No. S251574
(Court of Appeal No. F076395)
(Tuolumne County Super. Ct. No. PR11414)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOAN MAURI BAREFOOT,
Appellant,

v.

JANA SUSAN JENNINGS AND
SHANA LEE WREN,
Respondents.

After a Decision By the Court of Appeal,
Fifth Appellate District

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

This case presents the question of who has standing under Section 17200 of the Probate Code[1] to bring a petition regarding the internal affairs of a trust or its existence. Section 17200 allows only a "beneficiary" or "trustee" to invoke its procedures, a considered decision of the Legislature when it enacted a comprehensive revision of the Probate Code in 1986 on recommendation of the Law Revision Commission. In affirming dismissal of a petition brought by a former beneficiary of a predecessor trust, Appellant Joan Mauri Barefoot ("Mauri"), the Court of Appeal correctly held that only a current beneficiary or trustee may bring a Section 17200 petition.

In her Opening Brief ("OB"), Mauri has little to say about Section 17200 or the statutorily defined terms "beneficiary" and "trustee." Instead, she cites to cases discussing the Elder Abuse Act, WELF. & INST. CODE §§15600 *et seq.*, and the Probate Code definition of "interested person," a much broader concept than "beneficiary" and "trustee." As will be shown, the Legislature did not include "interested persons" among those entitled to bring a Section 17200 petition.

It makes sense that standing under Section 17200 would be limited to current beneficiaries and trustees. For one thing, Section 17200 allows for petitions regarding the "internal affairs" of trusts—i.e., their implementation and administration. It would make no sense for any and all former beneficiaries of a trust or (as here) a predecessor trust to be able to meddle in a trust's internal affairs. And Section 17200's provision for a current beneficiary to obtain a ruling as to the existence of a trust similarly makes sense; in fact,

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[1] All subsequent statutory references are to the Probate Code, unless otherwise noted.

the legislative history reflects that the Law Revision Commission sought in 1986 to make it easier to create a trust. The Commission's recommendations, enacted by the Legislature, had nothing to with increasing ease in challenging trusts and indeed did not address trust challenges at all. The Commission's proposals, adopted by the Legislature, left such challenges to be brought in civil actions and, later, in a new statutory procedure codified at Probate Code Section 850.

In fact, if this Court were to adopt Mauri's interpretation of Section 17200, it would invite chaos because any former beneficiary or trustee could petition—i.e., meddle—with a trust in which the petitioner has no current interest. That would make no sense and cannot be squared with Section 17200's language. For instance, Section 17200(b)(3) allows determination of "the validity of a trust *provision*" ((emphasis added)), which rules out an attack on the entirety of a trust by anyone, even a current beneficiary or trustee. Similarly, Section 17200(b)(4) allows ascertainment of beneficiaries and determination of "to whom property shall pass," but only "to the extent the determination is *not made by the trust instrument.*" (Emphasis added.) Here again, Section 17200's specific terms indicate it was not intended as a vehicle to challenge a trust in its entirety but merely to administer a trust.

This does not mean trusts are immune to challenge by an interested person, such as Mauri, as she contends. A challenge to a trust's validity may be brought either under Probate Code Section 850 (enacted well after the 1986 statutory revision) or a civil action, including an action for damages against alleged wrongdoers. These procedures are substantially different than the streamlined procedure Section 17200 offers to current beneficiaries and trustees. For instance, both a Section 850 proceeding and a civil action require service of summons, whereas the more informal

proceeding under Section 17200 may be initiated based only on service by mail. In addition, Section 850 has more stringent requirements than Section 17200 regarding what notices must be given in connection with a Section 850 petition.

The above analysis resolves the question presented. Mauri's extensive brief, however, ventures far into new territory not within the scope of the issue her Petition for Review framed, not addressed by the Court of Appeal Opinion and not preserved for review by this Court. The Court need not and should not reach those extraneous issues but should simply confirm that the Court of Appeal's sound reasoning was correct.

STATEMENT OF FACTS

Joan Maynord ("Joan") and Robert Maynord formed the Maynord 1986 Family Trust in 1986. Supplemental Clerk's Transcript ("SCT") 6. Robert Maynord died on September 12, 1993, leaving Joan as the sole trustee with full authority to make amendments and/or restate the Trust as she saw fit. SCT 6, 41. After Robert's death, Joan continued operating Maynord's Recovery Center ("Maynord's") in Tuolumne County, which she and Robert founded. Maynord's remains in operation today, led by Shana and Jana, to whom Joan left the business upon her death in 2016. SCT 5–6

Mauri's characterization of Joan as a feeble, confused elder who was manipulated and misled is utterly false. In Shana and Jana's verified response to Mauri's Petition, they explained that Joan was a free-spirited, independent person who proudly rode her Harley-Davidson into her 80s. SCT 10–11. She knew her own mind and "relied on no one." SCT 5. Joan was her own person, her own boss, and without exception exercised the final say in decisions regarding her family, her business, and her estate plan. *Id.*

Contrary to Mauri's claims, Joan operated and worked at Maynord's until the week before her death. SCT 5. In 2014, when Mauri claims Joan was in a mentally "infirm" state, Joan was described in the local newspaper as "still going strong" at age 81. SCT 5. She was indeed "going strong" until the day she died peacefully in her residence on the Maynord's property. *Id.*

Joan understood her authority to alter her revocable trust and exercised that authority frequently. SCT 6–8. Indeed, Joan amended the trust just over one month after Robert Maynord died in 1993. SCT 6. As described in detail in Shana and Jana's verified response, Joan removed beneficiaries, replaced beneficiaries, increased beneficiary shares, decreased beneficiary shares, increased beneficiary shares again, replaced entire trust documents, and so on and so forth as she saw fit. *Id.* In fact, she amended and/or restated her entire estate plan 24 times. SCT 8. Each of these changes was done through counsel. SCT 9.

