

FREEMAN, FREEMAN & SMILEY, LLP
1888 CENTURY PARK EAST, SUITE 1500
LOS ANGELES, CALIFORNIA 90067
(310) 255-6100

1 JERYLL S. COHEN (BAR NO. 125392)
jeryll.cohen@ffslaw.com
2 GERALDINE A. WYLE (BAR NO. 89735)
geraldine.wyle@ffslaw.com
3 FREEMAN, FREEMAN & SMILEY, LLP
1888 Century Park East, Suite 1500
4 Los Angeles, California 90067
Telephone: (310) 255-6100
5 Facsimile: (310) 255-6200

6 HOWARD WEITZMAN (SBN 38723)
hweitzman@kwikalaw.com
7 KATHERINE KLEINDIENST (SBN 274423)
kkleindienst@kwikalaw.com
8 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 Wilshire Boulevard, 3rd Floor
9 Santa Monica, CA 90401
Telephone: (310) 566-9811
10 Facsimile: (310) 566-9871

11 Attorneys for the Trustee of the Joe Kaplan
Living Trust dated July 24, 2007
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

15
16 In the Matter of the

17 **JOE KAPLAN LIVING TRUST,**
18 **dated July 24, 2007**

19 **Deceased.**
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21
22

Case No. 20STPB00786

Hon. Brenda J. Penny

**TRUSTEE'S PETITION FOR
INSTRUCTIONS RE INTERPRETATION
AND ADMINISTRATION OF TRUST; FOR
ORDER CONFIRMING OWNERSHIP OF
CERTAIN ASSETS; FOR RECOVERY OF
ASSETS WRONGFULLY TAKEN; AND
FOR DOUBLE DAMAGES; AND FOR THE
APPOINTMENT OF A GUARDIAN AD
LITEM
[Prob. C. §17200, 850, 859, 1003]**

Date:

Time: 8:30 a.m.

Dept.: 4

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26 The Trustee of the Joe Kaplan Living Trust dated July 24, 2007 (the "Trust" or "Joe's
27 Trust"), respectfully submits his Petition for Instructions Re Interpretation and Administration of
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1 Trust; for Order Confirming Ownership of Certain Assets; for Recovery of Assets Wrongfully
2 Taken; and for Double Damages and alleges on information and belief as follows:

3 **INTRODUCTION AND PURPOSE OF PETITION**

4 1. Joe Kaplan (“Joe”) passed away unexpectedly on July 27, 2018 while vacationing
5 with his second wife, Elizabeth Kaplan (“Elizabeth”), in Bermuda. In accordance with Joe’s
6 wishes, his brother, Petitioner herein, became the Trustee of Joe’s Trust (the “Trustee” or
7 “Ppetitioner”). Since losing his brother, the Trustee has worked diligently to fulfill his duties as
8 Trustee—including his duty to marshal and protect the Trust assets for the benefit of all
9 beneficiaries, which includes Joe’s three children as well as Elizabeth—and carry out his
10 brother’s intentions. Amongst the assets the Trustee is charged with protecting are Joe’s house in
11 Malibu, where Joe lived with Elizabeth, as well as cash and other valuables that Joe kept locked in
12 his personal closet in the master bedroom suite of that house (Joe and Elizabeth had completely
13 separate closets).

14 2. After Joe’s passing, Elizabeth was detained in Bermuda while the Bermudan
15 authorities investigated Joe’s death. During that time, the Trustee became concerned when he
16 learned that Elizabeth’s friends were entering the house for hours at a time and had removed art
17 from the walls. On advice of counsel, the Trustee had motion-activated cameras installed inside
18 Joe’s closet to ensure the preservation of the Trust’s valuables contained therein. In addition, the
19 Trustee’s attorneys specifically advised Elizabeth that everything in Joe’s name belonged to the
20 Trust and repeatedly warned her not to attempt to open the safe located in Joe’s closet.

21 3. When Elizabeth returned from Bermuda, she was caught on video in Joe’s closet,
22 bringing a locksmith to try and open Joe’s safe, ransacking Joe’s closet, stealing Trust money, and
23 desecrating her late husband’s memory.

