


(ENDORSED)  
**FILED**  
SAN MATEO COUNTY  
SEP 19 2022  
Clerk of the Superior Court  
By   
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Debra J. Dolch, Conservator of the ) Case No. 18-PRO-00964, 16-  
Estate of Thea Bacon, and Trustee ) PRO-00299  
of the Thea B. Bacon Living Trust, ) **STATEMENT OF DECISION -**  
Petitioner ) **Petition to Cancel Deed and**  
v. ) **for Damages for Abuse of an**  
James Sykes et al, Respondents ) **Elder Adult, Motion to Set**  
Aside Order Approving  
Petition for Approval of  
Settlement Agreement

**RELEVANT PROCEDURAL HISTORY**

On August 30, 2018, Debra J. Dolch filed the instant petition in 18-PRO-00964 for cancellation of a deed to the real property located at 700 Brewer Drive, Hillsborough, California and various other relief on the basis of elder abuse of Thea B. Bacon. Ms. Dolch did so in her capacity as the conservator of the person and estate of Thea B. Bacon and as the trustee of the

1 Thea B. Bacon Living Trust. During the pendency of the  
2 litigation, Ms. Bacon passed away on January 10, 2021. Prior to  
3 her passing, Ms. Bacon and Respondent James Sykes were parties  
4 to prior litigation in case 16-PRO-00299 in which they executed  
5 a settlement agreement. In the instant litigation, Mr. Sykes  
6 asserted the settlement agreement as a complete defense to Ms.  
7 Dolch's claims. In response to pretrial litigation of her elder  
8 abuse petition in 18-PRO-00964, on March 6, 2020 Ms. Dolch filed  
9 a Notice of Motion and Motion to Set Aside Order Approving  
10 Petition for Approval of Settlement Agreement. On September 3,  
11 2020, the Honorable George A. Miram ordered that the motion to  
12 set aside the settlement agreement be heard concurrent with  
13 trial of the instant petition.  
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17 Trial of the petition and the motion to set aside the  
18 settlement agreement commenced on September 8, 2021. The court  
19 denied Respondent's motion to bifurcate trial and try the issues  
20 of the settlement agreement, statute of limitations, and other  
21 affirmative defenses first. Presentation of evidence commenced  
22 on September 13, 2021 and concluded on October 21, 2021. The  
23 court heard the testimony of 32 witnesses, admitted various  
24 evidentiary exhibits from both sides, took judicial notice of a  
25 variety of materials at the request of both parties, and  
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1 considered the written pretrial and post-trial briefing of both  
2 parties.

3         After consideration of the testimony of the witnesses, the  
4 admitted exhibits, all judicially noticed materials, and the  
5 arguments of the parties, the court issued a Tentative and  
6 Proposed Statement of Decision on March 21, 2022 pursuant to  
7 California Rule of Court 3.1590(c)(1) subject to the parties'  
8 timely objections pursuant to California Rule of Court 3.1590(g)  
9 and caused it to be served on counsel. The court later granted  
10 Mr. Sykes' ex parte application for an extension of time for  
11 filing objections based on his trial counsel's recovery from a  
12 medical procedure. Both parties filed timely objections to the  
13 Tentative and Proposed Statement of Decision. In addition, Ms.  
14 Dolch filed a proposed judgment. Mr. Sykes subsequently filed  
15 objections to Ms. Dolch's proposed judgment, responses to Ms.  
16 Dolch's objections to the Tentative and Proposed Statement of  
17 Decision, and corrections, errata, and clarifications to his own  
18 objections. Mr. Sykes requested a hearing on his objections.  
19 California Rule of Court 3.1590(k) provides that the court "may"  
20 set a hearing on objections. The court declines Mr. Sykes'  
21 request for a hearing and issues this Statement of Decision,  
22 accompanied by a Proposed Judgment. Each party has 15 days from  
23 issuance of this Statement of Decision (extended by five for  
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1 mail service) to file objections to the court's proposed  
2 judgment.

