**B259534**

IN THE

# COURT OF APPEAL
# STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
Division Six

---

In Re
JOHN A. PATTON

---

KIM BUTLER, et al.,
Petitioners & Respondents,

vs.

JOHN F. LEBOUEF,
Respondent & Appellant.

---

Appeal from the Superior Court of California,
County of Santa Barbara
The Hon. Colleen Sterne (case no. 1383524)

---

## RESPONDENTS' BRIEF

---

John Derrick, SBN 223308
THE LAW OFFICE OF JOHN DERRICK, apc
21 E. Pedregosa Street
Santa Barbara, CA 93101
805 284 1660
jd@californiaappeals.com

Attorney for Respondents
KIM BUTLER, et al.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**CASES**

**STATUTES**

**CALIFORNIA RULES OF COURT**



**OTHER AUTHORITY**

## INTRODUCTION

The Superior Court found that appellant — a lawyer — drafted or transcribed testamentary instruments for an elderly person, making himself the main beneficiary. Under Probate Code section 21380, this created a presumption of fraud or undue influence. The court also found that the lawyer, in an effort to salvage the inheritance, lied his way through trial.

The facts of this case may be interesting compared with many (although one wouldn't glean that from the highly one-sided account in appellant's opening brief). Some border on the bizarre. But when it comes to the law, this appeal is as dull as they come. Put simply, there is no real issue of law in dispute as to the validity of the instruments. Appellant's endless string citations to non-dispositive, undisputed points of law do not change that. The issue turns on the facts. Appellant relies on arguing that a different result could have been reached by believing witnesses whose testimony the trial court did not find credible. That is not a plausible appellate argument.

As for the other issues raised, there *was* a statutory basis for the attorney fee award, the amount awarded *was* reasonable, and appellant's contention that the court abused its discretion in not ordering *him* to be compensated for his expenses and time as an imposter trustee is absurd.

## STATEMENT OF THE CASE

In October 2011, respondents[1] Kim Butler and Julie Black[2] filed a petition under Probate Code section 17200 seeking to invalidate the will and trust of the late John Patton and the removal of appellant John LeBouef as successor trustee. (1 AA 1.) An amended petition added respondent Carol Archer to the action. (5 AA 1481.)

The matter proceeded to a five-week bench trial early in 2014 along with related petitions dealing with Patton's estate. (See 7 AA 2088, 2090.) After the conclusion, the court issued a statement of decision favoring the petition. (7 AA 2088, 8 AA 2145.) A supplemental statement of decision approved a request for statutory attorney fees under Probate Code section 21380. (8 AA 2173, 2175.)

On July 29, 2014, the court entered a judgment granting the petition and awarding attorney fees in an amount to be determined. (8 AA 2219-2222.) Notice of entry was served on August 4, 2014. (8 AA 2225.) On October 14, 2014, LeBouef filed a notice of appeal. (8 AA 2229.)

On November 14, 2014, following a noticed motion, the court entered a supplemental judgment awarding fees of $1,256,971 as well as costs. (8 AA 2232, 9 AA 2437-2438.)

---

[1] The brief will refer to the respondents on appeal collectively as "respondents," although they were the petitioners below.

[2] The caption on appellant's opening brief incorrectly refers to "Kim Black" and "Julie Butler."

LeBouef subsequently petitioned the court for reimbursement of legal expenses incurred while he was trustee and before being removed as well as for trustee fees. (9 RT 2443.) On March 25, 2015, the court issued an order denying those requests. (9 RT 2554-2555.) On April 23, 2015, LeBouef appealed that order. (9 AA 2558.) This Court consolidated the two appeals.

## STATEMENT OF FACTS

### (a) John Patton

John Patton was an accomplished and renowned interior designer. (1 RT 248; 3 RT 645-646.) He lived in Santa Barbara at 1424 San Miguel. (1 RT 224, 248.) He also owned two other houses in Santa Barbara and had substantial liquid assets. (10 RT 2418-2419.) He died on June 18, 2011. (1 RT 218.)

Patton had a long-term relationship with his partner, Leo Duval. (1 RT 246.) Duval died in 2004. (1 RT 93-94.)

### (b) John LeBouef

Appellant John LeBouef is a member of the California Bar. (1 RT 81.) He goes by "Jack." (4 RT 939-940.)

LeBouef was born in 1939 and was 74 at the time of trial. (1 RT 63.) He has lived in Los Angeles at all times relevant to this narrative. (See, e.g., 1 RT 63-64, 3 RT 643.) He claimed to have been a friend of Patton's since the 1960's. (1 RT 72.)

The trial court considered LeBouef's testimony to have been "obstructive." It wrote: "When he did not answer or claimed lack of recollection, it appeared a matter of choice rather than uncertainty or inability to access a memory."

(8 AA 2134.) The court said that his attitude at trial was "inappropriate for a lawyer." (8 AA 2134.) While the court found that various witnesses were being mendacious, it was LeBouef's testimony "that created the greatest concern." (7 AA 2089.) In fact, as shown below, LeBouef admitted toward the the end of trial having lied under penalty of perjury about one somewhat black-or-white fact, namely whether his wife was alive or long dead.

**(c) LeBouef's marriage to Irene Grant**

LeBouef was married to Irene Grant in 1999. (1 RT 64.) It was a "confidential" marriage.[3] (1 RT 64.) Before LeBouef married Grant, he assisted her in recovering $2.5 million out of the estate of the late Walter Pick. (1 RT 66-67.) LeBouef did not deny drafting Pick's will. (1 RT 66-67.) Grant was, reportedly, Pick's romantic partner. (9 RT 2134.) But she was also his paid caretaker toward the end of his life. (9 RT 2160.)

LeBouef testified while being deposed in 2012 that his wife — Grant — was alive and that they lived together as a couple except when she was traveling. (Respondents' Appendix ["RA"] 3.) He said she was in Madrid on that particular day. (RA 4.) He also claimed the two of them had an unspecified number of children who were deceased, but that he "didn't care" to "discuss all that" as it was his "personal life." (RA 4-5.) He couldn't recall when Grant was born,

---

[3] A "confidential marriage" is one where there is no public record made of the union. (See *People v. Hassan* (2008) 168 Cal.App.4th 1306, 1314.)

protesting: "Do I have some privacy rights here?" (RA 5.) A video of this deposition testimony was played to the court during trial (with the portion played stated on the record). (1 RT 68-69 [hence, the RA citations in this paragraph are to the transcript that was lodged with the court (see 1 RT 61)].)

At trial, LeBouef *still* claimed not to know how old Grant was. (1 RT 65.) However, the information on her birth certificate indicated she was 83 at the time of the marriage (which would have made her 96 at trial). (1 RT 65.) LeBoeuf was about 59 when they married. (1 RT 64.)

But it also came out at trial that Grant had, in fact, died in 2006 — some eight years earlier. (1 RT 66.) And, moreover, the two had never actually lived together. (11 RT 2646-2647.) Two years before her death, Grant had moved to Argentina. (1 RT 65.)

During the marriage, LeBouef managed all of Grant's financial affairs. (9 RT 2146.) After her death, LeBouef continued to receive her Social Security benefits for seven years until 2013 (after the litigation began). (1 RT 67-69, 74-75; RA 152 [trial ex. 87].)

LeBouef confessed toward the end of trial to having lied in his deposition testimony about Grant. (12 RT 2724.) As for the supposedly "deceased children," nothing more was heard about them. It is unclear whether LeBouef was originally claiming that Grant was a female fertile octogenarian or whether his story was that the children were the product of

some earlier undisclosed fling. LeBouef made no effort at trial to suggest they ever existed.

What *was* both true and undisputed was that LeBouef was involved in the creation of Grant's trust. (1 RT 66.) LeBoeuf received the bulk of her estate. (1 RT 66.) He gave a niece of hers between $800,000 and $1 million from the proceeds. (9 RT 2118-2119, 2133.) The niece understood the arrangement was that Grant was leaving her entire estate to LeBouef on the basis that *all* of it would then be transferred to her. (9 RT 2147.) This, supposedly, was because the niece didn't understand the relevant "paperwork" and she had some problem with one of her brothers. (9 RT 2158.) However, she never received an accounting. (9 RT 2147.) And she suspected that LeBouef kept an unspecified amount for himself. (9 RT 2148.)

The reason for LeBouef's bizarre lies about Grant still being alive, and the mother of his never-existing children, appears to have been that by representing himself as still married to her, and a grieving parent, he hoped not only to cover up this inheritance, but also to play down his connection to someone called Mark Krajewski.

**(d) LeBoeuf's partnership with Mark Krajewski**

At trial, LeBouef denied that Krajewski — who was 58 at trial — was his long-term committed partner. (1 RT 140-142; 11 RT 2466.) However, the evidence pointed to a deep and long-

standing partnership of some sort.[4] This went back to the early 1970s. (11 RT 2468.) Over the years, the two had come to jointly own properties in Los Angeles and Buenos Aires as joint tenants with right of survivorship or tenants in common. (1 RT 142-145.) Krajewski testified that other than his siblings, no one had been closer to him in the previous 10 years than LeBouef. (11 RT 2654.) There were checking and investment accounts in both their names. (11 RT 2659; 12 RT 2854.) They had a shared cellphone plan, with phone numbers one digit apart. (11 RT 2658.) They used, at least for some purposes, the same Post Office Box. (1 RT 231-232.) And Krajewski used LeBouef's Costco card (a detail that has some significance as the narrative unfolds). (11 RT 2661.)