24 4. Since Joe’s death, Elizabeth has attempted to take and has taken assets for herself
25 and demanded that the Trustee agree to modify Joe’s Trust to her benefit. For example, Elizabeth
26 has withheld from the Trustee assets worth more than \$1.5 million that were Joe’s separate
27 property. When Elizabeth was warned that her plan to file a petition seeking modifications to
28 Joe’s Trust would be a contest, resulting in the forfeiture of her beneficial rights in the Trust,

1 trustees of the Joe/Elizabeth Trust until Joe's death, at which time, Elizabeth became the sole
2 Trustee.

3 9. Joe's Trust and the Joe/Elizabeth Trust are administered in the County of Los
4 Angeles, State of California. Accordingly, this Court is the proper jurisdiction and venue for the
5 filing of this action.

6 10. The Trustee is ignorant of the true names and capacities of Does 1 through 10. The
7 Trustee will amend this Petition to allege these Does' true names and capacities when ascertained.
8 On information and belief, each of Does 1 through 10 is responsible and liable in some manner for
9 the events alleged herein and damages caused thereby. On information and belief, Does 1 through
10 10, and each of them, conspired with Elizabeth and each other in doing all that is alleged herein.
11 On information and belief, at all times relevant hereto, Does 1 through 10, and each of them, were
12 agents of one another and of Elizabeth, and in doing the things alleged in this Petition, were acting
13 in concert and within the course and scope of such agency and with the knowledge and consent of
14 each other.

15 FACTUAL BACKGROUND

16 **Joe Kaplan's Untimely Death**

17 11. Joe was a successful businessman who cofounded several companies, including,
18 Superior Bankcard Services in 1994 and Innovative Merchant Solutions in 1999. Joe was
19 survived by two adult children from a prior marriage, Brandon and Danielle, and a minor child,
20 Parker, from his marriage to Elizabeth. Joe and Elizabeth were married in 2008 after entering into
21 a comprehensive Cohabitation/Prenuptial Agreement (the "Prenuptial Agreement").

22 12. The Trustee is informed and believes that Joe's and Elizabeth's marriage was
23 highly volatile. They fought, Elizabeth threatened to leave, and they truced, usually after Joe gave
24 in to some financial demand made by Elizabeth. In July of 2018, in the midst of a particularly
25 turbulent time for Joe, Joe and Elizabeth traveled to Bermuda. The Trustee is informed and
26 believes that Elizabeth insisted that they rent a two-bedroom suite and stay in separate rooms,
27 which was not their custom. According to Elizabeth, on the morning of July 27, she went to check
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1 on Joe and found him with his oxygen mask off and his face black.¹ Joe was pronounced dead by
2 emergency services workers at 10:03 am that morning. Joe was only fifty-five.

3 13. The Trustee was in Paris with his family when he learned the news of his brother's
4 death. He immediately began to tend to the various matters relating to his brother's death,
5 including making funeral arrangements, dealing with the Bermuda authorities, and taking control
6 of the Trust's financial matters. Among the Trustee's immediate concerns was securing Joe's
7 house in Malibu, which is owned by Joe's Trust. The Trustee's concerns were heightened after
8 Elizabeth informed him that she was being detained in Bermuda during the investigation into Joe's
9 death, and after learning that Elizabeth's friends had been seen entering the Malibu house and that
10 artwork had been removed from the walls.

11 14. In addition, the Trustee knew that Joe kept large amounts of cash in the house, and
12 that there was a wall safe located in his closet. The Trustee knew that as Trustee, he was
13 responsible for protecting and marshalling the assets of Joe's Trust, which he understood to
14 include the Malibu house, money (cash and accounts), and Joe's personal effects. Finally, the
15 Trustee was aware that his brother had accumulated substantial amounts of debt—including more
16 than \$15 million of gambling debts and a \$15 million credit line collateralized by his investment
17 portfolio. As a result, the Trustee was concerned about the solvency of Joe's Trust.

18 15. Based on consultations with his attorney, the Trustee understood that he could—
19 and should—have motion-activated cameras installed in Joe's personal closet to monitor and
20 protect those assets for the beneficiaries of Joe's Trust. Consistent with the advice he had received
21 from counsel, while Elizabeth was detained in Bermuda, the Trustee arranged for two motion-
22 activated cameras to be placed inside Joe's personal closet—one aimed at the wall safe and the
23 other aimed at the back of the closet where Joe kept money and other valuables. (Joe and Elizabeth
24 had completely separate closets.) Neither camera would activate unless someone entered Joe's
25 personal closet.