### 3 FINDINGS

#### 4 I. Factual Findings

##### 5 A. Timeline of Events

6  
7 The court finds the following facts by a preponderance of  
8 the evidence. The decedent elder, Thea Bacon, was born on  
9 October 16, 1923. She married Frank Rogers Bacon, Jr. (often  
10 referred to in trial testimony as "Roger") on May 3, 1963. He  
11 had children of prior marriages, Ms. Bacon never had any  
12 children. Roger died in 1984. Ms. Bacon was the lifetime  
13 income beneficiary of the Frank Rogers Bacon, Jr. Testamentary  
14 Trust.  
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16  
17 Ms. Bacon met respondent James Sykes in 1984 after her  
18 husband's passing, based on a common acquaintance with a  
19 practitioner of acupuncture in San Francisco. Mr. Sykes had  
20 studied acupressure with the acupuncturist, who provided  
21 acupuncture to Ms. Bacon. Mr. Sykes contacted Ms. Bacon at the  
22 suggestion of the acupuncturist that he might be able to help  
23 her. Mr. Sykes testified that he provided acupressure to Ms.  
24 Bacon to "balance energy", not specifically for the treatment of  
25 pain. The court found that testimony unreliable. In his  
26 provision of acupressure, Ms. Bacon discussed with Mr. Sykes  
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1 that she had long-term pain in her left hip. In his testimony,  
2 Mr. Sykes acknowledged that Ms. Bacon told him acupressure  
3 seemed to her to relieve the pain. The court concludes that  
4 whatever Mr. Sykes may have told Ms. Bacon, she communicated to  
5 him that she believed his acupressure treatments were directed  
6 at pain relief and he continued the treatments under that  
7 premise. At some point he stopped treating her with  
8 acupressure. He was certain he had stopped performing  
9 acupressure for Ms. Bacon by 2014, but had no more certain,  
10 specific recollection of when he stopped than that. She paid  
11 him for those services but he had no recollection of how much.  
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14 Mr. Sykes and Ms. Bacon shared interests in animals,  
15 antiques, art, design, travel, and holistic or homeopathic  
16 medicine. Photographic evidence demonstrated that they traveled  
17 to Europe together in the 1990's. Mr. Sykes did interior design  
18 work in the 1990's and Ms. Bacon was involved in that business  
19 in some way, although the nature and structure of that business  
20 was not clearly established by the trial evidence. Ms. Bacon  
21 also paid Mr. Sykes to do interior design and remodeling work  
22 for her. He could not recall how much she paid him without  
23 reference to records that he did not produce in court at any  
24 point during the trial.  
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1 This was a recurrent pattern during Mr. Sykes' trial  
2 testimony. When asked for specifics regarding monetary  
3 transactions with Ms. Bacon, timing of various activities, and  
4 other subjects (particularly on questioning by Ms. Dolch's  
5 attorney), Mr. Sykes would often answer that he was unable to  
6 recall without looking at his records. The court found those  
7 answers evasive and unconvincing in light of the three-year  
8 pendency of the litigation pre-trial and the duration of the  
9 trial. Mr. Sykes admitted in some instances that he made no  
10 pre-trial effort to reconstruct the records necessary to answer  
11 questions by, for example, contacting his bank to attempt to  
12 acquire copies of older bank statements. During the course of  
13 the trial, he belatedly produced some auction account records to  
14 opposing counsel at the court's direction documenting antique  
15 purchases that he claimed to have conducted on Ms. Bacon's  
16 behalf and for which he claimed she reimbursed him. Overall, the  
17 court found Mr. Sykes' reference to inability to recall "without  
18 records" unconvincing in light of the apparent lack of effort he  
19 put into actually acquiring or attempting to acquire such  
20 records either pre-trial or during the course of trial when the  
21 need for them became apparent. His references to needing  
22 records, in most instances, struck the court as an insincere  
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1 attempt to deflect attention from a basic unwillingness to  
2 answer questions candidly.

3         The court also noted that Mr. Sykes was markedly evasive  
4 during examination by opposing counsel. He rarely answered a  
5 question without asking that it be repeated, sometimes multiple  
6 times. On some occasions he questioned counsel's use of words  
7 that have readily apparent meanings, (e.g. - what do you mean by  
8 "meeting" when asked if he attended meetings with certain  
9 people). At first, the court attributed portions of that  
10 behavior to the difficulty of trying a case while all parties  
11 were masked for pandemic precaution, and to the fact that many  
12 of the trial participants noted difficulty with the quality of  
13 audio amplification in the courtroom. In the court's view, at  
14 least some of Mr. Sykes' manner was also reactive to opposing  
15 counsel's tone during examination.<sup>1</sup> However, the court noted a  
16 marked difference in Mr. Sykes' willingness to engage with and  
17 attempt to answer questions from the court and his own counsel  
18 which could not be entirely explained by hearing difficulty or  
19 animus to opposing counsel - particularly since Mr. Sykes'  
20 counsel was far more soft-spoken and difficult to hear than  
21 opposing counsel throughout the trial. This behavior led the  
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28 <sup>1</sup> See, e.g., Testimony of James Sykes, 9/30/2021, R.T. p. 128, L. 2 - p. 129,  
L. 24.

1 court to conclude that in many instances, Mr. Sykes simply  
2 didn't want to answer Ms. Dolch's counsel's questions candidly.

3         Mr. Sykes testified that he and Ms. Bacon adopted a dog  
4 named Wrigley from the SPCA in 2010. They went to the shelter  
5 together and Ms. Bacon "fell in love" with Wrigley. He  
6 described Wrigley as his dog, but the dog lived in Ms. Bacon's  
7 home and slept in her bed. Mr. Sykes admitted that at some  
8 point he began sleeping at Ms. Bacon's home. He was evasive  
9 when asked when he moved in, questioning counsel about what  
10 "moved in" meant. He recalled that he first "lived" in Ms.  
11 Bacon's residence at 700 Brewer Drive after 2010 but before  
12 2013, but claimed an inability to recall any more specifically  
13 than that. He indicated that he first moved in "full time"  
14 after she broke her hip so that he could assist her. At other  
15 points in testimony he said he spent the night there because Ms.  
16 Bacon wanted his dog Boots on the property, so he stayed there  
17 occasionally. In this area the court found Mr. Sykes' testimony  
18 deliberately evasive and not candid. Based on the testimony of  
19 household employees who regularly worked in Ms. Bacon's home  
20 multiple times per week, the court concludes that Mr. Sykes was  
21 present daily in Ms. Bacon's home from 2009 forward and began  
22 sleeping there regularly in 2010.  
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1 Ms. Bacon's health declined dramatically following two  
2 significant events: a hip fracture in October 2013 and a major  
3 stroke in July 2017. Even before these events, the trial  
4 evidence demonstrated that Ms. Bacon depended on Mr. Sykes for  
5 household assistance. Mr. Sykes testified that Ms. Bacon  
6 stopped driving in approximately 2000. Several witnesses  
7 testified that Mr. Skyes drove Ms. Bacon to places she wanted to  
8 go. Various trial testimony established that he drove her to  
9 the bank, to her various lawyers' offices, to her accountant's  
10 office, to her doctors' appointments, to her acupuncture  
11 appointments, to get coffee at her favorite coffee shops, to the  
12 beach and the golf course to exercise the dogs, to the  
13 Burlingame Country Club for meals, to a ballet class that  
14 Kathryn Crosby hosted in San Francisco, and to the Red Barn at  
15 Stanford to visit horses.