Krajewski had himself benefitted from the Pick estate. He received a limited partnership interest in an entity called the Horizon Land Company. (1 RT 156.) He also became the executor of Pick's estate. (1 RT 86-87.)

At trial, evidence was presented indicating that Krajewski was something of a serial inheritor. In its statement of decision, the court indicated that it was not going to consider the inheritances going back a long time as it found only the two most recent to be probative. Thus, this narrative will not summarize all the evidence about the others. Suffice it to say that Krajewski himself testified he assumed LeBouef had

---

[4] This narrative will omit the prurient detail about whether or not there was a romantic connection. The court declined to make a finding as to that issue. (7 AA 2090-2091.)

written *all* of the estate plans from which he had benefitted. (11 RT 2639.)

**(e) LeBouef's handling of Audrey Cook's trust**

The other of the previous inheritances involving Krajewski and LeBouef that the court found probative involved the trust of Audrey Cook, an elderly person born in 1916. (7 AA 2091; 1 RT 165.)

Rick Jong is an accountant. (3 RT 596.) Jong had a professional relationship with the Cook family going back to the mid-1990's. (3 RT 598.) After the death of her husband in 2002, Cook told Jong she would like an attorney to come to her house to make changes to her trust. (3 RT 602, 618.)

Jong had met LeBouef at an event and learned he did estate planning. (3 RT 602-604.) He told LeBouef he had a client who needed an attorney who would visit her at home. (3 RT 604.)

As a result of this introduction, LeBouef wrote four amendments to Cook's trust between 2003 and 2006. (1 RT 77.) At trial, he admitted to working on her trust. (1 RT 132-133.) The documents specifically identify "The Law Office of John F. LeBouef" as preparer. (RA 21, 36, 47, 51 [Exs. 10/11/12/13].)

In the first three trust amendments — made between 2003 and January 2006 — Cook left her estate to persons not connected with this litigation and Jong remained successor trustee. (RA 21, 23-24, 36, 38, 47, 49 [Exs. 10/11/12].)

However, the fourth amendment — made in August 2006, some seven months after the previous one — completely changed the terms of Cook's estate plan. After some specific bequests to various individuals, Cook purportedly left the remainder of her estate to Krajewski. (RA 51, 58 [Ex. 13].) Cook was 90 when this occurred. (1 RT 165; 12 RT 2811.) She died later that year or in 2007. (6 RT 1422; 11 RT 2553.)

Krajewski testified that LeBouef introduced him to Cook, supposedly in 2003, and, supposedly, to do some work on her house, and that they had gone on to share one another's interests in conservative politics. (11 RT 2542-2546.) But to the best of Jong's knowledge, Cook had never even heard of Krajewski. (3 RT 610.) Based on his long familiarity with her, he believed she would never have signed an amendment to her estate plan leaving more than $1 million to someone outside her family. (3 RT 611-612.) In February 2005, while Cook was still alive, LeBouef sent her a letter, in which he showed his address as what was, in fact, Krajewski's home. (1 RT 64, 226.)

That last trust amendment designated someone called Donald Pooler as successor trustee to replace Jong. (RA 59 [Ex. 13].) Jong did not hear about this amendment until after Cook's death. (3 RT 610.) When he found out, LeBouef told him Pooler was a retired judge. (3 RT 597.) That was not true. Pooler was actually an investigator and a friend of LeBouef's going back to 1964. (1 RT 90; 6 RT 1312.) Pooler regarded LeBouef as his second closest friend. (7 RT 1467-1468.) He was also a good friend of Krajewski. (7 RT 1471.)

Pooler was a tenant of LeBouef's living next door to him and had been for 10 years; before that, he lived in an apartment owned by Krajewski. (1 RT 91-92; 6 RT 1406.) Krajewski had inherited the 12-unit building of which that apartment was part from someone called Gravett, whose trust LeBouef had also prepared. (1 RT 153; 11 RT 2652.)

LeBouef used Pooler on an ongoing basis to witness documents. (1 RT 89-90.) Pooler was also involved in the Pick estate, as he signed a proof of service. (1 RT 89.) His Mercedes Benz used to belong to Grant. (6 RT 1449-1450.)

At trial, Pooler was asked: "You don't know if the Audrey Cook trust that named you as a successor trustee, you don't know whether or not that was created before or after she died, do you?" (6 RT 1423.) To this he replied: "I can't recall that." (6 RT 1423.)

Following Cook's death, LeBouef arranged for Krajewski to receive approximately $1.3 million from her estate. (1 RT 229-230, 232; RA 153 [Ex. 176].) Both Krajewski and Pooler were defendants in a lawsuit about their involvement in the Cook trust. (7 RT 1502.) The case eventually settled with Krajewski paying $1.1 million out of the $1.3 million he had received in liquid assets, although he retained an interest in a business. (7 RT 1503, 1533-1534; 11 RT 2554-2558.)

**(f) Patton's debilitating alcoholism, depression and illnesses after Duval's death**

Patton was hit hard by the death of his partner, Duval, in 2004. (1 RT 93-94; 3 RT 718.) He continued to grieve until the

day he himself died. (3 RT 718.) After Duval's death, Patton took to drinking very heavily. (3 RT 648.) He was — or became — an alcoholic. (2 RT 363-364.) LeBouef represented Patton in a felony DUI case in 2008-2009. (1 RT 97-98.)

Wayne Greene and Rosaleen Wynne were Patton's next-door neighbors. (4 RT 811-812, 892-893.) Both would sometimes have to assist him, because he was too intoxicated to help himself. (4 RT 820, 901.) For example, they would have to pick him up off the floor, put him to bed, help him out of his car when he was too drunk to get out himself, and help him shower. (4 RT 824, 902.)

Neely Bermant knew Patton and Duval since the early 1970s. (3 RT 633.) She worked for them — and later for Patton alone — from the late eighties or early nineties on and off until the time of Patton's death. (3 RT 633-635.) From 2008 until he died, she would typically stay at his home for two days a week, sometimes as much as four, commuting up from her home in Los Angeles. (3 RT 639-640.)

Bermant testified that toward the end of his life, Patton suffered from high blood pressure, diabetes, hepatitis C, and very bad incontinence. (3 RT 651.) He could often be heard making a wolf-like howling noise, both at night and during the day. (3 RT 649.) In the last year of his life, he had difficulty keeping his balance and would fall, injuring and bruising himself, every four to six weeks. (3 RT 674-675.) He also took pills for depression. (3 RT 650-651.)

Carmen Munoz worked for Patton as his housekeeper for 17 years until his death. (5 RT 1028, 1035.) She testified that during his last six months, Patton was more often drunk than sober on the two weekday mornings she would work at the house. (5 RT 1037.)

**(g) LeBouef's increasing visits to Santa Barbara following Duval's death**

After Duval's death, LeBouef started to visit Patton in Santa Barbara with increasing frequency, staying overnight. (3 RT 736-737; 4 RT 944.) Krajewski would often accompany him. (3 RT 641, 643.) By 2009, LeBouef would usually visit once a week. (1 RT 215.) Pooler, too, visited Patton at least once a month during the last five years of his life, also staying overnight. (6 RT 1341-1342.) Sometimes he would go on his own, sometimes with LeBouef and Krajewski. (6 RT 1342.)

Wynne (the neighbor) testified that at times — particularly in the last year of his life — Patton would say that LeBouef and Krajewski came too often and that LeBouef could be a little overbearing in directing him what to do. (5 RT 985.) In early 2010, Patton frequently told Bermant he was losing control of his finances to LeBouef, who would move his money around and invest it so that he — Patton — didn't know where it was. (3 RT 679-680.)

Patton told Munoz — the house cleaner — that LeBouef was his lawyer. (5 RT 1037.) The court found that "Ms. Munoz testified in a reliable and truthful manner." (8 AA 2107.)

### (h) Kim Butler, Julie Black, and Carol Archer

Respondents Kim Butler and Julie Black were Patton's nieces. (1 RT 244-245.) As a child, Butler felt Duval was like another uncle to her. (1 RT 246-247.) She continued to visit and stay with Patton as an adult, both before and after Duval's death. (1 RT 248-249.)

Black also had great relations with Patton as a child. (2 RT 354.) Indeed, she regarded both Patton and Duval as though they were her parents. (2 RT 355.) Patton would send her gifts as a child — sometimes money in amounts as much as $500. (2 RT 354-355.) This continued in college. (2 RT 356.)

After Black graduated, they fell out of touch between 1994 and 2001. (2 RT 358-359.) A visit in 2001 was warm to begin with and Patton was thrilled to see her. (2 RT 359.) However, it turned tense after he criticized her decision to concentrate on making lesbian and gay films as a career, a choice he felt wasn't economically viable. (2 RT 360.) Patton had been drinking when that occurred; Black found him intimidating. (2 RT 361.) Black felt "flabbergasted" and left in tears. (2 RT 361.) After that, they did not see each before Patton's death. (2 RT 362.) However, Patton would send her cards and they also spoke on the phone after Duval's death. (2 RT 362.)

Respondent Carol Archer used to work for Patton and Duval when they had a gallery and was a close friend. (10 RT 2423.) Patton never had anything negative to say about her, which, for him, was unusual. (10 RT 2423.) He tended to have

love-hate relationships with nearly everyone involved in his life. (4 RT 835.)