26 _____
27 ¹ Joe had sleep apnea which required him to use a CPAP machine at night, including when he
28 travelled.

1 “Yeah,” her mother responded. “I’m in his sock drawer.”

2 “Go into his suit jackets,” her father continued, “the pockets, check each one.”

3 And later, Elizabeth’s uncle is heard on the phone asking, “Did you go through the suits?”

4 “I did the suits, I did the shoes,” her mother responded.

5 22. The footage also captured Elizabeth finding a stack of cash, which she counted out
6 as ten thousand dollars and **promptly pocketed**. The footage also captured Elizabeth finding the
7 “bags he [Joe] would keep money in,” and telling her mother to “take it.”

8 23. While they were rifling through Joe’s closet, Elizabeth and her mother discovered
9 and disconnected both of the cameras. As a result, after Elizabeth and her mother ransacked the
10 closet, no further footage was recorded. It is unknown how much more was stolen from the Trust
11 after the cameras were removed.

12 **The Prenuptial Agreement**

13 24. Pursuant to their Prenuptial Agreement, Joe and Elizabeth did not have any
14 community property. The Prenuptial Agreement provides that any change in the character of their
15 property requires a separate written agreement signed by both parties that evidences an express
16 intent to own the property described as community property. It further provides that neither party
17 waives his/her right to reimbursement for separate property contributions to joint business
18 ventures or jointly owned property. Also, pursuant to the Prenuptial Agreement, Elizabeth waived
19 any rights to Joe’s retirement plans and all inheritance and other post-mortem rights, with the
20 following exception: after Joe’s death, Elizabeth would receive at least \$5 million in cash, but
21 from only one of two sources, either a life insurance benefit or from Joe’s estate (or at Joe’s
22 election, a combination of both to reach the \$5 million amount) and the right to live in Joe’s
23 residence for one year following his death, without charge.

24 25. At the time of Joe’s death, the Joe/Elizabeth Trust owned a condominium located
25 in Beverly Hills, which had been purchased with Joe’s separate funds, and an entity known as
26 Poppy-Yaya, LLC, which held approximately \$569,504 in cash, also Joe’s separate property.
27 There is no written transmutation agreement or waiver of the right to reimbursement with respect
28 to either of these assets. The Joe/Elizabeth Trust states that any separate property transferred to the

1 Joe/Elizabeth Trust shall remain the separate property of the settlor who contributed it, including
2 the rents, issues, and profits thereof. It further provides that upon the death of Joe, Joe's property
3 is to be distributed to the Trustee of Joe's Trust, and Elizabeth's property is to be distributed to
4 Elizabeth's Trust. The condominium was sold in July 2019 for \$1,612,500, netting after payment
5 of costs and mortgage, approximately \$1,028,726.

6 26. As the Joe/Elizabeth Trust contains only property contributed by Joe, all of the
7 assets of the Joe/Elizabeth Trust are Joe's separate property and should be distributed to the
8 Trustee of Joe's Trust. However, Elizabeth has improperly used the funds of the Joe/Elizabeth
9 Trust, including to pay the attorneys who represent her with respect to her interests as a
10 beneficiary, and has refused to distribute the assets of the Joe/Elizabeth Trust to the Trustee of
11 Joe's Trust, notwithstanding demands that she do so as required by the trust documents.

12 Joe's Trust

13 27. Joe's Trust provides that after Joe's death and after allowing for a reasonable
14 period of administration, including for the payment of debts, expenses of administration and taxes,
15 the Trustee is to:

- 16 a. Distribute to Elizabeth Joe's personal effects and \$5,000,000 in cash or
17 other property; the latter is stated to be for the purpose of satisfying Joe's
18 obligation under the Prenuptial Agreement²;
- 19 b. Allocate \$1,000,000 to a separate trust for the benefit of Parker's education,
20 the "Education Trust";
- 21 c. Allocate to a separate "Residence Trust," the Malibu residence plus an
22 amount equal to \$200,000 multiplied by the number of full years until
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24 ² Elizabeth was the named beneficiary on a \$1 million dollar life insurance policy insuring Joe's
25 life. It is unclear whether Joe intended for Elizabeth to receive the \$5 million bequest in the Trust
26 and the life insurance policy. However, the Trustee is not seeking instructions regarding this
27 matter at this time. Although the insurer initially withheld distribution of the insurance proceeds
28 due to the circumstances surrounding Joe's death, the Trustee is informed and believes that
Elizabeth has received the proceeds.