Mauri was one of Joan's six children, each of whom had a different father. SCT 6. Mauri moved away from the family to Texas in 1986 and had little contact with her mother until late 2012, when she needed a place to live. SCT 10. In January 2013, Joan allowed Mauri to move in with her. *Id.* It was during this time, in March 2013—while Mauri was living with Joan—that Joan amended and restated her trust, for the first time stating that Mauri would take an interest in Maynord's upon Joan's death. SCT 7.

Mauri and Joan's newfound connection did not last long. In May 2013, just five months after Mauri had moved in, Joan asked Mauri to leave. SCT 10. Joan was scared of, and intimidated by, Mauri's abusive behavior, and Mauri demanded money and support from her mother. *Id.* After Joan asked Mauri to leave, Mauri on May 31, 2013, sent a caustic email to Joan, other family members and Joan's estate

planning attorney. SCT 10, 190–92. Among other things, Mauri stated that because of what she perceived as mistreatment by her mother, Mauri "was dead to her [mother]." SCT 190. To symbolize the break, Mauri ripped up two pictures of her that had been hanging in her mother's home. *Id.*

Unsurprisingly, Mauri's behavior caused Joan in June 2013 to restate her trust again, eliminating Mauri from receiving any interest in Maynord's. SCT 7. In 2016, Joan executed another restated trust (the Twenty-Fourth Amendment and Restatement of Trust dated March 17, 2016) that eliminated Mauri entirely as a beneficiary. SCT 8–9. Joan also made that change because Mauri had caused Joan and her trust to become embroiled in litigation in Texas. SCT 9. This was the operative Trust in place at Joan's passing (hereinafter referred to as the "Trust").[2]

On February 17, 2017, Mauri filed a Probate Code Section 17200 Petition (the "Petition") in the probate division of the Tuolumne County Superior Court. Clerk's Transcript ("CT") 6. Contrary to her claim in her opening brief, her Petition expressly identified Section 17200 as the procedural basis for her Petition. CT 6. Mauri's Petition sought to invalidate six separate trust amendments and restated trusts so that the 2013 trust that briefly gave her an interest in Maynord's upon Joan's death (a period of about three months) could become the operative trust. CT 8, 15.

On March 24, 2017 Respondents Shana Wren and Jana Jennings (hereinafter "Shana and Jana") filed a verified response to the 17200 Petition. SCT 4. On June 23, 2017,

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[2] Mauri was named a successor trustee in the Sixteenth Amendment and Restated Trust during the brief period she was a beneficiary under that trust but never actually succeeded to trusteeship. SCT 67; *see also* SCT 87 (Seventeenth Amended and Restated Trust did not designate Mauri as successor trustee).

Shana and Jana filed a motion under Probate Code Section 17202 seeking dismissal of the Petition. The motion explained that Section 17200 specifies that standing to file a petition under that statute is limited to beneficiaries and/or trustees, and Petitioner is neither. CT 65–67. The trial court agreed and dismissed the Petition without prejudice. CT 115–16.

After the action was dismissed, Mauri filed a motion for reconsideration in which she claimed that her Petition stated civil claims. CT 120–21. In denying that motion, the trial court recognized that, having already dismissed the action, it lacked jurisdiction. CT 220. The court further ruled that, even if it had jurisdiction, Mauri's motion to reconsider violated Section 1008 of the Code of Civil Procedure because the motion did not identify new facts, law or other circumstances that did not exist when Mauri opposed the motion to dismiss. CT 221.

On Mauri's subsequent appeal, the Fifth District Court of Appeal affirmed in a published opinion that addressed a single issue: whether former beneficiaries or trustees have standing to bring a Section 17200 petition. *See Barefoot v. Jennings*, 27 Cal. App. 5th 1 (2018). Mauri did not seek rehearing but did seek review, which this Court granted.

ARGUMENT

I.

ONLY CURRENT BENEFICIARIES AND TRUSTEES HAVE STANDING UNDER SECTION 17200 TO PETITION REGARDING THE INTERNAL AFFAIRS OF A TRUST.

A. The Plain Text Of The Probate Code, And The Sequence In Which The Relevant Provisions Were Adopted, Shows That Section 17200 Is Not A Vehicle For Trust Contests.

In interpreting a statute, courts "begin with the plain language of the statute, affording the words of the provision their

ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." The plain meaning controls if there is no ambiguity in the statutory language. *Poole v. Orange Cty. Fire Auth.*, 61 Cal. 4th 1378, 1384–85 (2015) (internal quotation marks omitted). If the plain language of a statute is unambiguous, no court need, or should, go beyond that expression of legislative intent. *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 572 (1999); *Kobzoff v. Los Angeles Cty. Harbor/UCLA Med. Ctr.*, 19 Cal. 4th 851, 861 (1998).

As shown below, the text of the Probate Code and the sequence in which the relevant provisions were adopted demonstrate that a former beneficiary such as Mauri lacks standing to bring a Section 17200 petition.

1. As Part Of A Comprehensive Revision Of The Probate Code In 1986, The Legislature Enacted Section 17200, Leaving Civil Claims In Place As The Vehicle For Trust Challenges.

In 1986, Section 17200 was enacted as part of a comprehensive statutory revision consolidating scattered provisions related to private trusts in the Probate Code. This revision was based on the recommendation of the California Law Revision Commission. After enactment, the Commission's staff compiled a comprehensive summary of the final version as enacted, including relevant commentary the Commission had previously prepared in support of its legislative recommendation. *See Selected 1986 Trust and Probate Legislation*, 18 CAL. L. REVISION COMM'N REPORTS 1201, 1205–06 (1986) (hereafter "CLRC Report") (attached to Motion for Judicial Notice as Exhibit A).