**(i) Butler's interactions with Patton after Duval's death**

Butler spent Thanksgiving with Patton in 2006 when LeBouef and Krajewski were also there as houseguests. (1 RT 249.) Before that visit, Butler had no knowledge of LeBouef. (2 RT 339.) While she knew of many of Patton's acquaintances and friends, LeBoeuf was not among them. (2 RT 340-341.) At the time, she formed the impression that he had been closer to Duval than to Patton. (2 RT 340.) For example, LeBoeuf didn't know Patton had had a sister. (2 RT 340.)

In 2009, Butler borrowed $8,000 from Patton to help relocate and get out of a relationship. (1RT 255-256.) However, Butler did not relocate immediately and the relationship continued for another year or two. (1 RT 253, 259; 2 RT 323.)

Butler procrastinated for close to a year in telling Patton about the change of plan, because she was afraid he would be upset. (1 RT 263; 2 RT 324.) When she did tell him, he was angry she hadn't done so before. (2 RT 324-325.) However, they reconciled with Patton telling her how happy he was to be back in touch. (2 RT 343-344.) Butler never did pay back the loan, but Patton told her late in 2009 that he wasn't worried about it and it could come off her inheritance. (2 RT 323, 344, 346-347.) The court found Butler's account to be credible. (8 AA 2144.)

In 2010, Patton asked Butler to live with him, stressing he was serious. (1 RT 270-271.) He brought up the idea again in 2011, some months before his death. (1 RT 271-272.)

**(j) Patton's 1994 and 2000 wills**

Robert Rigdon is an attorney. (2 RT 277.) In 1993, he was contacted by Patton who wanted to have a new will drawn up. (1 RT 278-279.) His previous one had been prepared by LeBouef in 1986. (2 RT 279; RA 8 [Ex. 1].) In that, Patton left his estate to Duval after gifts of $5,000 to each of his nieces. (RA 8 [Ex. 1].)

Patton's new will signed in 1994 and another in 2000 — also prepared by Rigdon — were similar but added gifts to Archer and someone called Wendy Greenstein. (2 RT 279-281; RA 12 [Ex. 2]; RA 16-17 [Ex. 7]. Greenstein had known Patton for 20 years and regarded him as her best friend. (10 RT 2361.)

**(k) Patton's purported 2006 will and trust**

At issue in this litigation is the authorship and validity of a further will purportedly executed in December 2006 as well as a trust of the same date. (RA 79 [Ex. 14/trust]; RA 111 [Ex. 15/will]; RA 115 [Ex. 17/abstract].) Those documents, taken at face value, left everything to LeBouef after three relatively small specific gifts to Butler and a couple of other people. (RA 83 [Ex. 14].) Among those gifts was a 1955 Mercury classic car, which was to go to Pooler. (RA 83 [Ex. 14].) LeBouef was also made successor trustee. (RA 85.) This narrative will now turn to evidence about how those purported testamentary documents came into existence.

Alice Bennett is an attorney. (6 RT 1219.) She and LeBouef met around 1960 and went to college together. (6 RT 1217, 1268.) Pooler has also known her since the 1960's. (6 RT 1394.) Bennett currently works for the Los Angeles Superior Court as a referee conducting mental capacity hearings. (6 RT 1214.)

Bennett got to know Patton socially in the mid-to-late 1960's. (6 RT 1216.) She later kept in sporadic contact. (6 RT 1216.) The court wrote of Bennett in its statement of decision: "She demonstrated rather selective recollection, was rather evasive, and the court has credibility concerns with regard to her testimony." (8 AA 2111.)

For what it is worth in light of the court's comments, Bennett testified that in 2004, after Duval's death, Patton contacted her wanting to discuss preparing estate planning documents. (6 RT 1220-1221.) Patton supposedly told her he wanted to leave his estate to LeBouef, but LeBouef had said it wouldn't be appropriate for him to prepare the documents. (6 RT 1222-1223.) Bennett said she told Patton she hadn't done that sort of work for a long time and suggested he find a lawyer in Santa Barbara. (6 RT 1221-1222.)

About three years later — according to Bennett's testimony — Patton called to say he was sending his legal documents to her and asking her to hold them. (6 RT 1234.) On receipt, she glanced at them and found them to be a will, a trust, and an abstract of trust. (6 RT 1234-1235.) She believed the trust was the original of the one dated December 2006, in

which Patton purportedly left the bulk of his estate to LeBouef. (6 RT 1235-1236.) Also among the documents were, supposedly, the originals of the December 2006 will and the abstract of trust. (6 RT 1236-1238.) As will be shown later in this narrative, the original of the trust and abstract were never introduced into evidence due to a mysterious "burglary." Bennett did not have any information from Patton as to who drafted these documents. (6 RT 1248.)

Bennett said she did nothing with the documents until she heard from LeBouef after Patton's death. (6 RT 1238.) She then delivered them to him. (6 RT 1241-1242.) Before doing so, she reviewed them and saw that they provided for LeBouef to receive almost all of Patton's estate. (6 RT 1243-1244.)

In May 2010, Bennett received a check for $500 drawn on Patton's bank account. (6 RT 1268-1269.) As shown later in this narrative, it turned out that this check was actually made out by LeBouef. In that same year, LeBouef represented Bennett in litigation when she was sued by a neighbor. (6 RT 1268-1269.)

Pooler — Bennett's and LeBouef's friend — testified that Patton also told him on a number of occasions between 2005 and his death that he was leaving his estate to LeBouef. (6 RT 1324-1325.) Pooler claimed that in December 2006, he visited Patton in Santa Barbara, spending the night. (6 RT 1343-1344, 1388-1389.) In the morning, Patton told him he had two people coming to assist him with his will or estate plan. (6 RT 1344.) Before he left, he saw these two people — a man and a

woman — arrive. (6 RT 1344-1345, 1399-1400.) LeBouef was not present, Pooler said. (6 RT 1344.) The court wrote in its statement of decision that it did not believe that event happened. (8 AA 2141.)

In addition, Pooler claimed that in August 2008, Patton gave him copies of the 2006 trust and will, which he then took home and put in a drawer. (6 RT 1454.) He says he showed them to LeBouef after Patton's death. (6 RT 1455.) However, the court stated it had serious concerns about the truth and reliability of Pooler's testimony. (8 AA 2114.)

The December 2006 will was purportedly witnessed by two people called Maria Hirsch-White and Miriam Olivares. (RA 114 [Ex. 15].) Olivares was someone whom LeBouef routinely used to witness wills and contracts, in much the same way as he used Pooler. (1 RT 89-90.) Hirsch-White and Olivares were friends. (7 RT 1552.) According to Hirsch-White, Olivares wanted to visit Patton one day so she drove her. (7 RT 1552-1553.) She had never met Patton before. (7 RT 1553.)

They stayed for the afternoon and, while there — Hirsch-White testified — Patton asked them to witness his will. (7 RT 1553-1554.) They then did so. (7 RT 1554-1559.) Patton said something in which he referred to the attorney responsible for these documents as female. (7 RT 1560-1561, 1572.)

Olivares was medically unavailable at trial, but a portion of her deposition was read to the court by counsel for LeBouef and reporting was waived. (10 RT 2444-2445, 2450; 11 RT 2462, 2464.) The record contains no indication of what parts

were read. However, the court wrote in its statement of decision: "She presented as an unwilling and rather angry witness. Her testimony was sparse in detail, and had a rehearsed quality similar to that of Ms. Hirsch-White. Her testimony generally agreed with that of Ms. Hirsch-White concerning the spontaneous trip to Santa Barbara in 2006 that resulted in her witness of the 2006 Patton Will. The court finds this whole scenario rather improbable, and uncertain as to date." (8 AA 2129.)

According to LeBouef, Patton told him for the first time after December 22, 2006, that he was leaving him the bulk of the estate and that he was to be the successor trustee. (1 RT 100, 103-106.) LeBouef claimed he then told Patton he didn't want to see the trust or know who had prepared it. (1 RT 105.) According to LeBouef, Patton told him shortly before his death that if anything ever happened to him (Patton), he (LeBouef) should contact Bennett. (1 RT 107-108.)

LeBouef admitted he had subsequently assisted Patton with various documents and forms designating him a beneficiary of the latter's accounts. (1 RT 183; 12 RT 2850-2851.) A fax purportedly sent in Patton's name to one of Patton's banks transmitting a copy of the 2006 abstract of trust asked the recipient to contact "Patton" with any questions at an email address that was actually *LeBouef's*. (12 RT 2863-2864; RA 126 [Ex. 36].) That appeared to be in tension with LeBouef's claim not to have seen the trust.

Krajewski testified he did not recall LeBouef ever telling him he did not write Patton's purported 2006 will and trust. (11 RT 2686-2688.) Pooler had never heard this from LeBouef, either. (7 RT 1484-1485.) Pooler was also asked: "Do you know why Mr. LeBouef is taking the position that he did not draft the John Patton trust?" (7 RT 1512.) To this he replied: "I believe because he was a — acted as an attorney for Mr. Patton." (7 RT 1512.)

**(l) Evidence of a change made to the testamentary documents after December 2006**

Even if Patton did execute testamentary documents in 2006, there was evidence of a change that followed. During a telephone conversation in 2008, Patton told Butler: "Oh, I'm here with Jack [LeBouef] and we just got done making some revisions to my will and my trust." (1 RT 270.)