1 Parker attains age Nineteen (the “Residence Trust Fund”)(i.e., \$2,000,000),
2 to be administered as described below; and

3 d. Allocate the balance of the Trust to separate trusts equally for Joe’s three
4 children.

5 28. The Malibu Residence Trust is to terminate upon the earliest to occur of (a) Parker
6 attaining age nineteen, (b) the death of Parker, (c) Elizabeth remarrying or cohabitating with a
7 person other than a blood relative. Upon its termination, the Malibu Residence Trust is to be
8 distributed in equal shares to separate trusts for each of Joe’s children then living (or the then
9 living issue of a deceased child). Joe’s Trust provides that until the termination of the Malibu
10 Residence Trust, Parker and Elizabeth, or Parker’s guardian, are permitted to occupy the Malibu
11 residence without payment of rent or expenses of maintaining the residence. Joe’s Trust further
12 provides that income of the Malibu Residence Trust is to be accumulated and added to principal,
13 “to be distributed as hereinafter provided,” and the Malibu Residence Trust “shall pay any notes
14 secured by mortgages or deeds of trust on the Primary Residence and all expenses for maintaining
15 the Primary Residence, including, but not limited to, assessments, fire and casualty insurance
16 premiums, property taxes, maintenance costs, ordinary repairs and all other expenses of the
17 Primary Residence.” On the other hand, Joe’s Trust, however, also provides that “[t]here shall be
18 no distributions of principal from the Primary Residence Trust prior to the Primary Residence
19 Trust Termination Date,” thus creating a potential ambiguity. Finally, Joe’s Trust precludes the
20 Trustee from selling or refinancing the Malibu Residence prior to the termination of the Malibu
21 Residence Trust without the written consent of Elizabeth or Parker’s guardian.

22 29. Aaron is the Trustee of all sub-trusts referenced in Joe’s Trust. Additionally, Joe
23 gave Aaron the power to designate the successor Trustee. No such power is given to Elizabeth. In
24 the absence of another designation, Merrill Lynch is named as the Trustee to Joe’s Trust and the
25 sub-trusts.

26 30. Joe’s Trust contains a no contest provision which disinherits any beneficiary who
27 engages in a “direct contest” against any of Joe’s “Protected Instruments”, files a pleading
28 challenging a transfer of property on the grounds that it was not the transferor’s property at the

1 time of the transfer, or files a creditor's claim or prosecutes any action based upon it (other than
2 for funeral or last illness expenses). Protected instruments include Joe's estate planning documents
3 (all trusts, his will, any amendments or codicils), any beneficiary designation, any family
4 partnership agreement, and any written agreement between Joe and Elizabeth defining their
5 property rights. In addition, the Trust instructs the Trustee to "resist and defend against" at the
6 Trust's expense, any contest or "other attack of any nature" upon any provision of the Trust
7 (including the no-contest provision"), any amendment, Joe's will or codicil. It further provides
8 that if the Trustee is successful in defending any matter or action "as reasonably determined by
9 the Trustee," any costs of such defense may be charged against and reduce the share allocated to
10 the contesting beneficiary, in the Trustee's "sole and absolute discretion."

11 31. Joe's Trust also includes the broadest indemnification and exculpatory provision
12 for the Trustee allowed under California law (i.e., no liability except for willful misconduct,
13 gross negligence, bad faith or reckless indifference to the interest of the beneficiaries).

14 **After His Passing, Elizabeth Seeks to Defeat Joe's Intentions**

15 32. Since shortly after Joe's death, Elizabeth has relentlessly tried to take Joe's assets
16 away from his children and frustrate Joe's intentions as set forth in Joe's trusts. Indeed, within just
17 days of returning to the United States, Elizabeth was attempting to use her status as Joe's
18 surviving spouse to obtain money and sell assets that belong to the Trust. For example,
19 immediately following Joe's death, Elizabeth attempted to collect compensation due to Joe in the
20 amount of \$15,000 in violation of the Prenuptial Agreement. Upon being discovered and
21 confronted by the Trustee's counsel, Elizabeth and her attorneys ultimately conceded that she was
22 not entitled to receive those funds. Similarly, in the immediate weeks following Joe's death,
23 Elizabeth attempted to sell Joe's membership to the Brentwood Country Club and collect the
24 proceeds for herself, even though the membership was Joe's separate property and belonged to the
25 Trust.