This report does not describe Section 17200 or any of the other proposed Probate Code statutes as vehicles to bring trust contests. Indeed, there is no mention of trust contests

throughout the entire summary or in any of the legislative comments. At the time, trust contests and other property-related issues remained in the purview of the Civil Code. Specifically, causes of action for undue influence and other causes of action for setting aside trusts were not repealed and continued to be governed by the Civil Code. *See* PROB. CODE §15002 ("Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state."); CIV. CODE §1575 (defining undue influence); *see also* CLRC Report at 1222 (the 1986 revisions to the Probate Code did not replace or change any common law that was not covered by the new law).

With regard to petitions related to the internal affairs of trusts, the report stated that Section 17200(a) restated existing law, except that the introductory clause cross-referencing Section 15800 allowed the settlor to bring a petition while the settlor is alive and competent. CLRC Report, *supra*, at 1437. The report further noted that the "list of grounds for a petition concerning the internal affairs of a trust under subdivision (b) is not exclusive and is not intended to preclude a petition for any other purpose that can be characterized as an internal affair of the trust." *Id.* at 1437.

The report did not discuss challenges to trusts, but it dd evidence attention to how trusts can be created. The Commission's recommendations included a provision in Section 17200(a) allowing for a petition seeking a determination regarding the "existence" of a trust. This correlated with the Commission's commentary that its intention was to clarify rules regarding creation of trusts (not attacks on them). Indeed, the Commission noted that its proposal would provide for validation of some trusts that would have failed under then-existing law.

- "Creation of Trusts. The essential elements necessary to create a trust under the proposed law are not

substantively different [from existing law], although stated in terms drawn from the Restatement (Second) of Trusts. The proposed law revises the rules governing indefinite beneficiaries and purposes to conform trust law with the law of powers, and to validate trusts which would fail under existing law." CLRC Report at 1209.

- "Oral Trusts. The proposed law provides that an oral trust may be made irrevocable, that it may be established only by clear and convincing evidence of the trust elements, and that the oral declaration of the settlor is not, standing alone, sufficient evidence of its creation." *Id.*
- "Methods of Creating Trusts. Existing law is silent as to the mechanics of creating a trust. The proposed law fills the gap by adopting the formulation of the Restatement. In addition, the proposed law continues the recently enacted California rule that a valid trust can be created where the settlor is the sole trustee and sole beneficiary, so long as the trust designates one or more successor beneficiaries to take after the death of the settlor." *Id.* at 1226 (footnote omitted).[3]

2. Subsequently, The Legislature Created A New Probate Code Section 850 Procedure For Trust Challenges, Expressly Foreclosing Use Of Section 17200 For That Purpose.

In 1996, the Assembly passed AB 2751, which among other things would have added Probate Code Section 17200.1 as a means of bringing a challenge to a trust. That proposed statute would have provided that a trustee or "any interested

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[3] The 1986 legislation laid out the necessary ingredients to create a trust as including a declaration of trust or transfer of property (Section 15200); intent to create a trust (Section 15201); the existence of trust property (Section 15202); and a designation of a beneficiary (Section 15205).

person" could petition the court for an order where, among other things, "the trustee is in possession of, or holds title to real property or personal property, and the property is claimed to belong to another." AB 2751 (Kaloogian), 1996 Stat. ch 862. Section 17200.1 was not enacted that year.

Effective 2002, however, the Legislature adopted the same language but chose to do so as part of a new set of statutes codified as Probate Code Sections 850 *et seq.*, rather than under the rubric of Section 17200. At the same time, the Legislature expressly excluded matters subject to Section 850 from Section 17200 by adding a new Section 17200.1 that provides as follows: "All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2." PROB. CODE §17200.1. By contrast to Section 17200, which permits petitions to be filed only by beneficiaries and trustees, the Legislature opened the door to all "interested persons" in Section 850. PROB. CODE §850(a)(3)).

Because Section 850 allows for trust contests to be brought in Probate Court,[4] is available to "interested persons" and, under Section 17200.1, is the exclusive means of bringing a Probate Court proceeding seeking transfer of trust property, the trial court properly dismissed Mauri's petition brought under Section 17200. Because the relevant statutory language is plain and unambiguous, the Court need not go beyond that text to confirm that the Court of Appeal correctly interpreted Section 17200. *See* pp.8-9, *supra*.[5]

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[4] *See, e.g., Estate of Young*, 160 Cal. App. 4th 62, 67, 80 (2008) (Section 850 petition used successfully to nullify trusts).

[5] Mauri seeks to confuse matters by asserting that Section 17200.1 means that Section 17200 petitions that affect trust property "must be . . . conducted under the rules applicable to probate code [§]850 petitions pertaining to the return of trust property." OB 59. But Section 17200.1 does not borrow procedures from Section 850 to be used in a Section 17200 (. . . continued)

3. In 2017, The Legislature Further Distinguished Section 850 Petitions From Section 17200 Proceedings By Enhancing Due Process Protections For Section 850 Proceedings.

In 2017, the Legislature added subdivision (c) to Probate Code Section 851, which sets forth the following safeguards:

1) a description of the subject matter of the proceedings must be set forth in the notice as well as a description of the relief sought;
2) the person being served must be advised that he or she has a right to file a response to the petition; and
3) the court cannot shorten the required time for giving notice.

No such changes were made to the Probate Code Section 17200 notice requirements. The changes to Section 850 notice requirements were made at the recommendation of the Executive Committee of the Trust and Estates Section of the State Bar of California, which opined that such changed were necessary to meet due process requirements. Motion for Judicial Notice, Exh. B (State Bar memorandum).

Conflating Section 17200 proceedings with Section 850 proceedings, as Mauri urges, would allow the procedural safeguards the Legislature has required with respect to Section 850 proceedings and civil actions to be easily evaded. Specifically:

(. . . continued)
proceeding, as Mauri claims; Section 17200.1 states that "[a]ll proceedings concerning the transfer of property of the trust *shall be conducted pursuant to*" Section 850. (Emphasis added).

