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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

OPENING BRIEF ON THE MERITS

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

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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

OPENING BRIEF ON THE MERITS

After the Published Decision of the Court of Appeal, Fifth Appellate District Affirming the Order Dismissing Appellants Petition for Lack of Standing

ISSUE PRESENTED

1. Whether a former beneficiary of a trust lacks standing to challenge the validity of amendments to that trust that resulted in disinheritance?

INTRODUCTION

The Fifth District Court of Appeal's (hereinafter referred to as "Fifth DCA") opinion stands for the proposition that beneficiaries impacted by acts against the trust settlor such as fraud or undue influence must prosecute those claims in civil court, not probate court. Joan Mauri Barefoot

(hereinafter referred to as "Appellant") is baffled as to why the trial court and the Fifth DCA didn't simply transfer Appellant's trust contest to a different court if they thought a different court was better suited to hear Appellant's claims. Under Probate Code 16061.7 beneficiaries only have 120 days after receiving the notification from the trustee to bring a trust contest. The required 16061.7 notification was sent to Appellant on October 24, 2016. (Motion for Judicial Notice, hereinafter referred to as "MJN" at 0002-0003). Therefore, Appellant may be barred from bringing a separate civil action to contest the trust amendments that disinherited her if the civil court finds that the statute of limitations hasn't been tolled.

Under the Fifth DCA's decision disinherited beneficiaries like Appellant, who were the intended victims of fraud and undue influence perpetrated upon the trust settlor, no longer have recourse under the Probate Code to invalidate an ill-gotten trust or changes to that trust. The Fifth DCA's decision is fundamentally incorrect for public policy reasons because it creates a perverse incentive to exploit susceptible trust settlors by creating an administrative quagmire for beneficiaries who are the intended victims of elder abuse and fraud. For example, pursuant to the Fifth DCA's decision all equitable remedies available under the Probate Code are offered to beneficiaries like Appellant's brother Dana Anthony Berry, Sr. whose interests are merely diminished, however, bars fully disinherited

beneficiaries like Appellant from those same remedies. A copy of Appellant's brother Dana Anthony Berry, Sr.'s trust contest that is still pending before the Superior Court is attached to Appellant's MJN. (MJN at 0005-0058). Using the Fifth DCA's approach, disinherited beneficiaries are only allowed back into probate court after they successfully invalidate the ill-gotten trust in civil court.

Most trust contests are resolved by negotiated settlements, therefore, the issue of standing by a disinherited trust beneficiary raised in this case hasn't gone up on appeal before. Before this case, petitions under Probate Code 17200 to contest the validity of trusts on behalf of disinherited beneficiaries were commonly brought under the assumption that the standard applicable to will contests applies equally to trusts. It should be noted that nowhere in Appellant's pleadings was it alleged that Probate Code 17200 was Appellant's only basis for standing. Nevertheless, the generally accepted practice is that the probate court is the proper venue for parties whose interests are affected by the challenged trust instrument. However, there is no express statutory authority mandating so. For comparison, persons disinherited by a will have express statutory standing to contest the ill-gotten will in probate court under Probate Code 48.

The Fifth DCA's decision created a two-tiered judicial system whereby beneficiaries with diminished interests like Appellant's brother

may bring their claims in probate court pursuant to Probate Code 17200, however, disinherited beneficiaries like Appellant must seek their remedy in civil court. The Fifth DCA advised, "a complaint alleging the same causes of action would not be barred by the beneficiary limitation of section 17200." (Opn at p. 5 ftn 2). To follow the Fifth DCA's approach Appellant will first have to litigate the issue of whether the document is valid or not in civil court. However, the trial on Appellant's brother's trust contest has been continued pending the outcome of this appeal. (MJN at 0074-0077). Therefore, assuming Appellant is permitted to file a civil action to contest the validity of the trust amendments that disinherited her in civil court, there may be two different trials regarding the validity of the same documents and possibly two different orders reaching opposite conclusions regarding the validity of the exact same documents. This is a waste of judicial resources and inefficient because the trustee will be forced to defend identical lawsuits in two separate divisions of the same court. Additionally, this scenario would raise novel questions regarding res judicata that would likely be subject to further appeal. It's common practice for civil divisions to transfer trust contests to the probate division because probate courts have exclusive jurisdiction over the internal affairs of trusts and it makes sense to set all trust contests for trial at the same time. Furthermore, civil departments tend to transfer trust contests to probate

departments because probate departments are generally better equipped to handle complex trust and estate matters. For example, probate departments commonly have staff that specialize in probate matters such as probate research attorneys, probate examiners and probate technicians or clerks exclusively assigned to the probate department who assist the judge with analyzing complex trust disputes. The Fifth DCA's opinion has produced absurd results because the opinion bars civil courts from transferring trust contests filed in civil courts to be consolidated with other trust contests in probate court. The Superior Court will have to decide whether the civil court or the probate court will try the matter first. This Court should find that disinherited beneficiaries have standing to bring trust contests in probate court so that all trust contests can be heard by the same court at the same time.

Another problem with the Fifth DCA's opinion is after the ill-gotten trust is invalidated in civil court the victorious contestant who has now conferred standing as a beneficiary under Probate Code 17200 must return to probate court to litigate remaining companion issues against the trustee. For example, Appellant petitioned to declare that any recipients of distributions from the trust hold those assets and any income therefrom in constructive trust for the persons entitled to distribution of the trust property, for removal of the currently acting trustee, and for an order that

the currently acting trustee provide a complete accounting of the trust since the settlor's death. (Clerk's Transcript, hereinafter "CT" at 15). These companion issues are important to this appeal because the probate court has exclusive jurisdiction over the internal affairs of trusts which includes the removal of a trustee and accounting issues. In this appeal the removal of the trustee and accounting issues are interwoven with Appellant's claims that the currently acting trustee unduly influenced the settlor to effectuate the changes to the trust. It makes sense for all of Appellant's claims to be heard by the probate court at the same time. Additional items of concern are that unless this Court overturns the Fifth DCA's decision, the currently acting trustee will continue acting as trustee without any court supervision until after Appellant returns to probate court after her contest is successful in civil court and by that time it could be too late. As discussed below, civil courts don't function on an expedited timeline like probate court, therefore, it could be years before the trustee is subject to any court supervision.

As opposed to transferring Appellant's petition to a court the Fifth DCA deemed proper, the Fifth DCA wrote an opinion of first impression that improperly treats trust contests like standard civil lawsuits, bars disinherited beneficiaries from probate court, allows trustees to serve without court supervision pending trust contests by disinherited beneficiaries, departs from voluminous well-reasoned case law analogizing

wills to trusts, improperly forces disinherited beneficiaries to prove ultimate factual issues regarding the validity of the document at the pleading stage, and creates a dangerous quagmire for disinherited beneficiaries who wish to contest gifts to presumptively disqualified persons such as drafters of instruments, fiduciaries and care custodians. The Fifth DCA's opinion has far reaching unintended consequences which will be further discussed below. For example, although forgery is not at issue in this case, of additional concern is that the Fifth DCA's opinion fails to carve out any exceptions for beneficiaries disinherited by allegedly forged amendments.

This Court should resolve all issues brought before it by confirming that probate courts have jurisdiction to hear all trust contests and that disinherited beneficiaries have standing under Probate Code 17200, other statutes, common law and common sense to bring trust contests in probate court similar to how heirs disinherited by a will have standing to contest the will that disinherited them. Those defending ill-gotten amendments shouldn't be allowed to twist Probate Code 17200 to shield the amendments from judicial scrutiny and dismiss legitimate contests on an overly technical and out of context analysis of one code section.

LEGAL AND FACTUAL BACKGROUND

A. Factual Background

Joan Lee Maynord (Joan) died on August 20, 2016 at the age of 83. (CT 6-7). Joan had five surviving children including Appellant, Respondents Jana Susan Jennings (Sue) and Shana Lee Wren (Shana), and the other petitioner in this case, Dana Anthony Berry, Sr. (Tony). (CT-124). Joan's fifth surviving child, Tommy Joe Glover, has not appeared in this litigation. Tony's case remains pending at the trial court level and his trust contest has been continued pending the outcome of this appeal. (MJN-0074-0077).

In 1986 Joan and her husband Robert Maynord (Robert) established The Maynord 1986 Family Trust (the Trust). (CT-7). They amended it once in 1992. (CT-125). Joan became the sole trustee when Robert died in 1993. (CT-7). After Robert's death Joan executed an additional 23 purported amendments and/ or restatements of the Trust. (CT-125). Joan purportedly executed the 17th through 24th amendments over a period of less than three years. (CT 6-16, 122-36). Pursuant to at least the 16th amended version Appellant stood to receive a substantial inheritance as a beneficiary of the Trust. The purported 24th amended version of the Trust excludes Appellant as a beneficiary. (CT 20-21).