26 33. In addition, Elizabeth threatened to initiate litigation against the Trustee unless he
27 would agree to make several changes to Joe's Trust, including, among others:
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- 1 a. Resign as Trustee of the trusts to be established for Parker and the Malibu
- 2 Residence Trust, and allow Elizabeth to select the successor Trustee,
- 3 notwithstanding that Joe's Trust did not give Elizabeth that power;
- 4 b. Sell the Malibu residence and use the proceeds and the Residence Trust
- 5 Funds to provide Elizabeth and Parker with an alternative residence and
- 6 expenses for maintaining the substitute residence;
- 7 c. Pay all of her and Parker's **living** expenses (as opposed to expenses for
- 8 maintaining the Malibu Residence as set forth in Joe's Trust) from the
- 9 Residence Trust (i.e., the housekeeper, nanny, Parker's care, utilities, cable,
- 10 etc.);
- 11 d. Accept Elizabeth's claim that the property in the Joe/Elizabeth Trust,
- 12 including cash of approximately \$500,000 in Poppy YaYa and the Reeves
- 13 condominium (net worth of approximately \$1,000,000), is community
- 14 property and she is entitled to half, even though there is no documentation
- 15 supporting that claim; and
- 16 e. Accept Elizabeth's claim that she and Parker have an interest in a separate
- 17 property investment Joe made, even though there is no documentation
- 18 supporting that claim.

19 34. All of these demands are contrary to Joe's intentions as set forth in the trust
20 documents and the Prenuptial Agreement. Moreover, Elizabeth has failed to provide any support
21 or substantiation for her claims with respect to the Joe/Elizabeth Trust assets or Joe's separate
22 investments.

23 **When the Trustee Refuses, Elizabeth Threatens the Trustee**

24 35. Upon being warned that filing a petition seeking the above changes would
25 potentially trigger the no contest provision, which would result in Elizabeth's forfeiture of the gifts
26 given to her in the Trust, Elizabeth has now resorted to extortion.

27 36. In mid-August of 2019, Elizabeth and her new attorney, began threatening the
28 Trustee with a lawsuit that they warned would be damaging to the Trustee's career in the

1 entertainment business unless the Trustee acquiesced to Elizabeth's demands regarding the
2 administration of the Trust. In furtherance of his extortionate efforts, Elizabeth's attorney
3 threatened to publish manufactured allegations that the cameras were intended to capture footage
4 of Elizabeth in her dressing areas and indecently clad. **Those allegations are false.** Elizabeth's
5 attorneys have viewed the entirety of the footage and are well aware that the only indecencies
6 captured by the motion-activated cameras were Elizabeth's theft of inheritance meant for Joe's
7 children and heartless desecration of her late husband's memory.

8 **INSTRUCTIONS SOUGHT**

9 37. Probate Code Section 850 authorizes the trustee to bring an action under that
10 Section where the trustee is in possession of, or holds title to, real or personal property, and the
11 property, or some interest, is claimed to belong to another; and where the trustee has a claim to
12 real or personal property, title to or possession of which is held by another. Here, the Trustee is in
13 possession of and holds title to certain assets that Elizabeth claims belong to her; similarly, the
14 Trustee has a claim to assets that Elizabeth is in possession of or claims to have title to.

15 38. Specifically, Elizabeth, and Does 1 through 10, and each of them, conspired to or
16 did in bad faith take at least \$10,000 cash that belongs to the Trust. The full extent, nature and
17 amount of Trust assets that Elizabeth, and Does 1 through 10, and each of them, took or conspired
18 to take is unknown to the Trustee and an accounting of same is required. By this Petition, the
19 Trustee seeks to recover all of the Trust assets, wrongfully taken, along with the profits therefrom
20 and double damages.

21 39. In addition, Elizabeth is the Trustee of the Joe/Elizabeth Trust and she wrongfully
22 and in bad faith refuses to deliver to the Trustee even the assets she acknowledges belong to Joe's
23 Trust.