Mauri also misstates the text of Section 17200.1 in two other ways. First, that section does not apply only to the "return of trust property" (OB 59) but to "[a]ll proceedings concerning the transfer of property of the trust." Second, Section 17200.1 is not limited to "real property" (OB 59) but reaches "property" of any kind.

- In a Section 17200 petition, no summons needs to be served on a party who is a beneficiary of the trust (and therefore the most likely person to be impacted by the proceeding). Merely mailing a notice is sufficient.
- In a Probate Code Section 17200 petition, the information required in Probate Code Section 850 notices to beneficiaries is not required.

The heightened procedural protections the Legislature has imposed regarding Section 850 proceedings further shows that the Legislature did not intend Section 17200 to be used for trust contests or other disputes about disposition of trust property.

B. Mauri Incorrectly Claims Standing As An "Interested Party," A Statutorily Defined Term Not Within Section 17200.

The Court of Appeal Opinion is the first to examine whether a beneficiary of a prior trust such as Mauri has standing under Section 17200 to challenge the entirety of a successor trust in light of all the statutory provisions just described. *Estate of Heggstad*, 16 Cal. App. 4th 943 (1993), included some dicta about Section 17200's breadth, but was decided prior to enactment of Sections 850 and 17200.1. *Id.* at 951–52. Accordingly, the Court of Appeal's decision was one of first impression in interpreting all of the relevant statutes currently in force.[6]

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[6] *Gregge v. Hugill*, 1 Cal. App. 5th 561 (2016), held that a grandson who was currently named a beneficiary had standing to contest an amendment. *Id.* at 565. *Drake v. Pinkham*, 217 Cal. App. 4th 400, 408–10 (2013), concluded that a former beneficiary could challenge an amendment but did not analyze whether there was a difference between current and former beneficiaries and did not address Section 850 or Section 17200.1, as the Court of Appeal recognized. *See* 27 Cal. App. 5th at 7 (*Drake*'s "analysis . . . made no mention of the proper vehicle . . . when a former beneficiary is contesting later trust

(. . . continued)

In addressing the question at bench, Mauri focuses not on the relevant language in Sections 850, 17200 and 17200.1 but instead on her assertion that she is an "interested person," a defined term under the Probate Code that includes heirs. *See* PROB. CODE §48. The problem for her is that Section 17200 does not include the term "interested party." Instead, Section 17200 limits standing only to a "beneficiary" or "trustee," categories that are more narrow and specific than "interested person." As the Court of Appeal opinion explains, "beneficiary" is defined by statute—Probate Code Section 24(c): "As it relates to a trust, [beneficiary] means a person who has any present or future interest, vested or contingent." 27 Cal. App. 5th at 6. Mauri does not fall within that definition.

Mauri argues that, as a former beneficiary, she falls within Section 24(c)'s inclusion of "potential" beneficiaries, apparently meaning that she could potentially be a beneficiary if the court were to find the restated trust and numerous prior amendments all to be invalid. Opening Brief ("OB") 56. But she misstates Section 24(c)'s language to advance this point. Section 24(c) refers to those with a "present or future" interest, *not* a "potential" interest. The Legislature's use of the term "present or future" further shows that those with a *past* interest, like Mauri, are not within Section 17200. Were past beneficiaries to be included, then the words "present or future" in Section 17200 would be rendered surplusage, contrary to canons of statutory construction. *See People v. Valencia*, 3 Cal. 5th 347, 357 (2017); *Dyna-Med, Inc. v. Fair Emp't & Hous. Comm'n*, 43 Cal. 3d 1379, 1387, 1397 (1987).[7]

(. . . continued)
amendments."); *see also David v. Hermann,* 129 Cal. App. 4th 672 (2005) (former beneficiary of revoked trust had standing under Section 17200 to challenge newly created trust; no discussion of former versus current beneficiaries, Section 850 or Section 17200.1).

[7] Indeed, even calling Mauri a "former" beneficiary is a
(. . . continued)

Nor can Mauri claim to be a "contingent" beneficiary. A "contingent" beneficiary is one who has a present interest in the trust that is contingent on an event, such as the settlor's death which renders the trust irrevocable. *See Babbitt v. Superior Court*, 246 Cal. App. 4th 1135, 1145–48 (2016) (contingent beneficiary has no right to an accounting of a revocable trust which concerned the "internal affairs of the trust" until the contingency was removed upon the death of the trustor so that the beneficiary was now a primary beneficiary).

Moreover, Mauri's contention that "beneficiary" includes former beneficiaries under prior versions of a trust would not apply only to trust contests like hers. That interpretation, if adopted, would apply equally to former beneficiaries who make no claim to a current interest in the trust. Such former beneficiaries—under Mauri's reading of Section 17200—would be entitled to petition under Section 17200 regarding internal affairs of the trust. Granting standing regarding the internal affairs of a trust to all former beneficiaries, including those who have no interest at all in the trust assets, would make no sense. That absurd outcome of Mauri's interpretation further demonstrates that her construction of Section 17200 is incorrect and that is exactly what the Legislature sought to prevent by limiting Section 17200 to beneficiaries and not interested parties. *See Ellins v. City of Sierra Madre*, 244 Cal. App. 4th 445, 453–54 (2016) (in interpreting

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(. . . continued)
stretch because the trust in effect on Joan's death was a *restated* trust. Probate Code Section 16060.5 provides that "[i]f a trust has been completely restated, 'terms of the trust' *does not include* trust instruments or amendments which are superseded by the last restatement before the settlor's death." (Emphasis added).

statutes, courts should avoid interpretations leading to absurd results).[8]

Mauri's clam to have been an "original" trustee, as that term is used in Section 84 (OB 57–58), fares no better. She never served as a trustee, as the record reflects. Mauri was designated a successor trustee under one of the many past versions of restated trusts but never served in that capacity. *See* p.12 & note 2, *supra.* While Probate Code Section 84 defines a trustee to include "an original, additional or successor trustee," the purpose of this language was to give to successor trustees the same powers, rights and responsibilities as original trustees, *upon taking office* (unless a trust provided otherwise). *See* PROB. CODE §84 Law Revision Comm'n cmt.–1990 Enactment; RESTATEMENT (THIRD) OF TRUSTS §85(2) (2007).