Bermant — the employee — testified that in 2009, Patton told her he had just come out of an unspecified woman's office and had "signed everything," an apparent reference to his estate planning. (3 RT 671-672, 711-714.) From the context, Bermant understood that to refer to a woman attorney. (4 RT 797.)

**(m) Expert testimony about the testamentary and related documents**

Sandra Homewood is a forensic document examiner. (2 RT 380.) The parties stipulated to her expertise. (2 RT 380.) Homewood examined what purported to be Patton's testamentary documents and those in the Cook trust, as well as

445 exemplars of Patton's handwriting in other documents and exemplars of LeBouef's. (2 RT 391-398.) Over the course of extended testimony, she found numerous similarities between the quirks and idiosyncrasies of the "Cook" and "Patton" documents, including structure, grammatical and punctuation mannerisms and errors, language, and other identifying factors. (2 RT 398-443.)

Based on Homewood's detailed analysis, her conclusion — expressed in terms of industry-standard language about probability — was as follows: "My opinion is that the Patton trust very probably was produced by the same entity that produced the Cook trust and very probably is defined as virtually certain." (2 RT 408.) According to the standard laid down by her professional body — the American Society for Testing Materials — that degree of confidence meets the criteria for "proof beyond a reasonable doubt" in criminal cases. (2 RT 389, 408.)

Homewood came to the same conclusion about the Cook and Patton abstracts of trust. (2 RT 431-432.) Turning to Patton's purported 2006 will, she concluded that it was very probably produced by the same source as the Cook trust and that the signature was probably forged. (2 RT 432-433, 437-438.)

Homewood was also asked to examine an advanced healthcare directive purportedly signed by Patton. (2 RT 426-427; RA 146 [Ex. 56].) In an attachment, Patton appeared to state that he did not want any further involvement with his

nieces or any other family members and that the closest people to him were LeBouef and Pooler. (RA 148 [Ex. 56].) Homewood opined that the attachment, as well as a cover letter addressed to Patton's doctor, showed a similar format to LeBouef's known documents and her view tended toward thinking that he typed these pages, although she was less certain than in other parts of her opinion. (2 RT 427-430.)

Regarding various other documents to do with the eventual transfer of Patton's assets to LeBoeuf, Homewood concluded that LeBoeuf had filled out or otherwise prepared the following documents and forms, including ones funding Patton's newly-created 2006 trust:

- Grant deed dated December 22, 2006 transferring Patton's 1424 San Miguel property into his trust. (2 RT 411-413; RA 118 [Ex. 19].)
- Grant deed dated December 22, 2006 transferring Patton's 1407 San Miguel property into his trust. (2 RT 413; RA 120 [Ex. 20].)
- Certification of trust for Santa Barbara Bank & Trust. (2 RT 408-411; RA 149 [Ex. 69].)
- Certification of trust for The Network of Preferred Community Banks. (2 RT 413-414; RA 124 [Ex. 22].)
- Fidelity account application. (2 RT 414-415; RA 131 [Ex. 37].)
- American Express form designating LeBouef as Patton's beneficiary (thereby enabling him to draw on

funds on Patton's death). (2 RT 418-421; RA 143 [Ex. 53].)

- Check drawn on Patton's account 2010 in Bennett's favor. (2 RT 416-417; RA 142 [Ex. 52].)
- Discover Bank signature card with payment upon death provision in LeBouef's favor. (2 RT 421-423; (RA 145 [Ex. 54].)

LeBouef also offered expert testimony by a forensic document examiner, Frank Hicks. (8 RT 1837-1838 et seq.) However, the trial court found this to be not as persuasive as Homewood's. (8 AA 2121.)

**(n) Patton's statements to others about his intentions**

Greenstein — Patton's close friend — would talk to him on the phone a few times every day. (10 RT 2363.) She testified that Patton never told her of any plans to leave his estate to LeBouef. (10 RT 2393.) At one time, he told her he would leave *her* one of his houses. (10 RT 2408.) In fact, he often talked to her about including her in his will. (10 RT 2417.) Once he said he planned to leave everything to a labrador rescue charity. (10 RT 2419.)

On a few occasions, including within two years before his death, Patton told Greene — the neighbor — that he was going to leave *him* his house. (4 RT 825.) However, he also told Wynne he was leaving it to LeBouef or to LeBouef and Krajewski. (4 RT 915-916; 5 RT 979.) Bermant testified that when Patton told her in 2009 that he had "just signed

everything," he also told her he was giving his house to LeBoeuf but that more or less everything else was to go to "the three of you girls" — an apparent reference to herself, Butler, and Greenstein. (3 RT 671-672, 711-714, 735.)

However, two other witnesses — aside from Pooler and Bennett, whose testimony has already been summarized — testified that Patton told them he was leaving his estate to LeBouef, although neither spoke about hearing this before December 2006. Gloria Vaughn had known Patton for about 15 years. (9 RT 2086, 2089.) She testified that about five years after Duval's death — i.e., around 2009 — Patton told her several times that he planned to "leave everything" to LeBouef. (9 RT 2178, 2183.) Deborah Clark was a bookkeeper who worked for Patton from 2000 until his death. (5 RT 1170-1180.) She testified he told her at some unspecified time that all of his estate was going to LeBoeuf. (5 RT 1195.)

**(o) The day of Patton's death**

LeBouef and Krajewski discovered Patton's body when they arrived for a visit on June 18, 2011. (1 RT 218, 239-241.) LeBouef claimed they called 911 within about five minutes of finding the body. (1 RT 241.)

A portion of the deposition of Officer Perez from the Santa Barbara Police Department — who responded to the 911 call — was read into the record but not transcribed; the portion was not identified in the record. (5 RT 1058.) The court's statement of decision says that Officer Perez testified that he arrived at about 1:00 P.M. (8 AA 2108.)

In his deposition, however, LeBouef had stated that he arrived at Patton's house at 8:30 A.M. that morning. (12 RT 2837.) Portions of his deposition were played to the court, but, again, the specific segments played were not identified in the record. There were, however, references during live testimony in which LeBouef acknowledged what he had said about his arrival time. (See, e.g., 12 RT 2837.) Furthermore, the court's statement of decision noted that in deposition testimony received, LeBouef stated he arrived early in the morning. (8 AA 2135.) Diane Leslie — who was Patton's dog walker and pet sitter — testified that LeBouef told her the following day that he had arrived at the house in the morning of Patton's death. (5 RT 1009, 1011, 1015.)

At trial, by contrast, LeBouef claimed he and Krajewski got there in the early afternoon. (1 RT 218.) The trial court found this discrepancy to be of "some significance," noting: "The differences here are troubling, because they suggest several hours of time may have been spent in the PATTON residence prior to the reporting of the death." (8 AA 2135.)

At trial, LeBouef introduced into evidence a receipt indicating that someone using his Costco membership card filled up with gas in Oxnard — about 45 minutes' drive from Santa Barbara — at 12:07 P.M. that day. (9 RT 2076-2081, 2084-2085.) This was, apparently, an effort to show that he must have arrived later in the day. However, that information was of limited significance, since — as noted earlier —

Krajewski had stated he routinely used LeBouef's Costco card. (11 RT 2661.)

And that leads into another discrepancy in LeBouef's evidence about what happened that day. Krajewski testified that he drove to Santa Barbara in his BMW. (11 RT 2601.) He said that LeBouef was with him. (8 RT 2697.) But Greene — the neighbor — testified that he saw LeBouef's Ford Expedition vehicle arrive that morning and he saw it leave later in the day. (4 RT 878, 885, 960.) Furthermore, the court noted that LeBouef said in his deposition that he drove up in his Ford Expedition. (8 AA 2135.)

All of this suggests that — notwithstanding the testimony of the two men that they arrived together — they actually drove to Santa Barbara separately that day, Krajewski arriving some hours after LeBouef.

**(p) The alleged burglary after Patton's death**

Officer Andrew Freytag serves with the Santa Barbara Police Department. (5 RT 1085.) On April 24, 2012 — about 10 months after Patton's death — he was dispatched to 1424 San Miguel, Patton's home, when LeBouef reported a burglary. (5 RT 1086-1087.)

LeBouef told Officer Freytag he had returned from being away for a couple of days and found the home in "complete disarray." (5 RT 1087.) LeBouef claimed a burglar had stolen his Toshiba laptop computer as well as the original of Patton's purported December 22, 2006, trust and various other documents, including the abstract of trust. (1 RT 136.) Since

the time of Duval's death (i.e., 2004), any legal documents LeBouef created were on that computer, which he had kept for a very long time. (1 RT 134-136.) The date on which the alleged burglary took place was just before LeBouef was due to be deposed. (12 RT 2843-2846.) There were all sorts of other things in the house, but little else was stolen. (1 RT 136-139.)

The officer spent an hour investigating the scene. (5 RT 1092.) However, aside from a "doggy door" looking as though it may have been bent (possibly from ordinary wear and tear), there was no sign of forced entry. (5 RT 1092-1093.) Despite that, nearly every door and cabinet was open throughout the house — even the washer, dryer, and dishwasher. (5 RT 1093.) It looked to the officer as though the house had been ransacked. (5 RT 1093.) However, nothing had been broken or damaged. (5 RT 1094.)

Asked whether he thought the burglary seemed staged, the officer — who had received special training in burglaries — responded that it was "definitely one of the stranger" ones he had come across. (5 RT 1087, 1095.) Many pieces of art and other valuable items were seemingly untouched. (5 RT 1095.) The "totality of the circumstances" were "just odd." (5 RT 1112.) While they did not necessarily point to a staged burglary, that was one possible explanation. (5 RT 1113-1114.) The court concluded the loss of the original trust document and the computer were intentional. (8 AA 2174.)