19 At various times, Ms. Bacon employed personal secretaries.  
20 During Ms. Angela Broadbeck's employment from 2009 to 2014, she  
21 observed that Mr. Sykes did all of the household grocery  
22 shopping and prepared Ms. Bacon's meals for her. If Mr. Sykes  
23 did not buy or order particular foods, Ms. Bacon did not have  
24 access to them. Ms. Bacon had strong preferences about her meal  
25 service - including use of formal table settings, soup tureens,  
26 and coffee carafes. On one occasion when Ms. Bacon was hungry  
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1 and Mr. Sykes did not want to prepare lunch yet, Ms. Broadbeck  
2 went into the kitchen with Ms. Bacon to try to make her lunch,  
3 but was unable to do so because she didn't know how to use the  
4 kitchen equipment Ms. Bacon had or how Ms. Bacon wanted her  
5 lunch prepared. Ms. Bacon also allowed one housekeeper,  
6 Mikaela, to serve her soup.  
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8 Ms. Dolch contends, based mostly on Ms. Broadbeck's  
9 testimony, that Mr. Sykes deprived Ms. Bacon of food. The court  
10 finds that the preponderance of the evidence does not support  
11 that conclusion. At most, the evidence demonstrates that Ms.  
12 Bacon and Mr. Sykes sometimes got hungry for lunch at different  
13 times, and he did not always immediately prepare lunch when she  
14 asked for it. He didn't always keep or serve bread in the  
15 house, and he refused to order pizza for dinner as frequently as  
16 Ms. Bacon wanted it.<sup>2</sup> The evidence also shows that he tried to  
17 discourage her from eating chocolate - and that she frequently  
18 ignored his input and kept chocolate stashed in various places  
19 in the house so that she could enjoy it without his commentary.  
20 There is no evidence that Mr. Sykes intentionally deprived Ms.  
21 Bacon of nutrition or prevented her from eating. Witnesses who  
22 knew them well scoffed at the implication that Mr. Sykes might  
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27 <sup>2</sup> Ms. Bacon's long-time seamstress and friend Regina Bortolus testified that  
28 aside from Ms. Bortolus's homemade gnocchi, pizza was one of Ms. Bacon's  
favorite foods. Ms. Bortolus recalled that Mr. Sykes was reluctant to order  
it "every night".

1 have deprived Ms. Bacon of food. During the time of Ms.  
2 Broadbeck's observations of Ms. Bacon's mid-day chocolate  
3 rummaging, Ms. Bacon had several part-time household employees  
4 who routinely ran errands for her. The evidence amply  
5 demonstrates that had she asked one them to order or pick up a  
6 pizza for her, they would have done so without hesitation. The  
7 court infers that she did not do so because she was content with  
8 Mr. Sykes' preparation and service of her meals.  
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10  
11 During Ms. Anna Gomez's employment between 2004 and 2009,  
12 Ms. Bacon was active in her home office and gave Ms. Gomez  
13 specific instructions about how to organize her work area.  
14 During the later period of Ms. Broadbeck's employment, if Ms.  
15 Broadbeck had questions about what to do in the office Ms. Bacon  
16 told her to ask Mr. Sykes. When workers came to the house, Ms.  
17 Broadbeck testified that Mr. Sykes would give them direction on  
18 what to do.  
19

20 Even prior to her stroke, witnesses testified that Ms.  
21 Bacon was hard of hearing. Ms. Broadbeck testified that it was  
22 sometimes difficult for her to communicate with Ms. Bacon when  
23 she first began working for her, but with time they were able to  
24 develop a communication method that worked. Ms. Broadbeck also  
25 assisted Ms. Bacon when others, including her doctor, would come  
26 to see her by sitting next to Ms. Bacon and repeating questions  
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1 loudly into her ear so that she could hear and answer them. Ms.  
2 Bacon had hearing aids, but did not like to wear them. In the  
3 last two years of her employment when Ms. Bacon suffered more  
4 from dizziness, Ms. Broadbeck also observed her to have problems  
5 with short term memory. She would repeatedly ask Ms. Broadbeck  
6 what day or time it was.  
7