During the time preceding January 2013 Shana and Sue had assumed control of Joan's daily healthcare and finances. (CT-126). However, Shana and Sue were neglecting their mother's well-being. (CT-126). As a

result, Appellant moved back to California to care for Joan at Joan's request. (CT-127). In fact, on March 13, 2013 Joan designated Appellant as the executor of Joan's estate, successor trustee of Joan's Trust, personal representative for Joan's health care disclosures and agent for Joan's finances. (CT-127).

Appellant lovingly cared for her mother until Shana and Sue succeeded in poisoning the well against Appellant by means of fraud and undue influence to get back in control of Joan's healthcare and finances. (CT-127). Shana and Sue intentionally alienated Appellant from Joan and bullied Appellant to leave Joan's home. (CT-127). Shana and Sue conspired to falsely convince Joan that Appellant was responsible for initiating litigation against Joan regarding real property that Joan owned in Texas and for having Joan's driving privileges revoked. (CT-127). Shana and Sue also fed Joan's paranoia by falsely convincing Joan that Appellant was mentally ill and trying to harm the family. (CT-129).

Shana and Sue had control of Joan's healthcare and finances during the next three years leading up to Joan's death when Joan executed the 17th through 24th amendments. (CT-126). During that time period Joan relied on Shana and Sue for continuous assistance and management of Joan's healthcare and finances. (CT-127).

During the time that Joan executed the 17th through 24th amendments Joan suffered from the following conditions. Joan suffered from approximately five bouts of cancer that affected her major organs. (CT-126). She also suffered from cirrhosis which often caused her confusion, personality changes and fatigue due to her liver's inability to remove toxic substances from her blood. (CT-126). Joan also suffered from encephalopathy which affected her brain and caused her severe cognitive impairment. (CT-126, 129). Especially during the last three years of her life Joan was known to complain of difficulty thinking, concentrating, analyzing and remembering. (CT-126, 129-30). She even forgot how to start a motorcycle despite having driven motorcycles for years. (CT-126). During this time period Shana and Sue intentionally alienated Joan from Appellant and other family members. (CT-130-31). It was during this time that Shana and Sue were ultimately successful in unduly influencing Joan to increase their inheritances and disinherit Appellant. (CT-130).

B. The Underlying Pleadings

Appellant's petition challenged the validity of the 17th through 24th amendments to the Trust on three grounds. (CT 6-12, 124-33). In the first, Appellant alleged that Maynord was "not of sound and disposing mind" and thus lacked the "requisite mental capacity to amend the Trust." (CT-8,

128). In the second, Appellant alleged undue influence on behalf of Shana who received a large share from the Trust. (CT-8). In the third appellant alleged fraud on behalf of Shana, relying on similar facts as in the second ground. (CT-11). Appellant included a lengthy factual recitation of the facts she alleged led to her disinheritance. (CT 6-12, 122-36). Appellant additionally petitioned for removal of the trustee, imposition of a constructive trust on assets and proceeds of the Trust and for an accounting. (CT-13, 15).

Appellant alleged that she was a person interested in both the devolution of her mother's estate and the proper administration of the Trust because Appellant is both an heir at law, former beneficiary and successor trustee of the Trust before the purported amendments. (CT-7).

C. Motion to Dismiss

Respondents filed an answer to appellants petition and a motion to dismiss Appellants petition pursuant to Probate Code 17200 and 17202. (*Supplemental* Clerk's Transcript, hereinafter "SCT" at 4-196 and CT 59-97). Respondent's motion to dismiss argued that Appellant lacked standing under Probate Code 17200 because she was neither a beneficiary nor a trustee of the trust as constituted under the 24th amendment. (CT 59-60). Appellant opposed the motion and argued that she was a beneficiary under the 16th amendment and alleged that the later versions of the trust were

invalid. (CT 98-100). The trial court dismissed Appellant's petition for lack of standing. (CT 112-1123). Appellant brought a motion for reconsideration of the ruling dismissing her petition and attached a proposed amended petition including additional facts relevant to her claim that the later amendments were invalid and additional grounds for setting aside the amendments. (CT 120-84). Appellant attached a proposed amended petition as an exhibit to her motion for reconsideration. (CT-122-76). The proposed amended petition clarified the basis for Appellants standing, including additional statutory authority, and sought to add an additional cause of action for intentional interference with an expected inheritance. (CT 122-36). Respondents filed an opposition to Appellant's motion for reconsideration. (CT 185-93). Appellant filed a reply to the opposition to her motion for reconsideration. (CT194-218). The trial court denied Appellant's motion for reconsideration and Appellant filed a timely appeal. (CT 220-21, 223)

D. The Court of Appeal's Decision

The Fifth DCA affirmed the trial court's order dismissing Appellant's petition for lack of standing, holding that the law is clear that only a trustee or currently named beneficiary have standing to challenge the terms of the trust in probate court. (Opn at p. 5). The Fifth DCA held that a former beneficiary of a trust who no longer has any interest in the trust

lacks standing under Probate Code 17200 to challenge the validity of the amendments that disinherited her. (Opn at p. 8)

ARGUMENT

I. NO STATUTE OR POLICY LIMITS THE PROBATE COURT'S ABILITY TO HEAR TRUST CONTESTS FILED BY DISINHERITED BENEFICIARIES.

The Fifth DCA erroneously held that disinherited beneficiaries of a trust lack standing to bring trust contests in probate court. The Fifth DCA's conclusion rested on that court's erroneous pronouncement – the first of its kind by a California appellate court – that some trust contests must be filed in civil court and other trust contests may be filed in probate court. The Fifth DCA's holding departed from the well-established practice that disinherited beneficiaries are permitted to file trust contests in probate court. Furthermore, the Fifth DCA's opinion is contrary to public policy because it creates judicial waste by forcing parties with nearly identical claims to file in two separate courts and risks multiple courts reaching opposite conclusions regarding the validity of the exact same trust instrument. The Fifth DCA misses the boat because their analysis treats trust contests like standard civil lawsuits. Trust contests are not standard civil lawsuits, trust contests are specialized probate proceedings designed to determine inheritance rights. Typically probate courts don't rule on trust contests until notice has been perfected on all potential parties so that the

decision is binding on all the world with regard to the validity of the trust. This practice stands to reason because absent a protective statute, a trustee is ordinarily absolutely liable for mis delivery of the trust assets, even if the trustee reasonably believed that distribution was proper. (Rest.2d, Trusts (Restatement) § 226). If two different courts make two different decisions regarding which instrument is valid the trustee won't know who to distribute the assets to and the trustee will be absolutely liable for mis delivery of the trust assets. Therefore, the Fifth DCA's opinion violates public policy because trustees will be restrained from making distributions out of concern regarding liability pertaining to distributing assets pursuant to the wrong court order. This will cause needless confusion, appeals and litigation.

A. PROBATE COURTS HAVE GENERAL JURISDICTION TO DIPSOSE OF ANY MATTERS BROUGHT BEFORE IT IN ADDITION TO EXCLUSIVE JURISDICTION OVER THE INTERNAL AFFAIRS OF TRUSTS.

In proceedings commenced pursuant to Division 9 of the probate code concerning trust law the probate court is a court of general jurisdiction and has all the powers of the superior court. (Prob. Code § 17001). Probate Code section 17004 states that the probate court may exercise jurisdiction in proceedings under Division 9 of the Probate Code concerning trust law on any basis permitted by section 410.10 of the Code of Civil Procedure. Code of Civil Procedure section 410.10 states that a

court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. In addition to having general jurisdiction, probate courts also have exclusive jurisdiction to hear cases regarding the internal affairs of trusts. (*Saks* v. *Damon Raike & Co* (1992) 7.Cal.App.4th 419, 429). The Law Revision Commission Comment to Probate Code 17000(b) states, "it is intended that the department of the superior court that customarily deals with probate matters will exercise the exclusive jurisdiction relating to internal trust affairs provided by subdivision (a)." (Cal. Law Revision Com., 54A West's Ann. Prob. Code (1991 ed). 17000, p. 182). Therefore, probate courts have more jurisdiction to dispose of the matters brought before it than regular civil courts because probate courts have exclusive jurisdiction over the internal affairs of trusts in addition to general jurisdiction to hear proceedings on any basis permitted by the Constitution of California and of the United States.

B. THIS COURT SHOULD CONFIRM THAT PROBATE COURTS ARE PERMITTED TO HEAR ALL TRUST CONTESTS BECAUSE IT IS SOUND PUBLIC POLICY TO HAVE ALL TRUST CONTESTS HEARD AT ONE TIME SO THAT THE DECREE REGARDING THE VALIDITY OF THE CONTESTED INSTRUMENT IS FINAL AND BINDING ON ALL THE WORLD.