## ARGUMENT

---

**- 1 -**

## The Court Did Not Abuse its Discretion in Considering Evidence About the Grant and Cook Trusts

---

### 1.1 Evidence about the Grant and Cook trusts was admissible under Evidence Code section 1101

LeBouef's opening brief points out that respondents sought to introduce evidence of eight earlier inheritances benefitting himself or Krajewski, which they felt evidenced a common plan or scheme. (AOB 9.) However, the court concluded that while it would consider two — the Grant and Cook matters — it did not find the older ones probative.[5] (8 AA 2140.) LeBouef contends that the court nonetheless abused its discretion in considering those.

Evidence of a common design or plan of a series of acts is admissible to establish that a defendant committed the act alleged. (Evid. Code, § 1101, subd. (b); *People v. Ewoldt* (1994) 7 Cal.4th 380, 393.) Thus, the presence of a design or plan to do a given act may be proved circumstantially by evidence that a defendant has performed acts having similar features, such that they can naturally be explained as caused by a general plan of which they are individual manifestations. (*Ibid.*)

---

[5] The Pick trust — that of Grant's husband — was a subset of the Grant affair.

This applies as much in probate matters as in others. For example, *Estate of Zalud* (1972) 27 Cal.App.3d 945 dealt with a will contest in which the proponent of a challenged will was unrelated to the wealthy decedent. (*Id.* at pp. 948.) Over objection, the contestants introduced evidence under section 1101 that two other deceased women had executed similar wills in which the defendant or his brother were the primary beneficiaries. (*Id.* at pp. 955-956.) The admission of that evidence was upheld on appeal. (*Id.* at pp. 956-957.)

Here, in each of the Patton, Grant/Pick, and Cook matters, LeBouef — a lawyer (1 RT 81) — drafted trusts for elderly people, which, directly or indirectly, benefited himself or his partner Krajewski. (RA 83 [Ex. 14] [Patton]; RA 58 [Ex. 13] [Cook]); 1 RT 66-67 [Pick].) In the case of the Pick trust, it was Grant who was the immediate beneficiary. But LeBouef went on to marry her soon after and, moreover, managed her finances. (1 RT 64; 9 RT 2146.) He then drafted *her* trust, in which he became the beneficiary. (1 RT 66.)

There was a mass of evidence that LeBouef and Krajewski were close partners in some sense of that term, so a reasonable inference is that acts benefitting one were also done in the interests of the other. (See, e.g., 11 RT 2468 [friendship went back to early 1970s]; 1 RT 142-145 [owned properties as joint tenants with right of survivorship or tenants in common]; 11 RT 2654 [Krajewski testimony that other than siblings, no one was closer to him in previous 10 years than LeBouef]; 11 RT 2659, 12 RT 2854 [joint checking and

investment accounts]; 11 RT 2658 [shared cellphone plan, with phone numbers one digit apart]; 1 RT 231-232 [shared PO Box].)

There were other similarities, too (aside from the forensic document evidence, of which more shortly). For example, Pooler — LeBouef's friend, tenant, and factotum — had a hand in the Pick affair, went on to possess Grant's Mercedes after her death, became the successor trustee in the Cook affair, was a material witness in LeBouef's favor in the Patton matter (claiming to have witnessed the arrival of two unknown people to help LeBouef with his estate plan), and ended up with a classic car from that. (1 RT 89-92; 6 RT 1344-1345, 1399-1400; 1449-1450; RA 59 [Ex. 13]; RA 83 [Ex. 14].) Olivares, who witnessed Patton's questioned will, also just happened to be someone whom LeBouef regularly used for such purposes. (1 RT 89-90; 7 RT 1554-1559; RA 114 [Ex. 15].) Bennett, to whom Patton supposedly entrusted the originals of his estate planning documents, happened to be a college friend of LeBouef and a long-standing friend of Pooler's. (6 RT 1217, 1268, 1234-1235, 1394.)

It seemed a tight circle of friends, replete with coincidental events in their lives. As the court noted with some understatement: "The history in this case paints a picture of a group of people whose paths crossed an unusual number of times in matters concerning the testamentary estates of others." (7 AA 2091.)

The purpose of the evidentiary rule concerning prior acts is to help the trier of fact determine whether a run of comparable occurrences shows some common scheme or plan designed to bring them about. The law refers to this as the "doctrine of chances" — the relevance has to do with "probability based reasoning." (*People v. Spector* (2011) 194 Cal.App.4th 1335, 1379.) Here, the court had to decide whether the string of inheritances was just a fortunate coincidence, or whether there was a scheme to bring them about, of which this was a manifestation. The evidence was properly admitted for that purpose.

### 1.2 The trial court did not abuse its discretion under Evidence Code section 352

Evidence that passes muster under Evidence Code section 1101 is still subject to scrutiny under section 352. (*People v. Lenart* (2004) 32 Cal.4th 1107, 1123.) Section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

The word "prejudicial" in Evidence Code section 352 is not synonymous with "damaging." (*People v. Zepeda* (2008) 167 Cal.App.4th 25, 34.) Rather, it refers to a bias against the party caused by inflammatory input that lacks sufficient relevance to the issues that the trier of fact must decide and that may, therefore, be misused. (*People v. Zambrano* (2007)

41 Cal.4th 1082, 1138, disapproved of on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390; *People v. Filson* (1994) 22 Cal.App.4th 1841, 1851, disapproved of on other grounds by *People v. Martinez* (1995) 11 Cal.4th 434.)

In applying the Evidence Code section 352 balancing test in the context of evidence otherwise admissible under section 1101, subdivision (b), the probative value must be balanced against four factors: (1) Any inflammatory nature of the uncharged conduct; (2) the possibility of confusion of issues; (3) remoteness in time of the prior acts; and (4) the amount of time involved in introducing and refuting the evidence about them. (*People v. Branch* (2001) 91 Cal.App.4th 274, 282, citing in part to *People v. Ewoldt*, *supra*, 7 Cal.4th at pp. 404-406.) Respondents will address each of those in turn:

- ***Inflammatory nature of the uncharged conduct:*** An accusation involving the manipulation of the estate plans of elders might evoke strong reactions. But there is nothing about the Grant/Cook matters that could evoke a reaction independent of what the present case is actually about. Moreover, the court's lengthy statement of decision — running to over 20,000 words — reveals not the slightest hint of an emotional reaction that got in the way of rational consideration of the evidence. (7 App. 2088 et seq.) To the contrary, it contains a painstaking analysis of weeks of testimony, the portion about the Grant and Cook trusts being just one, relatively small part. And a review of the entire record shows that Judge

Sterne presided over this lengthy trial in a calm and dignified manner, not with some sense of inflamed personal outrage that clouded her judgment.

- ***The possibility of confusion of issues:*** A bench trial "minimizes" the possibility of confusion of the issues for the purposes of Evidence Code section 352. (*In re Jose M.* (1994) 21 Cal.App.4th 1470, 1481.) Here, again, one can look to the statement of decision to see whether the court seemed "confused." And there is nothing in the slightest to suggest that it was. The court used the evidence about the Grant and Cook trusts for the purposes allowed by section 1101, subdivision (b), and for no other purpose.
- ***Remoteness in time of the uncharged offenses:*** The Grant affair reached its economic climax in 2006, when LeBouef inherited Grant's estate, which included the money she had inherited from Pick (whose will LeBouef had earlier prepared). (1 RT 66-67.) The amendment to the Cook trust making Krajewski the beneficiary also took place in 2006. (RA 78 [Ex. 13]; 6 RT 1422.) The trial in the Patton case took place in 2014, eight years later. (7 AA 2088.) That, surely, does not make those earlier matters too remote in time. For example, in *Zalud* — the will contest case in which two similar wills were introduced under section 1101 — the earlier of the two went back nine years before the one whose validity was at issue. (*Estate of Zalud*, *supra*, 27

Cal.App.3d at pp. 948, 955.) Besides, LeBouef's opening brief does not even attribute error to the remoteness factor, so any such argument is waived. (*Katelaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216, fn. 4.)

- ***The amount of time involved in introducing and refuting the evidence about them:*** Again, LeBouef has not raised this factor on appeal, so it, too, can be discarded.

### 1.3 To win the argument, LeBouef needs to show that *every* reasonable Superior Court judge would have ruled differently

"An appellate court reviews a trial court's evidentiary rulings for abuse of discretion." (*People v. Her* (2013) 216 Cal.App.4th 977, 981.) LeBouef's opening brief pays lip service to this standard of review (AOB 1), but fails to acknowledge what it actually means.

"An abuse of discretion occurs when, after calm and careful reflection upon the entire matter, it can fairly be said that *no* judge would reasonably make the same order under the same circumstances." (*In re Marriage of Sinks* (1988) 204 Cal.App.3d 586, 591, citation omitted, emphasis added.) The reciprocal — applied to this case — is that to find an abuse of discretion, this Court would need to decide that *every* reasonable Superior Court judge would have refused to consider the Grant/Cook trusts in these circumstances. But to find that would amount to applying a bright-line rule

concerning the admission of prior acts in a case dealing with facts such as these. No such rule exists. Indeed, *Zalud* shows there isn't one.