8 In 2007, Ms. Bacon sought the assistance of estate planning  
9 attorney Henry Eavey. She was referred to Mr. Eavey by her  
10 accountant, Mary Jo Murphy. Mr. Eavey related that Ms. Bacon's  
11 prior estate planning attorney, Thomas Stikker, was in San  
12 Francisco and she wanted an attorney closer to her home. He  
13 assisted her with the preparation of trust amendment and  
14 restatement documents in 2007 and 2010. Mr. Eavey recalled that  
15 even at these appointments she was notably hard of hearing. He  
16 recalled that she spoke with an accent and that English was not  
17 her first language, but she was fluent and literate in English.  
18 They sat side by side during the meetings to ensure that Ms.  
19 Bacon could hear Mr. Eavey. Ms. Bacon did not tell Mr. Eavey  
20 about any prior gifts to Mr. Sykes other than gifts of artwork  
21 and personal property to him. Mr. Eavey and Ms. Bacon  
22 transacted all of their estate planning meetings in his office,  
23 and she rarely contacted him by telephone. Mr. Sykes was not in  
24 the room during Mr. Eavey's discussions with Ms. Bacon.  
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1 Trial evidence regarding Ms. Bacon's health and medical  
2 care in the years prior to her October 2013 hip fracture was  
3 scant. Dr. Mueller obtained a questionnaire of Ms. Bacon's  
4 medical history in connection with an evaluation of her mental  
5 capacity and susceptibility to undue influence that he conducted  
6 in 2014 at the request of Ms. Bacon's then-counsel Paul  
7 Barulich. Mark Brodka and Mr. Sykes helped Ms. Bacon fill out  
8 that questionnaire. Dr. Mueller did not speak to any of Ms.  
9 Bacon's physicians or actually review her medical records in the  
10 course of the evaluation. Dr. Mueller testified to the  
11 following summary of Ms. Bacon's medical treatment history: she  
12 suffered a cerebellum stroke in 2009 that caused balance  
13 problems. She had significant hearing loss that impaired her  
14 ability to cooperate in his evaluation, and she reported that  
15 she had suffered from hearing loss since 2006. She was  
16 evaluated by a neurologist for dizziness in 2007. She had not  
17 held a California driver's license since 2009 based on  
18 equilibrium problems associated with the stroke, which was only  
19 diagnosed after the fact based on a CT scan.

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24 In 2009, Wells Fargo Bank contacted Adult Protective  
25 Services when Ms. Bacon attempted to cash a check. The bank  
26 declined to cash the check and kept it. Mr. Sykes had driven  
27 Ms. Bacon to the bank that day. After she exited the bank  
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1 without the cash and without her check, he entered the bank to  
2 get an explanation about why the bank had refused to cash the  
3 check. He testified that he did so because Ms. Bacon was upset.  
4 The bank manager appeared to him to be apologetic, and the bank  
5 teller who had declined the transaction was reluctant to tell  
6 Mr. Sykes anything about it because she was suspicious of his  
7 authority to act on Ms. Bacon's behalf. Ms. Bacon and Mr. Sykes  
8 left the bank without the cash or check. Lynda Herrera of Adult  
9 Protective Services testified, based on contemporaneous APS  
10 records, that she contacted Ms. Bacon by phone based on the  
11 bank's report.<sup>3</sup> Ms. Bacon laughed at the suggestion that she was  
12 being abused and told Ms. Herrera she was "doing too much." APS  
13 closed the 2009 investigation without further action.  
14

15  
16 Ms. Bacon returned to Mr. Eavey in January 2013 because she  
17 wanted to give Mr. Sykes her primary residence, 700 Brewer Drive  
18 in Hillsborough. Mr. Eavey initially refused to assist her  
19 without a physician's letter documenting her mental capacity to  
20 make the gift. Mr. Eavey recalled that Ms. Bacon was upset that  
21 anyone would question her ability to make the gift. He  
22 testified that in general, she did not like lawyers and was  
23 resistant to virtually every piece of estate planning advice  
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28 <sup>3</sup> The admitted portions of the APS records in Exhibit 96 note that Ms. Hererra attempted in person contact but could not enter the gate at Ms. Bacon's home.