Because Mauri never served as a trustee, and certainly not as an "original" trustee—that was Joan—her argument fails factually. Further, even as to someone who was an "original" trustee but no longer holds office, it would be absurd—and contrary to established law—for a former trustee, no longer in office, to have standing to petition regarding the internal affairs of a trust. *See Moeller v. Superior Court*, 16 Cal. 4th 1124, 1131 (1997) (a new trustee "succeed[s] to all the rights, duties, and responsibilities of his predecessors," including the power to assert and control attorney-client privilege regarding

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[8] Mauri asserts that the Court of Appeal added the word "only" to Section 17200. OB 51–52. Nothing in the Court of Appeal opinion supports this contention.

Mauri seems to be arguing that a statutory list of persons who may initiate a proceeding must be construed, absent an express statement that the list is exclusive, as a mere list of examples. Her contention conflicts with the canon of construction that "[t]he expression of some things in a statute necessarily means the exclusion of other things not expressed." *Gikas v. Zolin*, 6 Cal. 4th 841, 852 (1993).

to communications between a predecessor trustee and an attorney on matters of trust administration) (emphasis and internal quotation marks omitted).

C. Contrary To Mauri's Contentions, Statutes That Define Who Is Entitled To Notice Or To Be Heard Do Not Confer Standing Under Section 17200.

Mauri claims that because Section 17203 requires that persons other than current trustees and beneficiaries be given notice of a Section 17200 petition, and she is within Section 17203, she must have standing to bring such a petition herself. OB 59–60 (citing Section 17203(b)). In doing so, she confuses two separate rules carefully delineated in the statutes related to Section 17200.

Section 17200(a) states the first rule: only trustees and beneficiaries may bring a petition. Section 17203 describes the second rule regarding who must be given notice of such a petition; this obligation *on the petitioner* is distinct from who Section 17200 authorizes to file a petition.

Further, the structure of 17203 refutes, rather than supports, Mauri's argument. Section 17203 shows that the Legislature carefully distinguished between current trustees and beneficiaries and the broader group of interested parties entitled to receive notice of such a petition under Section 17203(b).

Section 17203(b) states that service must be given to "any person, *other than* a trustee or beneficiary, whose right, title, or interest would be affected by the petition *and who does not receive notice pursuant to subdivision (a).*" (Emphases added). This confirms that when the Legislature used the terms "trustee or beneficiary" in Section 17200(a), it intended to distinguish between those terms and the broader concept of an interested party.

In a similar vein, Mauri notes that "heirs" such as her (i.e., those would inherit in the absence of a trust or will) are

among those entitled to notice under Section 16061.7 when, inter alia, a trust becomes irrevocable due to the settlor's death. *See* OB 56–57 (citing Section 16061.7(a)(1), (b)(2)). As Mauri notes, notice under Section 16061.7 commences a 120–day deadline to file a trust contest. But Section 16061.7 does not address the *means* by which such a contest may be made and therefore does not bear on whether Section 17200 is an available means to bring a contest.

Likewise, Mauri's reliance on Probate Code Section 1043(a) (OB 59), which allows an "interested person" to be heard in probate matters, has no bearing on who may *file* a petition under Section 17200.

D. Mauri's Petition Fell Outside Section 17200's Scope, Which Is Limited To Internal Affairs Of Trusts And Determinations Of Trust Existence.

Even if Mauri were a beneficiary of the Trust or could be said to have had standing under Section 17200 as a "beneficiary" or "trustee," her Petition fell outside Section 17200's scope. Section 17200(a) permits only petitions regarding "the internal affairs of the trust" or "determination of the existence of the trust." Mauri's petition did not fall within either of these categories, further confirming that the trust contest she sought to bring was not within Section 17200.

1. Mauri's Petition Did Not Involve The Internal Affairs Of The Trust.

As the Court of Appeal explained, Mauri's petition did not seek resolution of matters related to the internal affairs of the trust. 27 Cal. App. 5th at 6. Section 17200(b) provides more than twenty examples of matters within the internal affairs of a trust, none of which includes an attack on the validity of an entire restated trust. "Internal trust affairs, for example, include modification of the terms of the trust, changes in a designated successor trustee, other deviation from trust

provisions, authority over the trustee's acts, or the administration of the trust's financial arrangements." *Estate of Mullins*, 206 Cal. App. 3d 924, 931 (1988). The Law Revision Commission Comment to Probate Code Section 1000 characterizes the Section 17200 set of statutes as pertaining to "trust administration." PROB. CODE §1000 Law Revision Comm'n cmt.–1990 Enactment.

Mauri's interpretation would effectively delete the word "internal," extending Section 17200 to cover any and all "affairs" involving trusts. Such a rewrite of a statute is, of course, not permissible and would conflict with how Section 17200 defines "internal affairs."

And other portions of Section 17200 defeat Mauri's proposed interpretation. For instance, Section 17200(b)(3) cannot be reconciled with Mauri's attempt to attack the entire restated trust because that subdivision allows determination of "the validity of a trust *provision*." (Emphasis added). By framing subdivision (b)(3) in that manner, the Legislature ruled out the notion that an attack on the entirety of a trust could be deemed within the "internal affairs" of the trust.