If one rejects the notion of a bright-line rule, one is acknowledging the existence of discretion, which is "the freedom to decide what should be done in a particular situation." (Oxford American Dictionary (3rd Ed.).) In the very nature of discretion, many evidentiary issues can be decided one way or the other by an individual trial judge, such that — whichever way the decision goes — the result is going to be an affirmance on appeal. That is what this standard of review is all about — deference to the trial court in an area where that court is vested with discretion. (*Bancomer, S. A. v. Superior Court* (1996) 44 Cal.App.4th 1450, 1457.)

### 1.4 Even if there were error, it was harmless

Even if there were an abuse of discretion, LeBouef would still need to show that, but for the error, there was a "reasonable probability" he would have received a more favorable result. (*People v. Watson* (1956) 42 Cal.2d 818, 836.)

LeBouef could not overcome the prejudice barrier even were he to get that far, because had the circumstances surrounding the Cook trust *not* been considered, the actual Cook trust instrument could *still* have been considered by respondents' forensic document examiner — just as that expert could have used *any* exemplars of LeBouef's work provided to her.

The forensic expert — Sandra Homewood — concluded that the Cook and Patton trust instruments were prepared by the same person and her degree of certainty was equivalent to the "beyond a reasonable doubt" standard in a criminal case. (2 RT 389, 408.) *That* evidence would surely have come in *even if* all the evidence about how the final version of the Cook trust had come to be formed, and who the beneficiary was, had been excluded. At trial, LeBouef never challenged Homewood's use of the Cook trust as an exemplar on evidentiary grounds. Nor has he done so on appeal.

The reader will recall that it was undisputed that LeBouef did work on the Cook trust, including the amendment leaving almost everything to Krajewski. (1 RT 132-133; RA 21, 36, 47, 51 [Exs. 10/11/12/13].) So if one simply takes that as an exemplar for purposes of forensic document examination — ignoring any prejudicial evidence about how the document came into existence and that Krajewski happened to be the beneficiary — then, from that narrow point of view, the evidence would *still* show that LeBouef created Patton's trust. It is a matter of simple logic: If one starts from the premise that one doesn't know who created Patton's trust, but one does know that LeBouef was behind Cook's, and if one then learns that the two were crafted by the same person, it *necessarily* follows that LeBouef was responsible for Patton's.

Furthermore, there was plenty of other evidence that pointed to LeBouef having been behind the challenged Patton

trust — and this segues into the next portion of this argument, where the overall sufficiency of the evidence is examined.

---

**- 2 -**

**Substantial Evidence Supports the Court's Findings**

---

### 2.1 Since LeBouef has not furnished a full record of the evidence, the sufficiency must be presumed

LeBouef claims there was insufficient evidence to support the court's findings. This Court's ability to review that claim is hampered by the fact that LeBouef has not provided a full record of the testimony received by the trial court.

At various points in trial, portions of depositions were read or played to the court with reporting waived. Copies of the complete deposition transcripts were lodged. (1 RT 61.) However, with a couple of short exceptions, the record does not indicate *what* specific portions were received (in terms of where they started and stopped). (See: 5 RT 1022-1023, 1058-1059, 1160; 10 RT 2450; 11 RT 2462, 2464.) The deposition testimony included portions of LeBoeuf's deposition, as well as the entirety of that of two witnesses — Miriam Olivares (one of the purported witnesses to the challenged will) and Officer Perez (who attended the scene following the report of LeBouef's death).

Faced with these gaps, LeBouef could have provided a settled or agreed statement. (See Cal. Rules Ct., rules 8.134, 8.137.) But he did not do so.

A judgment or order of the trial court is presumed correct and prejudicial error must affirmatively be shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Where a portion of the record is missing, this Court "must indulge all intendments and presumptions to support the challenged ruling." (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1271.) "To the extent the record is incomplete, we construe it against [appellant]." (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 498.)

Since there is no record of almost all the deposition testimony read or played, it must be presumed that this supported the court's findings. Therefore, it is hard to see how this Court *could* conclude there was insufficient evidence *even if* it were not convinced on the basis of what *is* in the record. It would have to guess as to what it had not seen. That said, the incomplete record does contain ample evidence on which to affirm.

### 2.2 The incomplete record contains sufficient evidence to support the court's findings

Probate Code section 21380[6], subdivision (a), makes a donative transfer presumptively the result of fraud or undue influence if it was in favor of the person who drafted the instrument or, if the person who transcribed it or caused it to be transcribed was in a fiduciary relationship with the transferor. Subdivision (b) provides that the presumption can

---

[6] Further references to section 21380 are to the Probate Code.

be rebutted by clear and convincing evidence. However, subdivision (d) adds that it is conclusive as to a drafter.

Here, the court noted that in the very nature of acts taking place "behind a veil of concealment," one may never know *exactly* what took place. (8 AA 2141.) But it found that, one way or another, LeBouef did "'participate in the [trust] instrument's physical preparation whether by drafting or transcribing it' within the meaning of Probate Code section 21380." (8 AA 2141, citing to *Rice v. Clark* (2002) 28 Cal.4th 89, 92.)

The court noted that since the original of the trust had disappeared as a result of the "burglary" shortly before it would have been forensically examined, it was impossible to tell whether the purported copy of the document entered into evidence actually matched the original of anything that might have been signed in December 2006, because of the possibility that a page was later substituted. (8 AA 2139, 2142.)

The court concluded: "LEBOUEF's credibility is seriously tainted; and the court concludes that yes, he worked with PATTON on the December 22, 2006 trust, and/or tampered with the document at some point, which necessitated the burglary. The 2006 Patton Trust contains donative transfers to LEBOUEF that were drafted by LEBOUEF or were subjected to some form of tampering, and thus Probate Code section 21380 applies and he is disqualified as a beneficiary." (8 AA 2142-2143.)

"When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, emphasis in original.)

Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 584.) It includes circumstantial evidence and any reasonable inferences drawn therefrom. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) The trial court's resolution of disputed factual issues must be affirmed so long as it is supported by any such evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

Here, the evidence in support of the court's findings includes the following:

- ✓ The common plan scheme evidence discussed above concerning the Grant and Cook trusts (assuming it was properly admitted).
- ✓ The forensic document examiner's opinion that the Patton and Cook trusts, and the Patton will, were prepared by the same person. (2 RT 408, 432-433.)

- ✓ That expert's opinion that the signature on Patton's will was probably forged. (2 RT 437-438.)
- ✓ The expert's opinion linking LeBouef to portions of Patton's advanced healthcare directive, in which he purportedly stated he wanted nothing to do with family members. (2 RT 426-430; RA 146-148 [Ex. 56].) A reasonable inference is that LeBouef wanted to isolate Patton from family members in order to protect the hoped-for inheritance.
- ✓ The phone call in 2008 in which Patton told Butler he was with LeBouef and the two had just finished making revisions to his will and trust. (1 RT 270.)
- ✓ Evidence — including LeBouef's admission — that he had subsequently assisted Patton with various documents designating him a beneficiary of the latter's accounts and expert evidence linking LeBouef to the grant deeds funding the trust and related enabling documents. (1 RT 183; 2 RT 411-423; 12 RT 2850-2851.) The fact that LeBouef was involved in all of that tends to weigh against a theory that Patton had some other lawyer involved in preparing the trust, and tends to support an inference that LeBouef was masterminding the entire process.
- ✓ Evidence that in early 2010, Patton frequently told Bermant that he was losing control of his finances to LeBouef. (3 RT 679-680.)

- ✓ Evidence that Patton complained to Wynne (the neighbor) that LeBouef and Krajewski came too often to visit and that LeBouef could be overbearing in directing him what to do. (5 RT 985.)
- ✓ Evidence that LeBouef had a fiduciary relationship with Patton. For example, LeBouef represented Patton in a felony DUI case in 2008-2009. (1 RT 97-98.) Patton told Munoz — the house cleaner — that LeBouef was his lawyer. (5 RT 1037.) And Pooler believed LeBoeuf acted as Patton's attorney. (7 RT 1512.)
- ✓ Evidence that in his later years, Patton was frequently intoxicated to the point of being helpless, as well as depressed and in poor overall health. (2 RT 363-364, 368; 3 RT 649-651, 674-675, 677; 4 RT 820, 824, 901-902; 5 RT 1037.) A reasonable inference is that this made him vulnerable to be being taken advantage of.
- ✓ Statements that Patton made to others after 2006 about his estate plan, which were inconsistent with an intent to leave just about everything to LeBouef. (See, e.g., 4 RT 825 [repeated statements to Greene *he* would be receiving the house]; 3 RT 671-672, 711-714, 735 [statement to Bermant in 2009 that LeBouef would be receiving the house, but not the remainder of the estate].)
- ✓ The fact that Olivares — whom LeBouef routinely used to witness documents — just happened to show up on Patton's doorstep on the day that Patton purportedly

signed the December 2006 instruments, so that she was able to witness the will. (7 RT 1552-1559.) The most reasonable inference is that she was operating on LeBouef's behalf. Any other explanation would involve an astonishing coincidence.