1 that he offered regarding the proposed gift of her residence.  
2 He told her she needed to consult a medical doctor, not an  
3 alternative practitioner. He told her that the doctor had to  
4 have seen her for at least six months.  
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6 Ms. Bacon returned to Mr. Eavey approximately four months  
7 later in May 2013 with the requested letter. The letter was not  
8 introduced into evidence, but testimony established that it was  
9 authored by a Dr. Sangani of the Village Doctor. Ms. Broadbeck  
10 testified that the Village Doctor was one of a number of medical  
11 providers listed in a binder located in Ms. Bacon's office, but  
12 had no recollection of how frequently Ms. Bacon saw them. When  
13 asked to name Ms. Bacon's medical providers during her time, she  
14 was able to name Dr. Alex Zaphiris and Dr. Andrew Brandeis. She  
15 named the Village Doctor practice but not Dr. Sangani by name.  
16 Ms. Broadbeck also identified a chiropractor named Striebeck,  
17 another chiropractor in San Jose, and a doctor in Palo Alto that  
18 Ms. Bacon saw for neurofeedback related to her dizziness. Ms.  
19 Broadbeck testified that Mr. Sykes was the person who identified  
20 the doctors in the binder, and would tell Ms. Broadbeck which  
21 doctors to schedule for appointments. Dr. Zaphiris testified  
22 that prior to her first visit with Ms. Bacon as her primary care  
23 physician on October 23, 2013, Ms. Bacon had been a patient of  
24 Dr. Brandeis (a different doctor in Dr. Zaphiris' San Francisco  
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1 practice) for about three years. Exhibit 79, the health  
2 questionnaire completed by Ms. Bacon, Mr. Brodka, and Mr. Sykes  
3 for Dr. Mueller's evaluation, makes no reference to Dr. Sangani  
4 or the Village Doctor as a provider of Ms. Bacon's medical care.  
5 Based on this evidence, the court concludes that Dr. Sangani was  
6 not Ms. Bacon's primary care physician and not a doctor from  
7 whom she regularly sought medical care prior to her January 2013  
8 consultation with Mr. Eavey. The court finds by a preponderance  
9 of the evidence that Ms. Bacon sought out Dr. Sangani for the  
10 purpose of acquiring the letter documenting her capacity that  
11 Mr. Eavey required.  
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13  
14 Mr. Eavey testified that he never had any contact with Dr.  
15 Sangani to inquire about the substance of the letter. He also  
16 testified that around the time of the second trust amendment  
17 that he handled for Ms. Bacon in 2010, he also began to  
18 represent Mr. Sykes on estate planning matters. Mr. Eavey  
19 vividly recalled that throughout Mr. Eavey's representation of  
20 Ms. Bacon, Mr. Sykes drove her to every estate planning  
21 appointment for two reasons - first, Mr. Eavey referenced the  
22 idea of Ms. Bacon driving as "scary"; and second, Ms. Bacon and  
23 Mr. Sykes were frequently accompanied by Boots - who Mr. Eavey  
24 described as a large dog with an aversion to "white shirts and  
25 ties".  
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1 At deposition, Mr. Eavey testified that even after she  
2 returned with the letter, he advised Ms. Bacon that she should  
3 retain a life estate in the Brewer Drive property. He advised  
4 her that there would be adverse gift tax and other tax  
5 consequences to gifting the property to Mr. Sykes during her  
6 lifetime. He advised her that the gift of the residence might  
7 be questioned because of his concern that Mr. Sykes could be  
8 termed a care custodian. Ms. Bacon responded by comparing that  
9 law to "the Nazis" telling her what she could do with her  
10 property.<sup>4</sup> When Mr. Eavey referred her to a second lawyer for a  
11 certificate of independent review for each of the transactions  
12 he performed for her, Ms. Bacon at first accused him of trying  
13 to run up her bill. Ms. Bacon executed the gift deed  
14 transferring the Brewer Drive property to Mr. Sykes on May 14,  
15 2013. At Mr. Eavey's insistence, she and Mr. Sykes on the same  
16 day executed an "Occupancy Agreement" introduced as Exhibit P.  
17 Mr. Sykes was present in Mr. Eavey's office for the signing of  
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23 <sup>4</sup> Ms. Bacon was born in Germany and attended boarding school in Italy during  
24 the fascist regime. Other trial witnesses described anecdotes that she  
25 related about Mussolini waving to the girls at her boarding school as he  
26 drove by, and her family being required to return to Germany during the Nazi  
27 regime. Neither she nor her family were Jewish, but her father was perceived  
28 as critical of Hitler and she related to some witnesses that he was a target  
of government surveillance. The details of those anecdotes varied, but the  
court does credit the general point that Ms. Bacon had a strong aversion to  
government intervention in her life. Mr. Eavey also described both Mr. Sykes  
and Ms. Bacon as resentful of authority. Notably, when asked about this  
aspect of Ms. Bacon's background, Dr. Zaphiris indicated her impression that  
Ms. Bacon had grown up with a "privileged life".

1 the occupancy agreement.<sup>5</sup> Mr. Eavey testified at deposition that  
2 Ms. Bacon specifically rejected a life estate because she was  
3 concerned that if she was determined to have lost capacity  
4 during her lifetime while the life estate was still in place,  
5 that the transfer of the property to Mr. Sykes could be  
6 challenged.  
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8 Ms. Bacon broke her hip in October 2013. Ms. Broadbeck  
9 testified that when she arrived for work in the morning Ms.  
10 Bacon was in bed. Mr. Sykes told Ms. Broadbeck that Ms. Bacon  
11 had fallen the night before on the way to the bathroom. Ms.  
12 Bacon appeared to Ms. Broadbeck to be in a lot of pain. Ms.  
13 Broadbeck was concerned because Mr. Sykes did not intend to take  
14 Ms. Bacon to the doctor. Ms. Broadbeck called Ms. Bacon's  
15 primary care physician in San Francisco - she believed it was  
16 Dr. Zaphiris rather than Dr. Brandeis. Dr. Zaphiris responded  
17 and arranged for a mobile X-ray company to come to Ms. Bacon's  
18 home. Dr. Zaphiris came to the house and made a number of care  
19 recommendations for Ms. Bacon, including obtaining a hospital  
20 bed and removing or tacking down rugs in the home that presented  
21 a fall hazard. Ms. Broadbeck was upset because Mr. Sykes didn't  
22 arrange for a hospital bed or remove the rugs. When Ms.  
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28 <sup>5</sup> Mr. Sykes testified that the document he signed was a deed. The court finds  
in this instance that his testimony was an honest misrecollection.