And Section 17200(b)(4) allows ascertainment of beneficiaries and determination of "to whom property shall pass," but only "to the extent the determination is not made by the trust instrument." Here, in direct contravention of Section 17200(b)(4), Mauri seeks an order altering the Trust's designation of who shall receive property. Section 17200(b)(4) rules out such an attack brought in the form of a Section 17200 petition.

2. Mauri's Petition Did Not Seek Determination Of The Existence Of A Trust.

This provision allows a current trustee or beneficiary to demonstrate the existence of a trust, not to challenge the validity of an existing trust, as *Estate of Heggstad*, 16 Cal.

App. 4th 943 (1993), exemplifies. There, Section 17200 was a correct means of determining whether a trust existed regarding a particular piece of real property when the settlor listed the property on a schedule of assets to be placed in trust but did not actually convey the property to himself as trustee. *Id.* at 951–52.

As noted earlier, the Legislative history indicates that the 1986 statutory revision was intended in part to create additional means to establish the existence of a trust, including oral trusts, and even to validate trusts that would not have survived legal scrutiny under then-existing standards. *See* pp.15–16, *supra.* No evidence suggests Section 17200 was intended as a vehicle for trust contests; instead, such contests were left to common law and, later, Probate Code Section 850.

Were there any doubt about this analysis, the subsequent enactment of Section 850, with its due process protections, coupled with Section 17200.1, which confirms property disputes are outside of Section 17200, resolved it.

E. Mauri's Policy Arguments Conflict With The Plain Language Of Section 17200 And In Any Event Lack Merit.

Mauri makes a variety of policy arguments untethered to statutory text, none of which have merit.

1. The Court Of Appeal Opinion Does Not Discuss, Much Less Eliminate, Other Remedies For Misconduct That Mauri Did Not Invoke.

Mauri repeatedly claims that the Court of Appeal opinion will leave without a remedy those who are excluded from a trust due to misconduct perpetrated against the settlor. That is simply not the case. As the Court of Appeal Opinion recognized, civil claims are available to seek damages based on fraud or undue influence in connection with a trust. 27 Cal. App. 5th at 6–7. In addition, as discussed above, Probate

Code Section 850 provides an avenue for challenging a trust through Probate Court proceedings and for bringing claims and causes of action that would normally be civil in nature so long as they are factually related to the subject matter of the Probate Code Section 850 petition. *See* PROB. CODE §855 ("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.").

Further, the Elder Abuse Act can be invoked when an elder is convinced to create, modify, restate or rescind a trust through misconduct. *See* PROB. CODE §859. Thus it is possible through Probate Code Section 850 *et. seq.*, to consolidate all causes of action relating to a trust contest, including civil causes of action, into one proceeding.

Mauri did not invoke any of these avenues of redress in her Petition or in opposing the motion to dismiss. She relied solely on Section 17200 in her petition and in opposing the motion to dismiss. Apparently realizing that approach was mistaken, Mauri now attempts to rewrite history by contending that her Petition was not actually brought under Section 17200. OB 44. She goes so far as to assert that *"17200 is never even mentioned in Appel[l]ant's pleadings."* OB 44 (emphasis added). That misstates the record.

The caption of Mauri's Petition specifically cited two (and only two) statutes: "Probate Code Sections 17000, 17200." CT 6.[9] No other statute is cited anywhere else in Mauri's Petition. Her listing of the statutes under which her Petition was brought was required by Rule of Court 7.102, which

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[9] Section 17000 addresses superior court jurisdiction over trusts and does not bear on resolution of the issue presented to this Court.

states "The title of each pleading . . . must clearly and completely identify the nature of the relief sought."[10]

2. The Opinion Did Not Create A Risk Of Inconsistent Decisions.

The Court of Appeal Opinion does not create a risk of inconsistent decisions regarding the validity of the same trust instrument, as Mauri contends. OB 23. Consistent with the Opinion's explanation that civil claims were available to Mauri had she filed a civil action, the Probate Code itself recognizes that some matters filed in probate court should actually be brought as a civil action. The Code therefore empowers a superior court with a probate department to recategorize a case within the court as appropriate. To that end, Section 801 provides that the

> court, on its own motion or on the motion of any interested party, may order that an action or proceeding not specifically provided in this code be determined in a separate civil action. Upon the payment of the appropriate filing fees, the court may order transfer of the severed action or proceeding to the separate civil action.

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[10] Mauri also frets that the Opinion creates a two-tier court system by allowing current beneficiaries to invoke Section 17200, while not permitting former beneficiaries to do so. OB 12–13. By this, she seems to mean that it would be unfair to allow current beneficiaries access to the probate department but to exclude former beneficiaries from that opportunity. This contention merely begs the question of what Section 17200 means. Mauri does not (and could not) contend that the Legislature lacks power to define what is within and without of probate court proceedings or that the exercise of that power in Section 17200 was unconstitutional.

And, in any event, the premise of Mauri's argument is false because those who wish to contest a trust in probate court may do so by filing under Section 850 and complying with the enhanced procedural protections that statute affords opposing parties. *See* pp.16–19, *supra.*

This statute demonstrates Legislative recognition that more than one type of proceeding may be necessary to resolve the affairs of a decedent. The Opinion had no effect on that one way or another.

Moreover, in situations in which two or more actions related to a decedent's estate are pending (such as a probate proceeding, probate proceedings regarding a trust and a civil action), well-established procedures exist for managing them. Procedural tools including relating cases, consolidating them, staying all or portions of a case and abatement. For instance, in connection with Probate Code Section 850, the statutes provide as follows:

- "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 court may not grant a petition under this chapter if the court determines that the matter should be determined by a civil action." *Id.* §856.5.
- "If a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action. This section shall not apply if the court finds that the civil action was filed for the purpose of delay." *Id.* §854.