- ✓ The fact that Krajewski never heard LeBouef state that he — LeBouef — did not write Patton's trust. This was significant given that the two were so close to one another and had been living under the shadow of this litigation for an extended period by the time of trial. (11 RT 2686-2688.)
- ✓ Evidence that, contrary to his trial testimony, LeBouef spent hours in Patton's house after finding the latter's body before Krajewski arrived and the two of them called 911. (See, e.g., 12 RT 2837.) The court found this troubling. (8 AA 2135.) A reasonable inference is that LeBouef was somehow looking for and/or tampering with Patton's trust and, perhaps, other documents.
- ✓ The purported "burglary" when the original of the trust instrument — along with LeBouef's computer containing relevant files — were supposedly stolen before they would have had to have been subject to forensic examination. (1 RT 134-136.) Virtually nothing else was taken, and nothing was damaged, despite the house appearing to have been ransacked. (1 RT 136-139; 5 RT 1093-1094.) A reasonable inference — which the investigating officer found plausible — is that the

burglary was staged. (5 RT 1095, 1113-1114) It was an effort to prevent these items from having to be turned over in discovery. The court found the loss "intentional" and "critical" to its analysis. (8 AA 2139, 2174.)

✓ The fact that LeBouef lied under oath about Grant still being alive and the mother of his never-existing deceased children. (RA 2-7; 12 RT 2724.) This did more than place a cloud over his overall credibility. The very fact of the lie was itself evidence that LeBouef was trying to play down his partnership with Krajewski and, hence, conceal what seems to have been their collective efforts to secure inheritances.

When assessing the sufficiency of circumstantial evidence, one relevant factor is the absence of evidence that would *normally* be expected to be found. (*People v. Blakeslee* (1969) 2 Cal.App.3d 831, 839.) Here, noticeably absent is any evidence about who — if not LeBouef and/or someone acting in concert with him — might have been responsible for preparing the 2006 trust and related documents. If there had been some other lawyer involved, one would imagine that — especially with the publicity surrounding a case such as this — that person would have been found with some investigative work.

The court noted that it thought Bennett "may have assisted in some regard with the documents," and considered her evidence to the contrary to be "unreliable." (8 AA 2141.) But Bennett's involvement doesn't somehow distance LeBouef

from what was going on. To the contrary, she was in the same circle as LeBouef and Pooler. (6 RT 1217, 1268, 1394.) Even if Bennett had a hand in coming up with the instrument, that is consistent with LeBouef having drafted it or caused it to be transcribed within the meaning of section 21380.

### 2.3 There was no certificate of independent review

A gift otherwise subject to section 21380 is allowed if an independent attorney signs a certificate of independent review concluding that it is not the result of fraud or undue influence after meeting in private with the transferor. (Prob. Code, § 21384.) Here, it was undisputed that no such certificate was sought. The court noted in its statement of decision that in unreported deposition testimony received at trial, LeBouef claimed not to know what such a certificate was. (8 AA 2136-2137.) Although the court noted that this was followed by LeBouef's "rather clumsy" and "disingenuous" attempt to backtrack toward the end of trial, the earlier admission tended to increase the likelihood that he had "a significant hand" in the preparation of the 2006 estate plan. (8 AA 2137.)

### 2.4 It is irrelevant that Patton apparently intended to make some testamentary gift to LeBouef

It is true there was also evidence that Patton intended to make some sort of sizable bequest to LeBouef. Indeed, the court found this likely. (8 AA 2141.) Seizing on that, LeBouef claims it is a "non sequitur" to find that to have been the case and also to find undue influence. (AOB 33.)

Not so. Even if Patton intended to make a gift of — say — his house to LeBouef, that would not mean that he intended to leave him just about everything (keeping in mind that Patton also owned two other houses as well as substantial liquid assets (10 RT 2418-2419)).

---

**- 3 -**

**There Was No Omitted Finding in the Statement of Decision and any Claim to the Contrary has Anyway Been Forfeited**

---

A portion of LeBouef's argument is headed: "The Trial Court committed prejudicial error when it failed to make a ruling regarding whether or not Respondents met the required showing necessary to shift the burden of proof and create a presumption of undue influence under Probate Code § 21380." (AOB 14.)

Respondents find LeBouef's argument puzzling. As shown in the previous section of this argument, the court *did* expressly find that LeBouef was responsible for the trust's creation for the purposes of section 21380. (8 AA 2141, 2143.) Furthermore, the court wrote that it considered LeBouef's conduct to the estate to have been fraudulent. (8 AA 2144.)

Did the statement of decision spell this out further by expressly stating that the burden, therefore, shifted and that LeBouef had failed to overcome it by clear and convincing evidence? No, but this would surely be obvious by reading the

findings as a whole. (Added to which the presumption would have been conclusive to LeBouef as a "drafter" as opposed to "transcriber." (§ 21380, subd. (c).))

Besides, LeBouef's brief cites to nowhere in the record where he requested a finding on this issue or objected to the absence of one. In fact, his appendix does not contain a request for any findings or any objections to proposed ones. The only objection in the appendix is something filed *after* the statement of decision was finalized (but before the supplemental one). (8 AA 2156.) This did contain a non-specific objection to the procedure by which the statement of decision came into existence. (8 AA 2157.) However, LeBouef has not raised such an issue in his opening brief and any such issue is, therefore, waived on appeal. (*Katelaris v. County of Orange*, *supra*, 92 Cal.App.4th at p. 1216, fn. 4.)

A failure to present specific objections to a proposed statement of decision waives the right to claim on appeal that it is deficient in those respects. (Code Civ. Proc., § 634; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App. 4th 42, 59.) Furthermore, this Court will imply the necessary findings in favor of the prevailing party. (*Ibid.*) Hence, even if there were an omission, it would be replaced by an implied finding in favor of respondents.

## Respondents Were Entitled to Recover Reasonable Attorney Fees According to Statute

### 4.1 A fee award could be made against LeBouef as a "transcriber" as well as a "drafter"

Section 21380, subdivision (d), provides that if a beneficiary of a challenged instrument is unsuccessful in rebutting the presumption of fraud or undue influence, he or she shall bear all costs of the proceeding, including reasonable attorney fees. On this basis, the court awarded $1,256,971 in fees. (8 AA 2232; 9 AA 2438.)

LeBouef argues that since the presumption is conclusive in the case of beneficiaries who draft the instrument (§ 21380, subd. (c)), there is no liability for fees, since there is, supposedly, no opportunity to rebut the presumption. (AOB 27-29.) He cites to no case.

Even if that argument had merit, it would not apply to fiduciaries who transcribe an instrument, or cause it to be transcribed, since the presumption under section 21380 is not made conclusive with respect to them. (See *id.*, subd. (c).) And LeBouef overlooks the fact that he was not found *only* to be the "drafter" for the purposes of section 21380. The statement of decision found he "participate[d] in the instrument's physical preparation whether by drafting *or transcribing it*" within the meaning of Probate Code section 21380." (8 AA 2141,

emphasis added, internal quotation marks removed.) As the court remarked: "One never knows *exactly* how such conduct is perpetrated, as it occurs behind a veil of concealment." (8 AA 2141, emphasis in original.)

Moreover, being the "drafter" or "transcriber" are not mutually exclusive. This is especially so with a document that may well have metamorphosed with the substitution of pages. (See 8 AA 2142-2143.) Further, the court's finding that Bennett "may have assisted in some regard with the documents" supports a transcription theory. (8 AA 2141.)

### 4.2 Even if LeBouef did not transcribe the will and trust, he was a transcriber of the beneficiary forms, which are themselves subject to Probate Code section 21380

Even if one took the view that the record shows that LeBouef only "drafted" the will and trust, he would still be liable for fees under his reading of section 21380, since he transcribed the beneficiary forms, which are themselves instruments. Section 21380 does not refer to wills or trusts specifically, but to any "instrument making a donative transfer" generally.

Here, LeBouef admitted having filled out various beneficiary forms, designating himself as the person to receive assets of Patton's trust upon Patton's death. (1 RT 183; 12 RT 2850-2851.) Furthermore, Homewood — the forensic expert — connected him to them. (2 RT 413-423.)

As the court wrote, those forms were themselves testamentary instruments requiring a certificate of independent review. (8 AA 2143.) The court wrote: "Probate Code section 45, applicable throughout that Code, provides a definition of 'instrument' as: 'a will, trust, deed, *or other writing that designates a beneficiary* or makes a donative transfer of property.' A beneficiary designation is thus a 'donative instrument' within the meaning of Probate Code section 21380, subdivision (a)(1)." (8 AA 2143, emphasis added.) The court made a specific finding that LeBouef *did* fill out these forms in Patton's name, knowing that the purpose was to facilitate donative transfers to himself. (8 AA 2143-2144.)

Filling out forms necessarily involves transcribing information. The word "transcribe" in this context is to be given its ordinary, dictionary meaning. (*Rice v. Clark supra*, 28 Cal.4th at p. 101.) That can include "copying something out" either in longhand or by other means. (*Ibid.*) Or, for example, the Oxford American Dictionary, 3rd Ed., defines it, among other things, as to "put (thoughts, speech, or data) into written or printed form." When filling out an informational form, one necessarily copies data from other source — be it written or in one's own memory — by including it in the form. Hence, LeBouef certainly transcribed content into these other instruments — even with something as simple as writing in his own name — and, therefore, is liable for attorney fees under his own reading of section 21380. An example is trial exhibit

53, where in 2010 LeBouef transcribed by hand his own personal details into a preprinted form making him the beneficiary on death of Patton's account with American Express Bank. (RA 143; 2 RT 418-421.)

LeBouef argues in the sufficiency portion of his brief that the court failed to specify whether he drafted or transcribed the information in the beneficiary forms. (AOB 23.) He refers there to a "proposed" statement of decision, but no such document is included in the appendix. Moreover, LeBouef cites to nowhere in the record where a timely request for this finding, or a timely objection to any omission, were made. Besides, as pointed out above, filling out forms with information *necessarily* involves transcription.