1 Broadbeck asked Ms. Bacon about taking out the rugs, Ms. Bacon  
2 said that Mr. Sykes didn't want to remove the rugs. On one of  
3 her days off, Ms. Broadbeck called Dr. Zaphiris to notify her  
4 that Dr. Zaphiris' recommendations for caring for Ms. Bacon were  
5 not being followed. She was told that Dr. Zaphiris could not  
6 discuss Ms. Bacon's care with her. Dr. Zaphiris asked Ms.  
7 Broadbeck to transmit a copy of a medical power of attorney for  
8 Ms. Bacon, but Ms. Broadbeck couldn't because she didn't have  
9 it. When Ms. Broadbeck asked Mr. Sykes for a copy of the power  
10 of attorney he didn't give her one.  
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13 In 2014, APS conducted a second elder abuse investigation  
14 concerning Ms. Bacon based on a report by Roger's granddaughter,  
15 Shelley Avellar. Ms. Avellar testified that she maintained  
16 contact with Ms. Bacon in the years after Roger passed away.  
17 During the period between 2010 and 2016, Ms. Avellar testified  
18 that she visited Ms. Bacon two or three times a year, and that  
19 one of those times was usually around Christmas. As time  
20 passed, Ms. Avellar became concerned about Ms. Bacon's health  
21 and her relationship with Mr. Sykes. Starting in 2013 and 2014,  
22 she noticed that Ms. Bacon became quieter, and her conversation  
23 was simpler and more repetitive. She would repeat that she  
24 liked birds and dogs, where before she had discussed politics.  
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1 Ms. Avellar perceived Mr. Sykes to be undermining her  
2 relationship with Ms. Bacon. She recalled one occasion in 2014  
3 where she and her mother were on their way to visit Ms. Bacon  
4 and bring her lunch. Mr. Sykes called them while they were on  
5 the way and told them that Ms. Bacon was not feeling up to a  
6 visit because she was dizzy. Ms. Avellar insisted on coming.  
7 When she and her mother arrived, Ms. Avellar observed Mr. Sykes  
8 in the driveway attempting to hurry Ms. Bacon into their car  
9 with the dogs to leave the house. Ms. Avellar and Ms. Bacon  
10 proceeded to have a "nice visit", and Ms. Avellar did not  
11 observe Ms. Bacon to be unwell in any way. On another occasion,  
12 Ms. Avellar heard Mr. Sykes criticize her sister, Susan Arnold,  
13 in Ms. Bacon's presence for never visiting Ms. Bacon.

14 Ms. Broadbeck testified that during the later part of her  
15 employment, she heard Mr. Sykes making critical comments about  
16 Ms. Avellar and Frank's other granddaughter, Laura Hoke. Ms.  
17 Broadbeck observed Ms. Bacon to have affection for Frank's  
18 granddaughters. She would describe them as lovely girls and  
19 seem happy if she received cards or visits from them. Ms.  
20 Broadbeck heard Mr. Sykes tell Ms. Bacon that they were only  
21 interested in her money, and Ms. Bacon would repeat those  
22 comments. Later on, if Ms. Broadbeck would point to a photo of  
23 one of them or a book that one of them had given her, Ms. Bacon  
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1 would express affection for them to Ms. Broadbeck. Ms.  
2 Broadbeck also testified that Mr. Sykes would refer to certain  
3 people in Ms. Bacon's life as "spiders".  
4

5 Ms. Broadbeck also observed that as Ms. Bacon's physical  
6 condition declined, Mr. Sykes would discourage her from leaving  
7 the house for appointments he didn't like by telling her that  
8 she was dizzy or not feeling well. Ms. Broadbeck described a  
9 pattern whereby Mr. Sykes would not initially object to a social  
10 engagement Ms. Bacon wanted to attend. As the event got closer,  
11 he would begin to express concern that Ms. Bacon might be too  
12 dizzy or not well enough to go. Ms. Bacon would tell Ms.  
13 Broadbeck that she wanted to go to the event, and sometimes Ms.  
14 Broadbeck would see Ms. Bacon getting dressed to go. When Ms.  
15 Broadbeck would ask Ms. Bacon the next day about the event, Ms.  
16 Bacon would tell her that she had been too dizzy to go. In  
17 particular, Ms. Broadbeck recalled that Ms. Bacon enjoyed  
18 attending a ballet class in San Francisco with Kathryn Crosby.  
19 Mr. Sykes told Ms. Broadbeck that he didn't like driving Ms.  
20 Bacon to that class. After a few classes, Ms. Bacon stopped  
21 going to the ballet class. Ms. Broadbeck observed that a ballet  
22 teacher came to the Brewer Drive home, but Ms. Bacon was not  
23 really interested in ballet - she had seemed to prefer the other  
24 class because it allowed her to see Ms. Crosby. Ms. Broadbeck  
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1 also testified that Mr. Sykes would sometimes tell her to call  
2 people who were planning to visit Ms. Bacon or were on their way  
3 to cancel the visit because Ms. Bacon was not feeling well when  
4 that was not true. Ms. Broadbeck told Mr. Sykes she would not  
5 lie for him.  
6