In addition, the premise of Mauri's argument—that the Court of Appeal's analysis will require filings "in two separate courts" is false. The "Probate Court" is a department of a superior court, not an independent entity. Indeed, not all counties even offer a separate probate department. And

statutory authority for courts to handle related proceedings in one venue in an efficient manner is abundant.[11]

Accordingly, Mauri's contentions regarding the possibility of multiple proceedings fail because (a) the statutes anticipate multiple proceedings and provide means for managing them; (b) the Opinion had no effect on whether, when or how multiple proceedings regarding a single decedent's affairs may be necessary or helpful or how they should be carried out and managed; and (c) the facts at bench do not involve multiple proceedings, which means there is nothing for this Court to decide in that regard.

II.

MAURI'S OPENING BRIEF PRESENTS NUMEROUS ISSUES BEYOND THE COURT OF APPEAL OPINION, WHICH WERE ALSO NOT PRESERVED IN THE TRIAL COURT.

A. The Court Should Not Reach The New Issues Mauri Presents.

The Court of Appeal opinion addressed only the issue of whether Mauri had standing under Section 17200, and that is the issue Mauri presented in her petition for review. As shown above, the Court of Appeal concluded correctly that she lacked standing under that statute.

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[11] *See, e.g.*, PROB. CODE §800 ("The court in proceedings under this code is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure."); *id.* §17001 ("In proceedings commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court"); *id.* §17000 (court with jurisdiction over trust may handle various matters related to a trust).

Mauri's Opening Brief to this Court, however, goes far afield of that issue, addressing such matters as whether:

- California law recognizes lack of standing as a basis to dismiss a proceeding;
- a new action would be barred by the statute of limitations;
- the trial court should have transferred the matter instead of dismissing it;
- the trial court should have granted her leave to amend *sua sponte*, as though the motion were a demurrer, even though Mauri did not request that relief and the statutory motion to dismiss was not a demurrer.

These issues go beyond the single issue presented in the Petition for Review, which was: "Whether a former beneficiary of a trust lacks standing to challenge the validity of amendments to that trust that resulted in disinheritance?" OB 10. The substantial quantity of material in the Opening Brief that addresses other issues violates Rule 8.520(b)(3), which provides that, "[u]nless the court orders otherwise, briefs on the merits must be limited to the issues stated in [the statement of issues in the petition for review] and any issues fairly included in them." Accordingly, the Court should not consider these issues. *See Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 916 n.5 (2018) (declining to reach issue raised in merits brief but not in petition for review or answer: "that issue is not before us and we express no view on that question").

Further, these contentions are not preserved for review because they were not addressed by the Court of Appeal. "As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal." CAL. R. CT. 8.500(c)(1). And, to the extent Mauri might claim to have presented any of these points to the Court of Appeal, she

failed to bring their omission in the Court of Appeal's Opinion to that court's attention through a petition for rehearing. Accordingly, the Court should not reach those issues because, "as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts." CAL. R. CT. 8.500(c)(2); *see, e.g.*, *Ebbetts Pass Forest Watch v. Cal. Dep't of Forestry & Fire Prot.*, 43 Cal. 4th 936, 951 nn.4 & 5 (2008) (declining to reach issue not decided by Court of Appeal and issue not raised in petition for review).

Nor are these new issues preserved for appeal under standard principles of appellate procedure. When Mauri opposed the motion to dismiss, she rested her entire opposition on her erroneous interpretation of Section 17200. CT 98–100. She did not ask for leave to amend, assert that she had stated civil claims or claim standing under any statute other than Section 17200. *Id.*

True, Mauri attempted to raise some of these points in a motion for reconsideration to the trial court, which she filed after the action was dismissed. But, as noted above, the trial court denied that motion because it lacked subject-matter jurisdiction and the motion was improper under Section 1008 of the Code of Civil Procedure. It was right to do so. *See Bridgeman v. Allen*, 219 Cal. App. 4th 288, 297 (2013) (dismissal of probate petition without prejudice was final judgment); *APRI Ins. Co. v. Superior Court*, 76 Cal. App. 4th 176, 181 (1999) ("[o]nce judgment has been entered, . . . the court may not reconsider it and loses its unrestricted power to change the judgment"). Mauri does not even mention these rulings in her Opening Brief, much less challenge the trial court's sound legal basis for its ruling—nor did she do so in the Court of Appeal.

Accordingly, the Court should decide the single issue Mauri teed up in her petition review—standing under Section 17200—and decline to reach the numerous additional

arguments Mauri has improperly presented for the first time to this Court after the grant of review.

B. In Any Event, Mauri's New Arguments Lack Merit.

Because it may be helpful to the Court, we offer a brief response to a few of the new issues Mauri has improperly raised in her Opening Brief.

1. Mauri's Contentions That Her Petition Was Not Subject To Dismissal Due To Lack Of Standing Are Baseless.

Mauri half-heartedly asserts various supposed procedural bars to dismissing her Petition for lack of standing, often contradicting her own arguments. None of these points have any merit.

Mauri first argues that standing is "largely" a federal concept (*see, e.g.*, OB 33), suggesting the concept is not recognized by California courts, but goes on almost immediately to cite California cases discussing standing. *See* OB 33–34; *see also id.* at 41–42. This dispute is contrived. Like many of Mauri's myriad points, this contention serves only to beg the question of what Section 17200 means in stating that "a trustee or beneficiary of a trust" may file a Section 17200 petition. The answer to that question is not one of federal law but rather of California statutory interpretation.[12]

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[12] Mauri alludes to a federal court requirement that standing be proved with evidence (OB 34) and argues that California law requires only allegations, not proof, to establish standing. OB 42. In this context at least, Mauri is wrong. Section 17201 requires that a *verified* petition under Section 17200 "stat[e] facts showing that the petition is authorized under this chapter."