Probate courts generally exercise in rem jurisdiction whereas civil courts generally exercise in personam jurisdiction. (*Abels* v. *Frey* (1932)

126 Cal.App. 48, 53). As will be discussed below, the probate court's in rem jurisdiction may not extend to trust contests, however, trust contests function like an in rem proceeding. An action or proceeding in rem is one that affects the interests of all persons in the world to the property at issue. (2 Witkin, Cal. Procedure (5th ed. 2005) Jurisdiction, section 243, p. 846-47).

In rem jurisdiction is established when the appropriate petition has been filed and the notice required by the statute has been given. (*Estate of Wise* (1949) 34 Cal.2d 376, 382-383). By giving the notice prescribed by the statute the entire world is called before the court and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate. (*Abels* v. *Frey* (1932) 126 Cal.App. 48, 53). Probate decrees regarding heirship and distribution of the assets are binding on the whole world. (*Estate of Radovich* (1957) 48 Cal.2d 116, 122). In the *Estate of Wise*, *supra* the trial court made a finding that the decedent's siblings weren't heirs then issued a decree determining heirship. (*Estate of Wise*, *supra*, 34 Cal.2d 376, 382-383). The appellant in the *Estate of Wise* sought to void the binding effect of the heirship decree by arguing that the civil rules applied. (*Id.* at 381). However, the court found that the rules normally applicable to civil actions have no application in heirship proceedings because probate proceedings are not ordinary civil actions but

rather specialized proceedings in rem because the decree is binding on the whole world. (*Id.* at 383). This is an important concept in the instant appeal because after notice has been perfected on all the potential beneficiaries, the proceedings will be binding just like an in rem proceeding

The US Supreme Court held that American courts have sometimes classed certain actions as in rem because personal service of process was not required, and at other times have held that personal service of process was not required because the action was in rem. (*Mullane* v. *Cent. Hanover Bank & Trust Co.*, (1950) 339 U.S. 306). The U.S. Supreme Court in *Mullane* found that Central Hanover Bank couldn't settle an accounting for a common trust fund containing nearly 3 million dollars in 1946 for 113 separate inter vivos and testamentary trusts by only publishing notice in a local New York state newspaper. (*Id.* at 320). It should be noted that the only details the bank published in the newspaper regarding the accounting was the name and address of the trust company, the name and date of establishment of the common trust fund, and a list of all participating estates, trusts or funds. (*Id.* at 309). The U.S. Supreme Court found that the New York probate court lacked in rem jurisdiction over the 113 trusts in the common trust fund because the notice requirements under the New York statute violated the Fourteenth Amendment pertaining to depriving known persons whose whereabouts are also known of substantial property rights.

(*Id* at 320.) Mullane discusses at length the in rem character of some judgments but holds that a proceeding to determine the rights of beneficiaries under a trust is not embraced within the in rem classification and that when the rights of beneficiaries to a trust are inevitably affected, they are entitled to notice and are indispensable parties. (*Estate of Reed*, (1968) 259 Cal.App.2d 14, 21). It is the constant aim of Courts of equity to do complete justice, by deciding upon and settling the rights of all interested persons in the subject-matter of the suit so that the performance of the decree of the Court may be perfectly safe to those who are compelled to obey it and to prevent future litigation. (*McPherson* v. *Parker* (1863) 30 Cal. 455, 457-458). Therefore, Courts of equity delight to do justice and not by halves. (*Id.* at 457). In the instant appeal there are no notice issues and all necessary parties are properly before the court. Therefore, although the in rem jurisdiction of the probate court may not encompass the trust matter at the heart of this appeal, the probate court's order will be like an order in rem because the order will be binding on the rights of creditors, devisees, legatees and all the possible beneficiaries in all the world. Therefore, it is sound public policy to have all trust contests heard at one time by one court, and, preferably, as discussed below, by the probate court.

C. PROBATE COURTS DON'T IMPOSE STRICT PLEADING REQUIREMENTS.

The rules applicable to civil actions apply to probate proceedings unless the probate code provides an applicable rule. (Prob. Code § 1000(a)). For example, the discovery procedures found in the Code of Civil Procedure are available for use in probate proceedings. (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977). As stated above, probate courts have jurisdiction over both civil and probate matters. In fact, often probate pleadings necessitate hybrid pleadings to properly dispose of the matter. For example, petitions for the return of trust property under Probate Code section 850(a)(3) often incorporate civil causes of action for conversion, fraud, quiet title and Welfare and Institutions causes of action for financial elder abuse. Probate Code section 855 specifically allows hybrid pleadings. "An action brought under this part may include claims, causes of action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of a petition filed under this part." (Prob. Code § 855).

The doctrine of liberal construction of pleadings should be employed to aid the contestant. (4 Witkin, Cal. Procedure (3d ed. 1985) Pleading, section 396, pp. 446-447). Liberal allowances for pleadings are especially appropriate where upholding weak pleadings will "avoid a possible gross miscarriage of justice." (*Id.* section 401, p. 450). Appellant attempted to cure any procedural issues with her pleadings by requesting that the

Superior Court allow her to amend her pleadings to add Intentional Interference with an Expected Inheritance as a cause of action. It is undisputed that Appellant would have standing to bring an action for Intentional Interference with an Expected Inheritance. However, the Superior Court violated the rule concerning liberal allowances for pleadings where upholding weak pleadings will avoid a possible gross miscarriage of justice because instead of allowing Appellant to amend her pleadings the Superior Court dismissed Appellant's petition. Now it is uncertain whether the 120-day statute of limitations has been tolled so that Appellant can file a new civil action contesting the trust under civil statutes but alleging identical facts.

In *Lintz* v. *Lintz*, 222 Cal.App.4th 1346 the defendant argued that the plaintiffs who had successfully invalidated the ill gotten trust had deprived the defendant of the opportunity to invoke the well established rules pertaining to contests over testamentary instruments based upon allegations of undue influence because the plaintiffs, "failed to challenge the trust instruments under Probate Code section 17200, subdivisions (a) and (b)". (*Id.* at 1358). The Sixth District Court of Appeal rejected the defendant's argument that by failing to challenge the trust under Probate Code 17200 the defendant was deprived of the right to invoke well established rules pertaining to contests based on allegations of undue influence because the

plaintiffs' pleadings alleged undue influence based on the fact that the trust was invalid and also sought additional relief as the probate court deemed just and proper. (*Id.*). Thus, plaintiffs had put the defendant on notice of her opportunity to invoke any well-established rules in defense of an undue influence claim. (*Id.*) It should be noted that the contestants in *Lintz* were completely disinherited and the Sixth District Court of Appeal's analysis strongly implies that Probate Code 17200 would have been the proper vehicle for the disinherited beneficiaries in *Lintz* to bring their claim to invalidate the ill-gotten trust amendments based on undue influence, however, the court permitted the disinherited beneficiaries to proceed despite their failure to properly challenge the instruments under Probate Code 17200. (*Id.* at 1350, 1358.). Therefore, *Lintz* proves Appellant's points that there are no strict pleading requirements in probate court and, also, that Appellant has standing to contest the trust amendments under Probate Code 17200.

D. PROBATE COURTS DON'T IMPOSE STRICT STANDING REQUIREMENTS AND HAVE HISTORICALLY CRAFTED FLEXIBLE EXCEPTIONS TO STANDING REQUIREMENTS WHERE SPECIAL CIRCUMSTANCES MERIT MAKING AN EXCEPTION TO ALLOW LEGITIMATE CLAIMS TO PROCEED.

There is no rule in the Probate Code limiting standing. In fact, as will be discussed further below, the Probate Code is fluid and permits nearly anyone who will suffer a pecuniary loss as a result of the proceeding

to petition the probate court for relief. Because there is no rule in the Probate Code regarding standing, we look to the ordinary rules of civil procedure to test for standing. (Prob. Code § 1000(a)). The requirement of standing is provided by Code of Civil Procedure 367. Code of Civil Procedure 367 states that every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute. (Code Civ. Proc. § 367). The reason the code limits the prosecution of an action to the real party in interest is to protect a defendant from multiple claims arising out of the same harm and to prevent a claimant from transferring the right and thereby defeating a defendant's cross-complaint or setoff. (*Giselman* v. *Starr* (1895) 106 C. 651, 657).

The real party in interest is determined by the applicable substantive law and usually the person having the right to sue for injury to the property is the owner of the property. (*Vaughn* v. *Dame Construction Co.* (1990) 223 Cal.App.3d 144, 147). However, the real party in interest is the party who has title to the cause of action rather than title to the property itself. (*Powers* v. *Ashton* (1975) 45.Cal.App.3d 783, 788). Therefore, the essential element of standing is injury to one's interests in the property rather than ownership of the property itself. It has often been recognized that one who is not the owner of property may nonetheless be the real party in interest if that person's interests in the property are injured or damaged.

(*Vaughn*, *supra*, 223 Cal.App.3d 144, 148). Injury to an interest in property gives rise to a cause of action for that harm, which is itself a discrete property right called a "chose in action." (*Parker* v. *Walker* (1992) 5 Cal.App.4th 1173, 1182). Therefore, it is the owner of the chose in action who has standing to sue.