7 Ms. Avellar also testified that she is a remainder  
8 beneficiary to the Frank Rogers Bacon, Jr. Testamentary Trust,  
9 of which Ms. Bacon was the lifetime income beneficiary. The  
10 trial evidence established that Ms. Bacon, as co-trustee of that  
11 trust, sought discretionary principal distributions from the  
12 trust that resulted in litigation. Ms. Avellar acknowledged in  
13 her testimony that she was concerned about the amount of money  
14 Ms. Bacon was demanding from the trust. Ms. Avellar recounted  
15 an awkward disagreement she had with Mr. Sykes over a piece of  
16 exercise equipment and a pair of earrings in a way that  
17 demonstrated distaste for him. In her testimony, Ms. Avellar  
18 referred to Mr. Sykes as a "problem" that they had "gotten rid  
19 of" by ensuring that Ms. Bacon had full time care and could see  
20 her family. Despite her adverse financial interest to Ms. Bacon  
21 while Ms. Bacon was alive and her apparent hostility to Mr.  
22 Sykes, the court found Ms. Avellar's description of his  
23 gatekeeping credible based on the corroborating observations of  
24 Ms. Broadbeck.  
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1           On October 14, 2014, based on Ms. Avellar's APS report,  
2 Lynda Herrera and two Hillsborough police officers went to Ms.  
3 Bacon's residence. They encountered Mr. Sykes and Ms. Bacon in  
4 the driveway. Ms. Herrera had no independent recollection of  
5 the events, so her contemporaneous notes of the encounter were  
6 read into the record. The notes indicated that Mr. Sykes was  
7 immediately upset by the contact, yelling that he had done  
8 nothing wrong and that they would hear from his attorney Henry  
9 Eavey. Ms. Bacon was "HOH", which the court infers from the  
10 evidence refers to her being hard of hearing. She appeared  
11 confused. She did not know that she had signed over her  
12 residence to Mr. Sykes, but said that he would never displace  
13 her. She said that he did everything for her, traveled with  
14 her, and questioned who would travel with her. She could not  
15 name any family members who visited her and could not answer any  
16 questions about her finances. She told Ms. Herrera "You have to  
17 ask Jim." She said that she felt like she was "in Nazi Germany"  
18 with all the questions being asked of her.

19           Ms. Broadbeck testified that after this contact, while Ms.  
20 Broadbeck was working alone at the Brewer Drive residence, she  
21 received a phone call from a male Hillsborough police officer  
22 asking if she was safe. Ms. Broadbeck texted her husband and  
23 together they decided she would quit working for Ms. Bacon. Ms.  
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1 Broadbeck resigned as Ms. Bacon's secretary in November 2014.  
2 At some point after she resigned, Ms. Broadbeck also called APS  
3 to relate her concerns about Mr. Sykes' treatment of Ms. Bacon.  
4 She reported that he was "brainwashing" Ms. Bacon about who to  
5 like and dislike, failing to follow care instructions for Ms.  
6 Bacon, not following Ms. Bacon's personal trainer's  
7 recommendations about the types of food and amounts of water she  
8 should have, and reporting an incident prior to Ms. Bacon's hip  
9 fracture where Ms. Bacon fell in a marble shower. Ms. Broadbeck  
10 did not attempt to visit Ms. Bacon after she quit working for  
11 her, but did drop off a Christmas card one year.

14 In connection with the 2014 APS investigation, Ms. Bacon's  
15 longtime friend Mark Brodka<sup>6</sup> referred her to estate planning  
16 attorney Paul Barulich. In the course of his representation of  
17 Ms. Bacon, Mr. Barulich retained Dr. Jonathan Mueller to examine  
18 Ms. Bacon and render opinions regarding her susceptibility to  
19 undue influence and her testamentary capacity. Both Mr.  
20 Barulich and Dr. Mueller testified. Mr. Barulich first met Ms.  
21 Bacon on October 29, 2014. He identified two immediate problems  
22 with the gift deed to the Brewer Drive property related to gift  
23 and transfer taxes. Mr. Barulich drafted a corrective deed to  
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28 <sup>6</sup> Mr. Brodka is an attorney and an in-law of Katherine Crosby, and was a co-trustee of the Frank Rogers Bacon, Jr. Testamentary Trust.



