirement for section 15402 modifications.

**Unlike section 15401, section 15402 does not require the trust instrument to “explicitly” state** that the method of revocation provided in the trust instrument is the “exclusive” method of modification for the trust terms to displace the statutory modification provisions.  
(*Diaz, supra*, 91 Cal.App.5th 916, 925, emphasis added.)

Because the trustor in *Diaz* prescribed a specific procedure for modification, that procedure was exclusive, so it precluded any fallback method.

Section 15402 does not apply here because Article X of the Trust **provides a specific procedure for modification** of the trust terms. Article X therefore **displaces the alternative statutory modification** procedures under sections 15401 and 15402.  
(*Id.* at p. 926, emphasis added.)

The *Diaz* court found it would subvert the intent of trustors who prescribed a specific method for modification to also authorize the fallback method (which appears in section 15401 but not 15402) for modification.

A contrary result would **frustrate the intent** of the trustor, Mateo, who chose a specific method for amending the Trust terms. (*King, supra*, 204 Cal.App.4th at p. 1193 [parallel citation].) The 2007 document does not conform to that method and does not constitute a valid amendment of the Trust.

(*Id.* at pp. 926.)

*Diaz* further rejected the argument advanced by respondent Union of Concerned Scientists, that a modification should be enforced so long as the trustor signs a document, and there is no affirmative evidence of incompetence or coercion. (See UCSB 21.) Instead, the *Diaz* court adopted the reasoning of *Pena v. Dey, supra*, 39 Cal.App.5th 546, 555: “While we must construe a trust instrument, where possible, to give effect to the intent of the settlor, that intent ‘must be ascertained from the whole of the trust instrument, not just separate parts of it.’ ” In other words, courts must vindicate not just the trustor’s preferred *beneficiary* but also the *method* of modification.

We reject appellants’ argument that the [purported modification] document is relevant to determining Mateo's intent with regard to Trust amendments. The relevant and operative document is the Trust instrument itself. ([Citations].) **Mateo's intent** as trustor is evident in Article X, which sets forth a **specific method for amending** the Trust terms.

(*Diaz, supra*, 91 Cal.App.5th 916, 926, emphasis added.)

Accordingly, *Diaz* joins *King v. Lynch, supra*, 204 Cal.App.4th 1186, *Pena v. Dey, supra*, 39 Cal.App.5th 546, and *Balistreri v. Balistreri, supra*, 75 Cal.App.5th 511, in holding that a different law governs revocations and modifications. Section 15401 requires a revocation method be explicitly exclusive for it to displace the fallback method; by contrast, section 15402 has no such requirement of explicit exclusivity for modifications, and does not even include a fallback method for modification. This Court should enforce the Legislature’s decision to create different frameworks for regulating revocations and modifications.

Respectfully submitted,

*Mitchell Keiter*

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Dated: July 24, 2023

Mitchell Keiter  
Counsel for Appellant  
Brianna McKee Haggerty

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Executed this 24th day of July, 2023, at Beverly Hills, California.

*Mitchell Keiter*

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Mitchell Keiter

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STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

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THORNTON**

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Lower Court Case Number: **D078049**

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7/24/2023

Date

/s/Mitchell Keiter

Signature

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