The probate court is very flexible with regards to standing. Various exceptions to standing have been crafted to bend to find ways to allow legitimate claims to be heard. For example, when a personal representative of an estate is also trustee of a trust that the heirs of that estate sought to invalidate the Third District Court of Appeal found that the personal representative could hardly be expected to initiate an action against herself. (*Olson* v. *Toy* 46 Cal.App.4th 818, 824). The Third District found that there were special circumstances that allowed the decedent's heirs to bring the action in their names alone even though the personal representative was the real party in interest. (*Id.* at 824). These flexible rules pertaining to special circumstances is a hallmark of probate proceedings.

Another example of the probate court carving out exceptions to allow for flexible standing requirements is the standing to bring an elder abuse action. In *Estate of Lowrie* (2004) 118 Cal.App.4th 220 the court addressed the standing required to bring an elder abuse claim under the Welfare and Institutions Code. The court stated that the applicable statute

conferred standing to the personal representative of the decedent, or, if none, to the person or persons entitled to succeed to the decedent's estate. (*Id* at 227). The court ultimately found that although the definition of standing was not specifically set forth in Welfare and Institutions Code 15657.3(d) the legislative intent of the Elder Abuse and Dependent Adult Civil Protection Act showed that a broad definition was applicable to elder abuse cases. (*Id.* at 220, 221).

E. STANDING IS A FEDERAL CONCEPT AND THERE IS NO CORRELATING STATE STANDING REQUIREMENT.

Standing is a concept that has been largely developed by federal courts throughout the twentieth century. (*Jasmine Networks, Inc.* v. *Superior Court* (2009) 180 Cal.App.4th 980, 990.) It is a constitutional limitation to the subject matter jurisdiction of federal courts and is rooted in the "case" and "controversy" requirement of Article III of the federal Constitution. (*Id.*) Unlike the federal Constitution, the California Constitution imposes no such limitation to the subject matter jurisdiction of state courts. (*Jasmine Networks, Inc., supra,* 180 Cal.App.4th at 990). Rather, the state's Constitution "empower[s] superior court[s] to adjudicate any 'cause' brought before it." (Citations omitted.) (*Id.*) "At its core standing concerns a specific party's interest in the outcome of a lawsuit," and a party must generally show, "a direct and substantial beneficial

interest" in the outcome. (*Weatherford* v. *City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248.) However, to determine whether a plaintiff has standing in state court it's necessary to analyze the scope of the statute granting the right to relief. (*Id.* at 1248-1249).

As stated above, Code of Civil Procedure section 367 requires that every action be maintained, "in the name of the real party in interest." This provision is not equivalent to federal standing requirements and it poses no obstacles to a plaintiff with a right to sue under substantive law. (*Jasmine Networks, Inc., supra,* 180 Cal.App.4th at 991). Federal doctrine requires plaintiffs to establish an entitlement to judicial action separate from proof of the substantive merits of the claim advanced. (*Id.* at 980, 991). In contrast, Code of Civil Procedure Section 367 simply requires that the action be maintained in the name of the person who has the right to sue under the substantive law. (*Id.* at 980, 991). Here, as will be discussed below, the statutes authorize Appellant to request the relief sought because Appellant is the aggrieved party in interest and has brought this action in her capacity as an individual.

F. DISINHERITED BENEFICIARIES HAVE STANDING TO CONTEST ILL-GOTTEN TRUSTS IN PROBATE COURT.

The Fifth DCA's decision applies an extremely narrow interpretation of Probate Code 17200. The Fifth DCA's decision states that only beneficiaries and trustees have standing to contest a trust in probate court

under Probate Code 17200. (Opn. at pp 5-6). The Fifth DCA's interpretation directly conflicts with Probate Code 24 which states that a beneficiary means a person to whom a donative transfer of property is made or that person's successor in interest, and as it relates to a trust, means a person who has any present or future interest, vested or contingent. Here, based on the plain language of Probate Code 24 disinherited beneficiaries should have standing to bring a petition under Probate Code 17200 because their future interest will be contingent on whether the later instrument is invalidated or not. The use of the present tense "is" necessarily includes any beneficiary who could possibly take under any iteration of the trust no matter how remote.

Practitioners often analogize wills to trusts. Now that trusts are commonly used planning instruments there is no reason to draw strict distinctions between the vast body of law on will contests and the limited body of law on trust contests. To have standing to contest a will requires nothing more than being an "interested person". (*Estate of Sobol* (2014) 225 Cal.App.4th 771, 781). Probate Code 48 pertains to estates and broadly defines an interested person as an heir, devisee, child, spouse, creditor, beneficiary and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. Probate Code 48(3)(b) further broadens the definition of

interested person by stating that the meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding. Probate Code 48 is designed to provide the probate court with flexibility to control its proceedings both to further the best interests of the estate and protect the rights of interested persons to those proceedings. (*Estate of Maniscalco* (1992) 9 Cal.App.4th 520, 523-524). It is well established that contestants of a decedent's will have standing to contest if they stand to benefit by setting aside the will. (*In re Estate of Land* (1913) 166 Cal. 538, 543). The main purpose of the requirement that a contestant of a will be an "interested person" is to prevent persons with no potential interest from delaying settlement of the estate. *Estate of Plaut* (1945) 27 Cal.2d 424, 429.

In *Drake* v. *Pinkham*, (2013) 217 Cal.App.4th 400 trust settlors Theodore and Josephine Citta (Theodore) and (Josephine) established a trust in 1998. (*Id.* at 403). The 1998 trust dictated that after the death of the surviving spouse the trust was to be divided equally between the two trust beneficiaries (Janice) and (Gina). (*Id.*) Theodore died in 1999. (*Id.*) After Theodore died Josephine executed an amendment in 2001 eliminating Gina as a beneficiary. (*Id.*) In 2005 Gina filed a petition for appointment of herself as co-trustee of the trust as amended by the amendments. (*Id.* at

404). As part of her petition Gina alleged that Josephine lacked the ability to care for herself and act as trustee and that Janice was asserting undue influence over Josephine and isolating Josephine from Gina. (*Id.*) Josephine objected to Gina's petition and attached the amendment that had disinherited Gina to Josephine's objection. (*Id.*) In 2006 Gina and Josephine settled Gina's petition for appointment of Gina as co-trustee. (*Id.*) Josephine died on October 29, 2009. (*Id.*) On March 9, 2010 Gina filed a trust contest to invalidate the amendment that disinherited her on the basis of lack of capacity, undue influence, breach of fiduciary duty, fraud, financial abuse of an elder, declaratory relief, imposition of a constructive trust and mistake. (*Id.* at 404, 405). Gina's trust contest was dismissed because the trial court determined that Gina's causes of action for lack of capacity and undue influence were barred by the principles of collateral estoppel and that the remaining causes of action were barred by the statute of limitations. (*Id.* at 405). Gina appealed and on appeal Janice relied on the following undisputed facts: Gina was aware of the same alleged wrongdoing by Janice in 2005, Gina was aware of Josephine's alleged lack of capacity in 2005, and Gina was aware of the contested amendments in 2005. (*Id.* at 406, 407). At first Gina argued that she didn't know about the contested amendments until after she received the 16061.7 notification from Janice on November 12, 2009, however, Gina later admitted that she

was aware of the contested amendment at the time she entered into the settlement agreement with her mother in 2006. (*Id.* at 407). Gina argued that she lacked standing to contest the amendments to the trust until after Josephine died. (*Id.* at 407). The Third District Court of Appeal disagreed and found that laches applied because Gina had waited so long to file her petition even though she had known about the facts giving rise the petition years earlier. (*Id.* at 408, 409). However, and most importantly to the instant appeal, the Third District found the following pertaining to Gina's standing under Probate Code 17200, "**nothing in sections 17200 or 15800 precluded her from bringing the *underlying* action prior to Josephine's death.**" (*Id.* at 408, emphasis added). The underlying action being referenced in this line is Gina's trust contest to invalidate the amendment that disinherited Gina. (*Id.*) Therefore, by reference to section 15800, section 17200 confers standing on a disinherited beneficiary to challenge a trust during the settlor's lifetime if the settlor becomes incompetent. (*Id.* at 408). The Third District found that the petitioner's mere allegation of incompetence was enough to give Gina standing under Probate Code 17200 even though there was no determination of the settlor's incompetence. (*Id*). Likewise, Appellant's allegations that she is a beneficiary because the 17th through 24th amendments are invalid products of mental incapacity, undue influence, and fraud are sufficient to give her standing under Probate Code

17200. The Third District's analysis makes it clear that Gina would have had standing under Probate Code 17200 if she hadn't waited to bring her claims. It should be noted that laches aren't at issue in the instant appeal and Appellant didn't know about the disputed amendments until after her mother's death. Therefore, nothing prevents Appellant from pursuing her trust contest under Probate Code 17200.