In any event, neither the Court of Appeal nor the trial court made any ruling that imposed a burden of proof on Mauri in connection with the motion to dismiss. The Court of Appeal Opinion analyzed Mauri's "allegations" without imposing on

(. . . continued)

Mauri also argues that dismissal was inappropriate under Section 581 of the Code of Civil Procedure, which she implicitly contends lists all proper grounds for dismissing an action. OB 44. Because lack of standing is not mentioned in Section 581, Mauri suggests that the trial court here could not have dismissed her Petition for lack of standing. *Id.* She is wrong under Section 581's own terms. Subdivision (m) of that statute states that the "provisions of this section shall not be deemed to be an exclusive enumeration of the court's power to dismiss an action or dismiss a complaint as to a defendant."

Further, Section 581 did not govern the motion to dismiss at issue here. That motion as brought, and authorized by, Probate Code Section 17202, which specifically authorizes a motion to dismiss a Section 17200 petition.

2. No Decision Regarding Timeliness Of This Action Or A Future Action Is Before This Court.

Mauri ruminates about whether she can timely file another petition even though her Petition was dismissed without prejudice, never taking a firm position on the point. *See* OB 11, 29. However, no ruling about timeliness, limitations or any other time-based doctrines is presented in this case.

It would be unusual enough for this Court to take up an issue not decided by the Court of Appeal or the trial court but even more out of order to speculate about what might happen in some future proceeding. Whether another proceeding by Mauri would be timely has nothing to do with who has standing to bring a Section 17200 petition and is not properly before this Court.[13]

(. . . continued)
her a need to prove them. *See* 27 Cal. App. 5th at 4.

[13] If anything, Mauri is attempting an end-run around the doctrine of laches. Respondents believe that Mauri knew of
(. . . continued)

3. The Trial Court Had No Reason to Transfer Mauri's Petition.

Mauri claims the trial court should have transferred her petition to another court or division of the same court under Section 396(b) of the Code of Civil Procedure. OB 62. But that statute had no application to Mauri's Petition.

Section 396(b) provides that "If the superior court *lacks jurisdiction* of an appeal or petition, *and* a court of appeal or the Supreme Court *would* have jurisdiction, the appeal or petition shall be transferred to the court having jurisdiction upon terms as to costs or otherwise as may be just, and proceeded with as if regularly filed in the court having jurisdiction." (Emphases added).

Here, the trial court's dismissal of Mauri's Petition was not based on lack of jurisdiction. It was based on her lack of standing to bring a petition under Section 17200. The outcome would have been the same in any California court.

4. The Trial Court Did Not Err In Not Granting Leave To Amend *Sua Sponte*.

Mauri criticizes the trial court for not allowing her leave to amend to allege a civil claim for intentional interference with an expected inheritance. OB 29. She claims to have asked for that relief and that the trial court, "instead of allowing Appellant to amend her pleadings[,] . . . dismissed Appellant's petition." OB 29. That, of course, is a misstatement of the record.

(. . . continued)
her mother's alleged mental incompetence well before Joan's death and therefore the current challenge is time-barred. *See, e.g., Drake v. Pinkham*, 217 Cal. App. 4th 400, 408–10 (2013) (beneficiary may challenge a trust during settlor's life if settlor is incompetent and failure to do so under after settlor's death resulted in laches). The lack of a record on this issue shows the danger of deciding it outside of established procedures.

Mauri did not seek leave to amend in opposition to the motion to dismiss. Rather, she chastised opposing counsel for pointing out that she had civil remedies available to her, commenting that "[i]f Respondents want to rely on the availability of alternative, more suitable remedies, they should identify those remedies and explain why they are more suitable." CT 100. Nor did the trial court, as Mauri claims, dismiss her action in response to a request to amend. Instead, Mauri sought leave to amend only after the action was dismissed, by which point the trial court lacked jurisdiction. *See* p.13, *supra.*

Indeed, Mauri has never suggested that she could amend to resolve the standing issue. It is undisputed that she is neither a current beneficiary nor trustee. Nor did the Court of Appeal or the trial court (not to mention Respondents' counsel) owe a duty to reframe Mauri's petition to invoke some other procedure besides Section 17200. "Ordinarily, on appeal, where a party has failed to invoke the proper procedure to preserve error for appellate review, has invited the error by his own conduct or is otherwise estopped to assert error, we will decline to rule on the merits of the issue." *APRI Ins. Co.*, 76 Cal. App 4th at 184. Indeed, unless the trial court choose to construe a pleading as something other than that as which it is labeled, the appellate courts will not do so. *Id.* ("For an appellate court to construe a motion [to reconsider as one for new trial[merely to 'save' the appeal from dismissal may result in further problems and cannot be justified.").

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeal should be affirmed.

DATED: March 13, 2019.

Respectfully,

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CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. R. CT. 8.520(c)

Pursuant to California Rule of Court 8.520(c)(1), and in reliance upon the word count feature of the software used to prepare this document, I certify that the foregoing **Answer Brief on the Merits** contains 8,759 words, exclusive of those materials not required to be counted under Rule 8.520(c)(3).

DATED: March 13, 2019

Sean Selegue

SEAN M. SELEGUE

PROOF OF SERVICE

Supreme Court No. S251574
(Court of Appeal No. F076395)
(Tuolumne County Super. Ct. No. PR11414)

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Tenth Floor, San Francisco, California 94111-4024.

I am readily familiar with the practice of Arnold & Porter Kaye Scholer LLP for collection and processing of documents for delivery by overnight service by Federal Express, and that practice is that the document(s) are deposited with a regularly maintained Federal Express facility in an envelope or package designated by Federal Express fully prepaid the same day as the day of collection in the ordinary course of business.

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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 at San Francisco, California on March 13, 2019.

Jane Rustice