24 40. Additionally, Elizabeth has demanded that the Trustee administer the Trust in a
25 manner contrary to its terms. The Trustee has a fiduciary duty to the other beneficiaries of the
26 Trust, Brandon, Danielle and Parker, to administer the Trust impartially and in accordance with its
27 terms. Moreover, Parker is a minor and is unrepresented. Parker's interests and Elizabeth's
28 interests are clearly in conflict. Therefore, Elizabeth cannot adequately represent Parker's

1 interests. Pursuant to Probate Code Section 1003, the Trustee requests that the Court appoint a
2 guardian ad litem to represent the interests of Parker.

3 41. As a result of the various claims made by Elizabeth, pursuant to his obligation to
4 resist and defend against any attack of any nature on the Trust or any of its provisions, the Trustee
5 has been required to bring this Petition and seek this Court's order confirming the Trust's
6 ownership of certain assets that Elizabeth has withheld and this Court's instructions regarding the
7 interpretation and administration of certain provisions of Joe's Trust notwithstanding demands
8 made by Elizabeth. Specifically, the Trustee requests that this Court:

- 9 • Instruct the Trustee to administer Joe's Trust in accordance with the terms of the
10 Trust without variance;
- 11 • Authorize the Trustee to defer making full distribution of Elizabeth's specific cash
12 bequest and allocation of the assets among the sub-trusts until the resolution of the
13 pending litigation, the potential contest issues, and provision for the payment of
14 Joe's liabilities, including allegedly outstanding gambling debts and estate taxes;
- 15 • Determine that the assets in Joe's Trust are Joe's separate property assets and that
16 Elizabeth does not have an interest in them other than as a beneficiary of Joe's
17 Trust;
- 18 • Determine that the assets in the Joe/Elizabeth Trust are Joe's separate property,
19 should be distributed to the Trustee to be administered in accordance with the terms
20 of Joe's Trust, and order Elizabeth to immediately transfer such assets to the
21 Trustee and fully account for all of her transactions with respect to such assets;
- 22 • Instruct the Trustee to continue to hold the Malibu Residence, or if it needs to be
23 sold to pay debts/liabilities, instruct the Trustee as to how to allocate the remaining
24 assets of the Malibu Residence Trust;
- 25 • Order Elizabeth, and Does 1 through 10, to return to the Trustee the \$10,000 cash
26 they took from Joe's closet and any other cash or assets of Joe's that they have
27 taken and to account for their actions with respect to all such assets; and
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8. An order appointing a Guardian Ad Litem to represent the interests of Joe's minor child, Parker Kaplan; and

9. For such other and further relief as the Court deems just and proper.

DATED: February 25, 2020

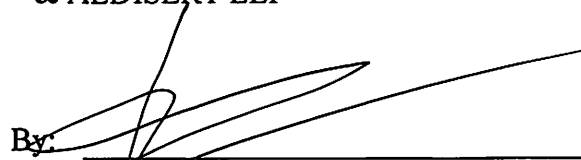
Respectfully submitted,

FREEMAN, FREEMAN & SMILEY, LLP

By: 
JERYLL S. COHEN
Attorneys for AARON KAPLAN, Trustee of the
Joe Kaplan Living Trust dated July 24, 2007

DATED: February 25, 2020

KINSELLA WEITZMAN ISER KUMP
& ALDISERT LLP

By: 
HOWARD WEITZMAN
Attorneys for AARON KAPLAN, Trustee of the
Joe Kaplan Living Trust dated July 24, 2007

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

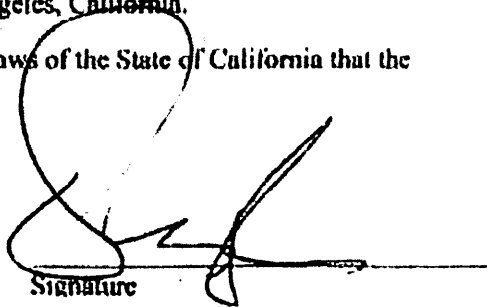
I have read the foregoing Trustee's Petition for Instructions Re Interpretation and Administration of Trust; for Order Confirming Ownership of Certain Assets; for Recovery of Assets Wrongfully Taken; and for Double Damages and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on February 21, 2020, at Los Angeles, California.

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

Aaron Kaplan, Trustee of the Joe Kaplan
Living Trust dated July 24, 2007
Print Name of Signatory


Signature

FREEMAN, FREEMAN & SMILEY, LLP
1088 Century Park East, Suite 1800
Los Angeles, California 90067
(310) 255-8100