In *Bridgeman* v. *Allen* (2013) 219 Cal.App.4th 288 the court didn't directly rule on whether a disinherited beneficiary has standing to contest a trust under Probate Code 17200, however, the court rejected the contention that a disinherited beneficiary lacks standing to appeal an order dismissing his petition for lack of standing. (*Id.* at 292). The Court stated, "We need not, and do not, address the issue of Edward's standing to bring the underlying action." (*Id.*). The court did not need to rule on the underlying trust contest because the contestant failed to file the contest within the required 120 days.

As will be discussed further below, in *David* v. *Hermann* (2005) 129 Cal.App.4th 672, 678-679 the settlor disinherited her eldest daughter Susan and the court construed Susan's petition to invalidate the trust for undue influence and incapacity as a proceeding under Probate Code 17200(b)(3) even though Susan was not a beneficiary under any version of the trust. (*Id.* at 679, 683). The *David* v. *Hermann* opinion implies that even a party

who was never a beneficiary of a trust still has standing under Probate Code 17200 if they stand to benefit from a successful challenge.

Therefore, it is implied that disinherited trust beneficiaries have standing to bring trust contests under Probate Code 17200.

Justice Traynor intimated the procedure for determining whether a party has standing to contest a will in the *Estate of Plaut, supra*, 27 Cal.2d 424. Justice Traynor states, "Although the right to ask the court for an adjudication of his claim to the estate should be denied a person whose interest 'has not even the appearance of validity or substance', it should not be denied a person who, even though he may ultimately not receive any part of the estate, has at least established a prima facie interest in that estate." *Estate of Plaut, supra*, 27 Cal.2d 424, 428 (internal citations omitted). This Court should apply the same procedure intimated by Justice Traynor for determining whether a disinherited trust beneficiary has standing to contest a trust or amendment to the trust.

II. APPELLANT'S PLEADINGS ARE SUFFICIENT, AND APPELLANT HAS STANDING TO PROCEED.

As discussed above, to establish standing a disinherited beneficiary only needs to allege facts sufficient to establish a cause of action under 17200 or any other cause of action that was plead. The trial court and the Fifth DCA completely overlooked the fact that Appellant never argued in her pleadings that 17200 was the only statute that conferred standing. In

fact, 17200 is never mentioned in Appellant's pleadings. Appellant plead that the trust amendments were invalid on the basis of lack of capacity, undue influence and fraud. (CT 6-12, 124-33). Therefore, Appellant alleged standing under common law. Appellant has pleaded facts more than sufficient to invalidate the trust amendments that purport to disinherit her. If the Court accepts the facts that Appellant pleaded as true, Appellant is a beneficiary of the last valid iteration of the Trust, thereby giving her standing to bring a claim under 17200. Furthermore, Appellant has standing under other statutes and common law because she is an interested person and has a pecuniary interest in the outcome of the case. As plead, the trust amendments are invalid and at this pleading stage of the case the Court must accept the allegations as true. (*Bounds* v. *Superior Court* (2014) 229 Cal.App.4th 468, 483). Any allegations that Appellant's claims are speculation or conjecture lacking evidentiary support frames the issues for trial, not a demurrer or a motion to dismiss. (*Id.* at 483).

Standing is jurisdictional and can be raised at any stage of a case, even by the court for the first time on appeal. (*Troyk* v. F*armers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1344, 1345). Like any other element of a claim, it must be supported in the same way as any other matter with the manner and degree of evidence required at the successive stages of litigation. (*Id.* at 1345). However, at the pleading stage, as here, the party

only needs to allege facts sufficient to establish standing. (*Estate of Lind* (1989) 209 Cal.App.3d 1424, 1430, 1434).[1] The contestant's ability to prove those allegations is not the concern of the reviewing court. (*Id* at 1430). The U.S. Supreme Court has long adhered to this same rule: "For purposes of ruling on a motion to dismiss for want of standing, both the trial court and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." (*Warth* v. *Seldin* (1975) 422 U.S. 490, 501). *Warth* v. *Seldin* was superseded on other grounds by later legislation, however, the stated rules regarding accepting all material allegations of the complaint as true and in favor of the complaining party holds. Respondents' motion to dismiss attacked Appellant's standing based on the pleadings thereby denying Appellant the opportunity to prove her allegations. Therefore, the Superior Court should have evaluated Appellant's standing based on the facts pleaded and accepted the facts pleaded as true. Appellant alleged facts sufficient to support her claims that the purported amendments and

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1 It should be noted that although *Estate of Lind* (1989) 209 Cal.App.3d 1424, 1435 suggests that standing disputes may be resolved by a preliminary evidentiary hearing based on "minimal discovery limited to the standing question," that approach would be impracticable in this case because standing and the merits turn on exactly the same facts and evidence. For example, to prove that Appellant will take under the trust she must prove that the 17th through 24th versions of the Trust are invalid products of mental incapacity, undue influence, and/or fraud, in which case she also prevails on the merits. Thus, all of the discovery relevant to the merits is also relevant to Appellant's standing.

restatements of the trust are invalid because they are the products of mental incapacity, undue influence, and fraud.

In *Estate of Lowrie, supra*, 118 Cal.App.4th 220 the court addressed the standing required to bring an elder abuse claim under the Welfare and Institutions Code. The applicable statute conferred standing to the personal representative of the decedent, or, if none, to the person or persons entitled to succeed to the decedent's estate. *Id* at 227. According to the terms of the trust in that case, the respondent (Sheldon) would have had standing under this statute and not the petitioner in that case (Lynelle). (*Id.* at 227-228). However, Lynelle sought an order under Probate Code section 259 to deem Sheldon to have predeceased the trustor. (*Id.* at 228-229). The court of appeals found that Lynelle had standing because if Sheldon predeceased the decedent Lynelle would become the person entitled to succeed to decedent's estate. (*Id.* at 229). In other words, Lynelle had standing because Lynelle would qualify under the statute if Lynelle prevailed on her claims. Likewise, Appellant will be a beneficiary if she prevails. Therefore, Appellant has standing just as Lynelle had standing under the Elder Abuse Act.

In *David, supra*, 129 Cal.App.4th 672, 678-679 the decedent's amended trust left her estate to one of her two daughters and her grandchildren, disinheriting her eldest daughter Susan. Susan filed a

petition to invalidate the trust and amendment on the grounds of incapacity and undue influence. (*Id.* at 679). Even though Susan was not a beneficiary under any version of the trust, the appellate court noted, "we construe Susan's petition as a proceeding under Probate Code section 17200, subdivision (b)(3)." (*Id.* at 683). Although the opinion didn't directly address standing, the ultimate determination by the court strongly implies that even a party such as Susan, who was never a beneficiary of the trust, still had standing to challenge a trust under section 17200 as long as they stood to benefit from a successful challenge. Appellant's standing under 17200 is even more definite because she will be a beneficiary if her claims are successful.

Appellant never asserted that 17200 was the only statute that conferred standing. In fact, 17200 is never even mentioned in Appelant's pleadings. As clarified in Appellant's proposed amended pleadings, Appellant has standing under other statutes. (CT 122-36). The Superior Court shouldn't have dismissed Appellant's petition without affording Appellant an opportunity to file her amended petition. The proper grounds for dismissal of an action are set forth in Code of Civil Procedure section 581. Lack of standing is not one of them. Rather, Code of Civil Procedure section 581(f) authorizes dismissal after a demurrer to the complaint is sustained either without leave to amend or when leave is given but the

pleadings party fails to amend. Such leave should be freely given. If Appellant needed to plead any separate statutory basis for standing pertaining to the same common nucleus of operative facts her amended pleadings could have easily cured any such defect.

Nothing in the Probate Code limits trust contests on the basis of incapacity, undue influence and fraud to the confines of section 17200 so long as the petitioner is an interested person. Interested persons are defined by Probate Code section 48 as any person with a claim against a trust estate or the estate of a decedent which may be affected by the proceeding. Appellant has standing to litigate her claims against the trust as an interested person under Probate Code section 48. Specifically, as an heir at law and as a person having a property right in or claim against a trust estate, Appellant has standing to bring an action to invalidate the contested amendments. Petitioners claim is based on the fact that by unraveling the trust amendments she will receive her rightful share of the trust estate and regain a pecuniary interest in the estate.

Appellant has standing to bring an action to invalidate the amendments as a result of mental incapacity under Probate Code section 812, which determines when a person lacks testamentary capacity. Appellant also has standing to bring all of her claims under Probate Code

section 850(a)(3)(A), because she is an interested person asserting a claim to property held by the acting trustee.

Appellant's claims for fraud and intentional interference with an expected inheritance are subject only to the very broad "real party in interest" standing requirement of Code of Civil Procedure section 367. A real party in interest is simply one who has an actual and substantial interest in the subject matter of the action and who would be benefitted or injured by the judgement in the action. (*Chao Fu, Inc.* v. *Wen Ching Chen* (2012) 206 Cal.App.4th 48). Respondent's actions in procuring the contested amendments to the Trust directly injured Appellant by preventing Appellant from receiving her rightful inheritance. Therefore, dismissal of her petition for lack of standing was not warranted.