### 4.3 The fees provision in Probate Code section 21380 does apply to drafters

LeBouef's argument about "drafters" not being liable for fees under section 21380 anyway misreads the law and relies on flawed logic. First, LeBouef *did* have an opportunity to overcome the presumption. He had the opportunity to produce a certificate of independent review under Probate Code section 21384. That would have trumped the effect of section 21380. LeBouef failed to do that. The fact that he *could not* do so does not mean he was deprived of a legal opportunity to rebut the presumption. It simply means the facts were not in his favor.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (*Davis v.*

*Michigan Dept. of Treasury* (1989) 489 U.S. 803, 809 [109 S.Ct. 1500, 103 L.Ed.2d 891].) Hence, the language of section 21380 about "conclusiveness" has to be read in context with the overall statutory scheme, section 21384 included.

Second, LeBouef *did* seek to rebut a presumption of undue influence, inasmuch as he sought to prove he was *not* the drafter and, hence, not barred from receiving the gift. To put it another way, one can overcome a presumption by showing that the necessary facts for it to exist are not true — an opportunity that LeBouef had *ample* opportunity to do over five weeks of trial.

The only thing different between a drafter and other persons covered by section 21380 is that the drafter doesn't have the last-ditch chance under subdivision (b) to prove a lack of undue influence by clear-and-convincing evidence (in other words to show that, legal appearances notwithstanding, it really was all above board). This surely reflects the fact that the drafter is held to the strictest standards. Thus to contend that *this* person — *of all people* — should be given a break on fees that is not available to *other* beneficiaries subject to section 21380 makes no sense whatsoever.

Finally on this issue, LeBouef's argument about section 21380's predecessor does not withstand scrutiny. Section 21380 came into effect in 2011. (West's Ann. Cal. Prob. Code § 21380.) LeBouef cites to the former statutory scheme, in which drafters were not liable for attorney fees, even though others

could be. He suggests that this informs us how the current statute should be interpreted.

However, in the former statute, there was an express statement excluding drafters. Former Probate Code section 21351, subdivision (e), stated: "Subdivision (d) [containing the fees provision] shall apply *only* to the following instruments: (1) Any instrument *other than* one making a transfer to a person described in paragraph (1) of subdivision (a) of Section 21350." (West's Ann. Cal. Prob. Code (2010) § 21351, emphasis added.) Former section 21350, subdivision (a)(1), in turn, referred to "[t]he person who drafted the instrument." (West's Ann. Cal. Prob. Code (2010) § 21350.) So there, the Legislature wrote in a rule that the fees provision did not apply to drafters.

Section 21380, by contrast, contains no equivalent language. Had the Legislature intended to exclude drafters from attorney fees liability, it would have so stated. (See *In re Marriage of Wight* (1989) 215 Cal.App.3d 1590, 1595.) It would have been easy to add language similar to that in the former statute. A court should not imply language that the Legislature has excluded. (*Ibid.*)

---

**- 5 -**

**The Court Did Not Abuse its Discretion in the Amount of Fees Awarded**

---

The amount of an attorney fee award is reviewed for abuse of discretion. (*Graciano v. Robinson Ford Sales, Inc.*

(2006) 144 Cal.App.4th 140, 149.) "[A]n experienced trial judge is in a much better position than an appellate court to assess the value of the legal services rendered in his or her court, and the amount of a fee awarded by such a judge will therefore not be set aside on appeal absent a showing that it is manifestly excessive in the circumstances." (*Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 782; see also: *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239 ["there is no question our review must be highly deferential to the views of the trial court"]; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1323 ["We may not reweigh on appeal a trial court's assessment of an attorney's declaration" re fees].)

Here, LeBouef grumbles that the fees were too high, but makes only a series of boilerplate arguments about duplication, unnecessary work, and vagueness, citing to 27 pages of dense billing records but without referencing anything specifically. (AOB 30.) Likewise, he complains about two lawyers' hourly rates of $250 (AOB 31), but does not cite to any evidence of what, in his view, reasonable hourly rates are for complex, high-value probate litigation in Santa Barbara. In short, he invites this Court to plough through the record on his behalf looking for things the trial court might have missed and to come up with another number. This Court should decline that invitation.

Suffice it to say that LeBouef has filed a 10-volume appendix, yet cites to only three volumes in his brief (and then

only to small portions of those). Presumably, the remainder is there to demonstrate the sheer volume of litigation over the years leading to trial. That speaks in favor of the fee award.

---

**- 6 -**

## The Court Did Not Abuse its Discretion in Denying an Award to LeBouef of Trustee and Attorney Fees

---

This argument will now turn to LeBouef's second appeal, where he challenges the court's refusal to award him trustee fees and legal expenses for the period when he purported to be successor trustee following Patton's death and before his removal. (AOB 33.)

The court considered LeBouef's conduct toward the estate to have been fraudulent. (8 AA 2144.) His tenure as "trustee" was a continuing part of that fraud. So this is a case of a fraudster demanding to be compensated by his victims for his malfeasance. It takes some gall to ask for that.

LeBouef cites to the terms of the purported 2006 trust in support of his claim to compensation. But that trust has been found invalid, added to which we don't know what the terms were due to the loss of the original in the "burglary" and the evidence of tampering.

Anticipating this, LeBouef also cites to Probate Code section 15681, which provides: "If the trust instrument does not specify the trustee's compensation, the trustee is entitled to reasonable compensation under the circumstances." Here, it

is not even clear that there *is* a trust — since none existed before the one that has been invalidated. But that point aside, the key language here is "in the circumstances."

LeBouef became trustee through a fraud in which he sought to enrich himself. And the court found that under these circumstances, it would be "inequitable" to pay him anything. (9 AA 2555.) This is in keeping with a fundamental of jurisprudence: "No one can take advantage of his own wrong." (Civ. Code, § 3517.)

A court sitting in equity is vested with wide discretion in awarding fees for services to a trust and its findings will not be disturbed without a showing of "palpable" abuse of such discretion. (*In re Vokal's Estate* (1953) 121 Cal.App.2d 252, 260; see also *In re McLaughlin's Estate* (1954) 43 Cal.2d 462, 465.) The same standard of review applies to claims for expenses incurred generally. (See, e.g., *In re Spencer's Estate* (1936) 18 Cal.App.2d 220, 222.)

Furthermore, the court was provided with evidence that LeBouef — while trustee — had used Patton's furnished home for more than three years, which created a loss of some $200,000 to respondents in terms of rental value. (9 AA 2515.) He never had to compensate respondents for that. This weighs in the equitable analysis regarding his claim for fees and expenses.

As for the fees incurred in defending the action brought by Bermant, the court pointed out that it was LeBouef's improper action that necessitated that expenditure. (9 AA

2555.) As noted earlier, Bermant thought Patton was going to include *her* in his estate plan. (3 RT 671-672, 711-714, 735.) Since she knew that LeBouef was being challenged as a fraudster, she had every reason to pursue her own claims against him, ones that would not have been plausible had a cloud not have hung over the Patton estate.

Furthermore, respondents presented evidence that the Bermant dispute could have been settled within a month after Patton's death for just $20,000. (9 AA 2506, 2516.) Therefore, a claim for $114,000 for the cost of defending her action was not reasonable, since the expenditure was not necessary — even if, *arguendo*, LeBouef might otherwise have been equitably entitled to anything.

## CONCLUSION

For the reasons stated above, this Court should affirm in full.

November 20, 2015 Respectfully submitted,

THE LAW OFFICE OF
JOHN DERRICK,
a professional corporation

_____

by John Derrick
Attorney for Respondents
Kim Butler, Julie Black, and
Carol Archer

## CERTIFICATE OF WORD COUNT

I certify that the text of this brief, as counted by the Apple Pages word processing software, consists of precisely 14,000 words (including footnotes but excluding the tables of contents and authorities, this certificate, and the attached proof of service).

November 20, 2015

THE LAW OFFICE OF
JOHN DERRICK,
a professional corporation

by _____
John Derrick
Attorney for Respondents

**PROOF OF SERVICE**

I am over 18 years of age and not a party to this action. I am a resident of the county where the mailing described herein took place. My business address is 21 E. Pedregosa Street, Santa Barbara, CA 93101.

On November 20, 2015, I sent from Santa Barbara, California, the following documents:

RESPONDENTS' BRIEF

RESPONDENTS' APPENDIX

I served the documents by enclosing them in envelopes and depositing the sealed envelopes with the United States Postal Service, postage fully prepaid. The envelopes were addressed and mailed as follows:

SEE ATTACHED SERVICE LIST

Electronic service, where shown in addition, took place from this email address: jd@californiaappeals.com.

Per Rules of Court, rule 8.212(c)(2), service on the California Supreme Court was effected by the filing of an an electronic copy with the Court of Appeal.

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

November 20, 2015 _____

John Derrick

**SERVICE LIST**

Michael P. Ring
1234 Santa Barbara Street
Santa Barbara, CA 93101
*(also served electronically to:*
*mpr@ringlaw.net)*

Scott B. Fooks
Weldon & Hass
205 E. Anapamu Street
Santa Barbara, CA 93101

Office of the Clerk
Santa Barbara Superior Court
1100 Anacapa Street
Santa Barbara, CA 93101
*(Delivered for the attention of Judge Sterne;*
*brief only, not appendix)*