The broad scope of standing based on the statutory definition of interested person is consistent with the long-standing test for standing to challenge a testamentary act. California Probate Code section 15002 states that except to the extent that common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state. Therefore, Appellant's pleadings are sufficient, and she should be able to proceeds with her trust contest under the pleadings filed.

III. PROBATE COURTS ARE THE PREFERRED FORUM FOR TRUST CONTESTS OVER CIVIL COURTS AND TO TREAT TRUST CONTESTS AS CIVIL MATTERS RATHER THAN PROBATE MATTERS CONTRAVENES

THE PUBLIC POLICY IN FAVOR OF SWIFT PROBATE PROCEEDINGS.

Public policy favors the prompt administration and settlement of estates and probate proceedings should be expeditiously conducted. (*Colden* V. *Costello* (1942) 50 Cal.App.2d 363, 372; 14 Witkin, Summary of Cal. Law (10th ed. 2005), *Wills and Probate*, §406, p 488). In *Farb* v. *Superior Court* (2009) 174 Cal.App.4th 678 the Second District referenced the strong public policy in favor of the expeditious administration of estates that was articulated by the California Law Revision Commission. 20 Cal. Law Revision Com. Rep. (1990) p. 511 (Recommendation).

The policy in favor of prompt probate proceedings is expressed throughout the probate code. For example, a special administrator can be immediately appointed at any time without notice. (Probate Code §§ 8540(a), 8541(a)). Additionally, there is no right to a jury trial in probate proceedings and probate proceedings shall be given preference in hearing in the courts of appeal and in the Supreme Court when transferred thereto and shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties. (Probate Code §§ 44, 825).

The calendaring system in probate proceedings is drastically different from calendaring in civil matters because the calendaring system in probate proceedings is expedited. For example, when a petition, report,

account, or other probate matter that requires a hearing is filed with the court clerk the clerk shall set that matter for hearing. (Probate Code §1041). Probate Code section 8003(a) requires that the hearing on a probate petition be set not less than 15 days nor more than 30 days after the petition is filed. This is drastically different from the calendaring system for civil matters because when a civil matter is filed it's simply scheduled for a Case Management Conference date as opposed to a hearing date when the Court can decide the merits of the matter filed.

There is no matter more essential to the internal affairs of a trust than whether the operative instrument is in fact valid or not. Probate departments are best equipped to hear complex trust contests because they regularly hear trust contests and are equipped with specialized staff who assist with analysis for complex trust disputes. Disinherited beneficiaries who may have been the target of fraud or undue influence should be afforded the opportunity to have their claims heard in probate court because probate courts are best equipped to hear their claims. The Fifth DCA correctly states that the administration of trusts is intended to proceed expeditiously and free of judicial intervention pursuant to Probate Code 17209. (Opn. at pg 5). However, by incorrectly dismissing Appellant's petition and erroneously proclaiming that all trust contests by disinherited trust beneficiaries should be complaints in civil court the Fifth DCA's

opinion will create more judicial intervention in the administration of trusts because trust contests by disinherited beneficiaries will get tied up in the slower civil divisions where the matter will not be entitled to calendar preference and also unable to proceed on the expedited probate calendar.

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IV. THE FIFTH DCA'S OPINION CREATED A TWO-TIERED JUDICIAL SYSTEM FOR TRUST CONTESTS AND HAS RESULTED IN INEQUITABLE RESULTS FOR CONTESTANTS IN NEARLY IDENTICAL POSITIONS.

The Fifth DCA's interpretation of Probate Code 17200 creates a two-tiered judicial system for trust contests because it forces nearly identical groups of litigants to file in two separate divisions of the superior court. Pursuant to the Fifth DCA's decision litigants like Appellant who are completely disinherited must file their claims in civil court. However, litigants with diminished interests like Appellant's brother are still permitted to bring their trust contests in probate court. This is an inequitable result for the below reasons.

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A. DISINHERITED BENEFICIARIES SHOULD BE PERMITTED TO LITIGATE THEIR TRUST CONTESTS IN PROBATE COURT BECAUSE CIVIL COURTS DON'T HAVE JURISDICTION OVER TRUSTEES, THEREFORE, DISINHERITED BENEFICIARIES WILL LOSE ALL EQUITABLE REMEDIES AVAILABLE UNDER THE PROBATE CODE.

As stated above, probate courts have exclusive jurisdiction to hear cases regarding the internal affairs of trusts. (*Saks*, *supra*, 7.Cal.App.4th 419, 429). Therefore, probate courts have exclusive jurisdiction over trustees. The probate court's powers are broad and sweeping. For example, Probate Code 17206 states that the probate court may, in its discretion, make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

Frequently trust contests include claims against the trustee for illegal acts. For example, Appellant petitioned to remove the trustee and to compel an accounting. The Fifth DCA's opinion has barred Appellant from probate court and all equitable probate remedies against the trustee until after Appellant proves her standing under Probate Code 17200 by invalidating the contested trust instruments. The following remedies are exclusively available in probate court: a finding that the trustee breached their duties, compelling the trustee to perform their duties, enjoining a trustee from committing a breach of trust, compelling the trustee to redress a breach of trust by paying money, restoring money or restoring property, ordering a trustee to account, appointing a temporary trustee to take hold of the property during the trust contest, suspending a trustee, reducing a trustees compensation or imposing a lien or constructive trust on trust

property, and tracing trust property wrongfully disposed of and recovering the proceeds.

Trust contests usually turn based on equitable orders made by the probate court during the pendency a trust contest. For example, whether a trustee can use trust funds to litigate a trust contest is often a hotly contested issue that may determine the outcome of the trust contest. For example, Appellant's sister has access to substantial trust funds that she is using to fund this litigation against Appellant whereas Appellant must pay out of pocket. In *Terry* v. *Conlan* (2005) 131 Cal.App.4th 1445 the court held that a trustee should remain neutral if a beneficiary is merely contesting one or more amendments of a trust as opposed to defending the validity of the underlying trust. (*Id.* at 1462, 1464). The trustee is bound by their duty of impartiality to serve as a neutral placeholder while the beneficiaries litigate who will receive what at their own cost. Under the Fifth DCA's approach, disinherited beneficiaries are barred from seeking an order under *Terry* v. *Conlan* instructing the trustee not to use trust funds to defend the ill-gotten amendment. This puts disinherited beneficiaries at an inherent disadvantage and beneficiaries with merely diminished interests at an advantage. There is no rational reason to draw such a distinction.

V. THE FIFTH DCA ERRONEOUSLY AND IMPERMISSIBLY ADDED THE WORD "ONLY" TO PROBATE CODE SECTION 17200(a).

The Fifth DCA's decision implies that Probate Code Section 17200(a) was specifically drafted to provide rights "only" to a trustee or a beneficiary of the most current iteration of the trust. Section 17200(a) does not contain the word "only". Courts do not have the power to add words to a statute to conform it to an assumed intent that does not appear from the statute's actual language. (*People* v. *Eckard* (2011) 195 Cal.App.4th 1241, 1249). The Fifth DCA added the word "only" to Section 17200(a) despite the fact that the Legislature did not include the word "only" in the code section. Section 17200(a) reads, "a trustee **or** beneficiary of a trust **may** petition the court under this chapter." (Emphasis added). The Legislature did not include any language in Section 17200(a) that expressly limits standing to only trustees and beneficiaries. The Legislature simply cites two classes of individuals that may file a petition under Section 17200(a). There is no language in Section 17200(a) that indicates the Legislature intended to specifically exclude any groups of people from seeking relief under Section 17200(a). This stands to reason because Section 17200(a) authorizes individuals who are not yet beneficiaries to file a petition to determine the existence of a trust. There are technically no beneficiaries if no trust exists prior to the filing of a petition to determine the existence of a trust under Section 17200(a). If the Fifth DCA's reasoning is applied literally no party would have standing to petition to determine the existence

of a trust under Section 17200(a). Therefore, the Fifth DCA's interpretation of Section 17200(a) does not stand to reason.

The Fifth DCA's main argument appears to be that the Legislature drafted Section 17200(a) to intentionally exclude anyone other than trustees and beneficiaries under the latest iteration of the trust. The Fifth DCA fails to cite any legislative notes, history or other authority to evidence the Legislature's intent to expressly limit standing to only beneficiaries and trustees under the most recent iteration of the trust. If the Legislature intended to limit standing to only beneficiaries and trustees of the latest iteration of the trust the Legislature could have expressly stated so. However, they did not. The Legislature instead drafted a code section that allowed for fluidity. Fluidity with regards to standing is one of the hallmarks of the Probate Code. Additionally, standing is a federal concept and there is no correlating state standing requirement.

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VI. THE FIFTH DCA'S INTERPRETATION OF PROBATE CODE 17200(a) IS CAVALIER BECAUSE THE COURT TOOK THE CODE SECTION OUT OF CONTEXT AND FAILED TO HARMONIZE SECTION 17200(a) WITH THE ENTIRE STATUTORY SCHEME.

The Fifth DCA's interpretation of Probate Code 17200(a) runs afoul of the canon of statutory construction that directs courts to interpret legislative enactments to avoid absurd results. (*Estate of Kelly* (2009) 172

Cal.App.4th 1367, 1368.). Here, the Fifth DCA has completely misinterpreted Probate Code 17200. Most of Probate Code 17200 is geared towards ensuring that probate courts and beneficiaries can hold trustees liable for misconduct. For example, Probate Code 17200(b)(12) authorizes compelling redress of a breach of trust by any available remedy. However, the Fifth DCA has run far astray and twisted the statute to become a shield for trustees against legitimate trust contests by disinherited trust beneficiaries.

Generally, the plain meaning rule applies if there is no ambiguity in the statutory language. (*Poole* v. *Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1384-1385). However, the plain meaning rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with the other provisions of the statute. (*Donovan* v. *Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 592-593). Furthermore, the literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purpose that, in light of the statute's legislative history, appear from its provisions considered as a whole. (*Times Mirror Co.* v. *Superior Court* (1991) 53 Cal.3d 1325, 1334, fn. 7). Once a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the

statute. (*Id*). The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context and provisions relating to the same subject matter must be harmonized to the extent possible. (*Id.* at 592). Each sentence must be read not in isolation but in light of the statutory scheme and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. (*Id.* at 592-593). The Fifth DCA's interpretation of Section 17200(a) creates disharmony between various probate code sections. For example, as discussed above, Probate Code 17200(a) states that a petition may be brought to determine the existence of a trust. There are no present beneficiaries if the trust doesn't exist prior to the filing of a petition to determine the existence of the trust under Section 17200(a). If the Fifth DCA's reasoning is applied literally then no individuals have standing to file a petition to determine the existence of a trust.

Literal construction should not prevail if it's contrary to the legislative intent apparent in the statute. (*Lakin* v. *Watkins Associated Industries* (1993) 6 Cal.4th 644, 659). The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. (*Lungren* v. *Deukmejian* (1988) 45 Cal.3d 727, 735). An interpretation that renders related provisions nugatory must be avoided. (*Id.* at 735). Below is discussion regarding the various code sections related to Probate

Code 17200(a). Throughout the discussion below it will become clear that when Section 17200(a) is interpreted in the context of the entire statutory scheme beneficiaries disinherited by a later amendment or restatement have standing under 17200(a).

A. PROBATE CODE SECTION 24(c)

Probate Code Section 24(c) defines a beneficiary as a person to whom a donative transfer of property is made, and, as it relates to a trust, means a person who has any present or future interest, vested or contingent. This code section is expansive because it defines beneficiaries as beneficiaries with both present and future interests as well as vested or contingent interests. In other words, Section 24(c) includes both current and potential beneficiaries. For example, a beneficiary of a revocable living trust with no vested rights and whose interest could be revoked at any time is still defined as a beneficiary under Section 24(c). There is nothing in Section 24(c) that indicates that the Legislature intended to expressly limit the definition of trust beneficiaries to only beneficiaries under the most current iteration of the trust. In fact, the definition under Section 24(c) is expansive and includes both current and potential beneficiaries.

B. PROBATE CODE SECTION 16061.7

Probate Code Section 16061.7(a)(1) and (b)(1)-(2) require that notice of the irrevocability of the trust instrument be given to heirs at law of the deceased trustor as well as beneficiaries and trustees named in trust instrument. Section 16061.7(h) also requires that these individuals be given specific warning that they cannot bring an action to contest the trust more than 120 days from the date of the notification. The Fifth DCA's decision expressly bars the very persons to whom statutory notice of the right to bring an action to contest the trust for a limited period of time must be given from bringing an action to contest the trust under Section 17200(a) unless they are still specifically named as a beneficiary. When the Legislature added the requirement that trustees notify heirs as well as beneficiaries of the settlor's death and set an 120-day time limit for contests after service of notification (Prob. Code 16061.5, 16061.7 and 16061.8) the Legislature could not have intended that heirs who were not named as beneficiaries lacked standing. The whole point of 16061.7 is to notify those who would contest so it would make no sense to bar those who would contest from contesting in probate court if this section of the probate code has specific language regarding the deadline to contest the trust.

C. PROBATE CODE SECTION 84.

Probate Code Section 84 states that a "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a

court. The Fifth DCA's decision creates disharmony with Section 84 because a formerly named trustee, or original trustee, is deemed to be a trustee under Probate Code 84. A formerly named trustee, or original trustee, should therefore have standing under Section 17200(a). For example, Appellant was formerly named as trustee of the trust at issue. Therefore, Appellant has standing under Section 17200(a) because she was a formerly named trustee, or original trustee, under prior instruments whether or not appointed or confirmed by a court.

D. PROBATE CODE SECTION 48

Probate Code Section 48 defines interested persons. Although Probate Code Section 48 is not directly related to Section 17200(a) because 17200(a) does not require standing as defined by Probate Code 48, Probate Code 48 helps to put Section 17200(a) in context. Probate Code 48(a)(1) states that an interested person is an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. Probate Code 48(b) further expands the definition of interested person by stating that the meaning of interested person as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in any proceeding. Essentially, any individual that may stand to gain from the

estate or trust has standing as an interested person under Section 48. Section 48 is the quintessential probate code section with regards to standing because it exemplifies the Legislature's intent to permit any individual whose pecuniary interests may have been harmed to bring a claim.

E. PROBATE CODE SECTIONS 1040 AND 1043(a)

Probate Code Section 1040 governs all hearings under the probate code. Probate Code Section 1043(a) provides that an interested person may appear and make a response or objection in writing at or before the hearing. These sections are expansive in that they allow any party to appear and object at or before the hearing. These expansive code sections demonstrate the Legislature's intent to allow any party whose interests may be harmed by the proceeding to appear and be heard.

F. PROBATE CODE SECTIONS 851(c) AND 17203(b)

A Probate Code 17200 trust contest that affects real property (as undoubtedly most trust contests that end up in court will) must, according to Probate Code 17200.1 be conducted under the rules applicable to Probate Code 850 petitions pertaining to the return of trust property. Probate Code 17200.1 states that all proceedings concerning the transfer of property shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2. Effective January 1, 2018, Probate Code 850

Petitions were required to be accompanied by a notice under Probate Code 851(c)(3) that contains a specific admonition advising any person interested in the property that he or she may file a response to the petition. Therefore, the new notice requirement in Probate Code 850 and Probate Code 17200 affecting real property (as in the case in the instant appeal) further underscores the legislature's intent to hold the doors of the probate court open to all with a claimed interest in the real property and not just named beneficiaries.

Probate Code 17203(b) further sets forth that at least 30 days before the time set for hearing on the petition the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 commencing with Section 413.10 of Title 5 of Part 2 of the Code of Civil Procedure on any person other than a trustee or beneficiary whose right, title, or interest would be affected by a petition and who doesn't receive notice pursuant to pursuant to subdivision (a). If Probate Code 17200 was closed off to anyone other than a currently named trustee or beneficiary, then the language in Probate Code 17203(b) requiring notice "on any person, other than a trustee or beneficiary, whose right, title, or interest would be affected by the petition" would be a meaningless requirement.

G. PROBATE CODE SECTIONS 17000(b)(1) AND 17001

California Probate Code 17000(b)(1) states that the superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction over actions and proceedings to determine the existence of trusts and other actions and proceedings involving trustees and third persons. Probate Code 17001 states that in proceedings commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court. The Fifth DCA's decision is in direct contradiction to Probate Codes 17000(b)(1) and 17001 because both sections demonstrate the Legislature's intent to permit the probate court to hear any claims brought before it. Furthermore, Probate Code 17000(b)(3) states that the superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction over actions and proceedings involving trustees and third persons. The Fifth DCA's decision renders Probate Code 17000(b)(3) nugatory. For example, under the Fifth DCA's line of reasoning, beneficiaries disinherited by a later iteration of the trust are third persons with no interest in the trust. The Fifth DCA therefore reasons that these third parties have no standing under Probate Code 17200(a). However, Probate Code 17000(b)(3) grants the probate court authority to hear claims by third persons against the trust. Therefore, is clear that disinherited beneficiaries have standing under Probate Code 17200 when

Probate Code 17200 is analyzed considering the larger statutory framework.

H. CODE OF CIVIL PROCEDURE SECTION 396

Finally, if a court determines that it is not the appropriate forum or division of the court to hear a petition Code of Civil Procedure section 396(b) directs the court to transfer the matter to the appropriate court or division. Code Civ. Proc. 396(b). Therefore, Code of Civil Procedure 396 suggests that the appropriate course of action for the Superior Court and the Fifth DCA would have been to transfer the matter to the appropriate court or division.

VII. THIS COURT SHOULD AFFIRM LONGSTANDING CASE LAW AND PRACTICE GUIDES THAT CONFIRM THAT DISINHERITED BENEFICIARIES HAVE STANDING TO CONTEST AMENDMENTS THAT DISINHERIT THEM IN PROBATE COURT.

The Fifth DCA's decision flies in the face of decades old case law that that explicitly confers standing upon non-beneficiary heirs. *Olson* v. *Toy* confirms that standing is conveyed to heirs to directly challenge the validity or existence of the trust. (*Olson, supra*, 46 Cal.App.4th 818, 823). The heirs in *Olson* v. *Toy* filed a complaint for declaratory relief, to impose constructive trust, and to recover damages where the decedent executed an inter vivos trust that did not include the contesting heirs. (*Id.* at 821). The trial court dismissed for lack of standing. (*Id.*) The Third Appellate District

reversed the dismissal and held that the heirs did have standing under Probate Code Section 9654 because the heir's action for constructive trust sought possession of property. (*Id.* at 823.) The Third Appellate District in *Olson* v. *Toy* found that the defendant trustee could not be expected to initiate an action on behalf of the estate to declare invalid the trust she administered as trustee. (*Id.* at 824.) The Third Appellate District held that the heirs had standing to bring the action because they had an interest in the trust property if the trust was declared invalid. (*Id.*) It should be noted that the Third Appellate District's decision was based at least in part on Code of Civil Procedure Section 1060 which has since been repealed. Code of Civil Procedure Section 1060 conferred standing on anyone involved in an "actual controversy" relating to a trust. (*Id.* at 824-825). The repeal of Code of Civil Procedure section 1060 doesn't disrupt the Third Appellate District's reasoning that the fact that the heirs were disinherited under the trust instrument does not prevent them from maintaining an action for declaratory relief as to the validity of the trust. (*Id.* at 825).

The Fifth DCA failed to consider the very specific language in James A. Barringer & Noel M. Lawrence, 2 CEB California Trust and Probate Litigation, Chapter 20 Trust Contests, § 20.6 Standing, where the authors note, "Those who would gain a pecuniary benefit from invalidating the trust should have standing to bring a trust contest...Under most

circumstances, the contestants are the beneficiaries of an earlier estate plan or the heirs at law." (*Id.* at 20-6).

VIII. THIS COURT SHOULD CREATE SAFEGUARDS TO PROTECT THE INTENDED VICTIMS OF FRAUD AND UNDUE INFLUENCE.

California's judicial system is fundamentally flawed if disinherited trust beneficiaries can't find a court to hear their claims on the merits. Civil Code 3523 states, "for every wrong there is a remedy." It surely cannot be the case that a beneficiary in Appellant's position loses standing before the validity of the amendments that disinherited her can be tested. If a beneficiary who is written out of an amended trust is denied standing to challenge that amendment, the victims of invalid trust amendments would rarely, if ever, be allowed to "right the wrong." Meanwhile, those who exploit mental incapacity, exert undue influence, and commit fraud to increase their share of a trust would be free to do so with impunity. Such an interpretation of standing under Probate Code 17200 would create a perverse incentive to exploit susceptible trust settlors.

The California Supreme Court has long recognized that any policy disfavoring will contests is countered by the right of a citizen to have their claim determined by law. (*Lobb* v. *Brown* (1929) 208 Cal. 476, 490-491; *Gregge* v. *Hugill* (2016) 1 Cal.App.5th 561, 569-570). The California Supreme Court in in *Lobb* recognized that public policy demands that a full

and complete opportunity should be given to all interested parties to test the validity of such a testamentary document, not only to protect that which may be rightfully and legally theirs, but also to preserve the wishes and desires of the decedent against persons seeking to take advantage of her age and infirmities which are the usual result of advanced years. (*Lobb* at 491-492). The public policy recognized by the Supreme Court in *Lobb* resonated more recently in a 2007 California Law Revision Commission report examining the enforceability of no contest clauses. The commission reported that no contest clauses can be used to shield fraud or undue influence from judicial review, and it recognized that the "policy of effectuating the transferor's intentions" would be undercut if a challenge to a testator's capacity could be thwarted by a no contest clause. (Recommendation: Revision of No Contest Clause Statute (Jan. 2008) 37 Cal. Law Revision Com. Rep. (2007) pp. 362, 370-371.) This reasoning is analogous to the current appeal because the allegedly ill-gotten amendment disinheriting Appellant is being used as a shield to protect the amendment itself from judicial scrutiny. The Fifth DCA's opinion is further troubling because the alleged abuser is the party controlling standing under Probate Code 17200 by unduly influencing the settlor to disinherit beneficiaries. It should be noted that forgery is not an issue in the present appeal, however, the Fifth DCA's opinion poses massive issues pertaining to forged

amendments because in a forgery case the abuser will literally, themselves, hold the power to determine who does and does not have standing in probate court under Probate Code 17200.

Over the past 30 years the use of revocable living trusts has rightly become the preferred estate planning vehicle for persons seeking to protect and pass on their estates. Trusts function virtually indistinguishably from wills. (*Langbein & Waggoner, Reformation of Wills on the Ground of Mistake: Change of Direction in American Law?* (1982) 130 U.Pa.L.Rev. 521, 524 (Reformation of Wills)). Therefore, disinherited trust beneficiaries should be afforded the same rights as those afforded to will contestants. Extending the same rights to disinherited trust beneficiaries protects not only that which may rightfully and legally be theirs, but also protects the trustors wishes and prevents persons from taking advantage of age and infirmities which are the usual result of advanced years.

Standing for the purposes of the Probate Code is a fluid concept dependent on the nature of the proceeding before the trial court and the parties' relationship to the proceeding as well as to the trust (or estate). This means that before the issue of standing can be resolved, a court must understand the nature of the proceedings so that it may determine the parties' relationship to it. As a practical matter, standing and the merits are closely tied, and it is often necessary to come to terms with the substantive

claim before the issue of standing can be resolved. Appellant has demonstrated that her interest may be impaired and need not show that her interest will necessarily be impaired. Therefore, Appellant has made prima facie showing that she is a beneficiary because she would gain a pecuniary interest if her challenge is successful. To establish standing to challenge a will or trust, the contestant should only be required to make a prima facie showing of an interest in the trust under some iteration of the instrument, and shouldn't be required to demonstrate the validity of that instrument. The *Estate of Plaut, supra*, 27 Cal.2d 424, 428 involves a will contest where the California Supreme Court held that a party may contest a will if they have at least established a prima facie interest in that estate even if they may ultimately not receive any part of the estate. Therefore, this Court should confirm that Appellant is allowed to proceed with her trust contest in probate court under Probate Code 17200 even if she is not ultimately entitled to receive part of the trust. By taking this simplified approach this Court will ensure protections for the intended victims of undue influence.

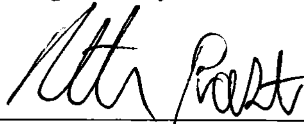
CONCLUSION

The Fifth DCA's opinion is cavalier because it fails to harmonize Probate Code 17200 within the broader framework of the Probate Code when read as a whole. The Fifth DCA's decision flies in the face of decades old precedent and practice guides that confirms that disinherited

beneficiaries may bring their trust contests in probate court. The Fifth DCA's decision is contrary to public policy because it places the ability to control standing in the hands of the alleged abuser and allows the abuser to shield the ill-gotten amendment from the scrutiny of the probate court. This Court should overrule the Fifth DCA's opinion and confirm that Appellant has standing to proceed with her trust contest in probate court under Probate Code 17200, common law and other statutes. This Court can correct all issues raised by this appeal simply and elegantly by confirming that in order to have standing under Probate Code 17200 a disinherited trust beneficiary must show that he or she would benefit from having the instrument set aside either through returning the instrument to the last valid iteration of the instrument or through intestacy.

Dated: January 9, 2019

Respectfully submitted,



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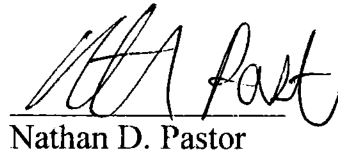
CERTIFICATION OF WORD COUNT

I, Nathan D. Pastor, hereby certify in accordance with California Rules of Court, rule 8.504(d)(1), that this brief contains 13,555 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.

Dated: January 9, 2019

Respectfully submitted,



Nathan D. Pastor

PROOF OF SERVICE

I am employed in the County of Contra Costa, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 2033 N. Main St., Ste 750, Walnut Creek, CA 94596.

On January 9, 2019, I served true copies of the foregoing document(s) described as:

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

Executed on January 9, 2019, at Walnut Creek, California.

Preetpaul Khangura