1 add a life estate for Ms. Bacon. He described Ms. Bacon as  
2 scared, anxious, elderly, and vacant of legal understanding. He  
3 was concerned about her susceptibility to undue influence. He  
4 described Mr. Sykes as overly protective, suspicious, and  
5 adverse. During the course of the representation he came to  
6 learn that Mr. Sykes was writing checks and presenting them to  
7 Ms. Bacon for signature and that he was "intimately involved" in  
8 the management of her finances. He viewed the execution of the  
9 corrective deed as immediately necessary to protect Ms. Bacon's  
10 interests, and felt that the occupancy agreement between her and  
11 Mr. Sykes would not protect her right to live in the Brewer  
12 Drive property against any creditors of Mr. Sykes. He did not  
13 go over her prior estate plans with her in detail, and he was  
14 not told that she had given large gifts of other money to Mr.  
15 Sykes. He represented Ms. Bacon in the drafting of a third  
16 trust amendment, and ultimately that document contained a  
17 scrivener's error in the designation of Mark Brodka as a trustee  
18 of her personal trust when she wanted Albert Bartridge in that  
19 role. Both the corrective deed and the third trust amendment to  
20 Ms. Bacon's trust were executed on February 26, 2015. Mr. Sykes  
21 was represented by his current trial counsel, Ed Thirkell,  
22 during the negotiation and execution of the corrective deed.  
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1 Dr. Mueller, who is board certified in both psychiatry and  
2 neurology, evaluated Ms. Bacon at Mr. Barulich's request. The  
3 court found him qualified and found his recollection and  
4 opinions related to Ms. Bacon's evaluation credible. Dr.  
5 Mueller testified that administered an examination he referred  
6 to as a Cognistat with a variety of cognitive tests to assess  
7 Ms. Bacon's cognitive function. He described the testing  
8 process. He acknowledged that Ms. Bacon appeared to view the  
9 examination as an intrusion, and that she expressed a fear of  
10 uniforms and APS based on her prior experiences. He attempted  
11 to build rapport with her by speaking in German and simple  
12 conversational French at times. She took out her hearing aids  
13 about halfway through the meeting with him. He perceived her as  
14 attempting to cooperate with the testing. Dr. Mueller concluded  
15 that Ms. Bacon exhibited moderate to severe impairment with  
16 short term verbal memory, moderate impairment with visual-  
17 spatial skills, impairment of undetermined severity in her  
18 orientation to time, and difficulty with practical judgment.  
19 She was unable to recall or describe the circumstances under  
20 which she met Mr. Sykes or the nature of his role in her life.  
21 She could not recall what amounts she paid him for services or  
22 what amounts she had given him as gifts over time. Although Ms.  
23 Bacon had not been diagnosed with Alzheimer's dementia, Dr.  
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1 Mueller observed symptoms often associated with that condition  
2 in his interview of Ms. Bacon. Ms. Bacon was unable to identify  
3 any assets other than her Hillsborough home. Dr. Mueller opined  
4 that as of the date of his evaluation in November 2014, Ms.  
5 Bacon lacked both testamentary and donative capacity, as well as  
6 capacity to contract. She was unable to describe to him the  
7 nature and extent of her assets or her wishes and plans. She  
8 was unable to describe prior estate plans to him. Dr. Mueller  
9 also opined that Ms. Bacon was vulnerable to undue influence and  
10 lacked the ability to withstand potential undue influence.  
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13 On May 12, 2015, attorney Jessica Rowe began representing  
14 Ms. Bacon. Ms. Rowe was notified of Ms. Bacon's interest in  
15 retaining her by Mr. Sykes' counsel, Mr. Thirkell. During the  
16 call from Mr. Thirkell, Ms. Rowe did not recall him mentioning  
17 that he represented Mr. Sykes. Ms. Rowe's retention came as a  
18 surprise to Mr. Barulich, who was under the impression that he  
19 had established a good rapport with Ms. Bacon. Ms. Rowe  
20 represented Ms. Bacon from May 12, 2015 to April 19, 2018.  
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23 Throughout her representation of Ms. Bacon, Ms. Rowe  
24 received numerous e-mail communications from wriggle@sonic.net,  
25 an e-mail account attributed at the time to Ms. Bacon and  
26 referred to in testimony as both "Wrig" and "TBB" based on  
27 abbreviations occurring in the printed e-mails marked as  
28

1 exhibits. Both Anna Gomez and Angela Broadbeck testified that  
2 Ms. Bacon never used e-mails. She did not like computers, and  
3 according to Ms. Broadbeck was unhappy when she saw Ms.  
4 Broadbeck using a computer that Mr. Sykes brought into the  
5 house. Ms. Gomez did not believe Ms. Bacon knew how to send an  
6 e-mail. Mr. Eavey stated that Ms. Bacon was "not a  
7 technological person" and preferred in person visits even to  
8 using the telephone during his representation of her. By the  
9 time of Ms. Rowe's representation of Ms. Bacon, the trial  
10 evidence establishes that Ms. Bacon no longer had any personal  
11 secretaries working in her household. Mr. Sykes denied ever  
12 typing anything for Thea Bacon on a computer keyboard.<sup>7</sup> The court  
13 finds that testimony to be willfully false. The court concludes  
14 that Mr. Sykes was the author of all communications referenced  
15 at trial originating from the e-mail address wriggle@sonic.net  
16 or called TBB or Wrig in the trial transcript. The court  
17 further finds that the recipients of the communications at the  
18 time, including both Ms. Rowe and her partner Melissa Karlsten<sup>8</sup>,  
19 were unaware that Mr. Sykes authored them and believed that they  
20 were corresponding with Ms. Bacon. Ms. Rowe testified that she  
21 relied on the e-mails received from wriggle@sonic.net in her  
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27 <sup>7</sup> Testimony of James Sykes, 9/21/2021, p. 171, L.3-5.

28 <sup>8</sup> Ms. Karlsten responded to some of the Wrig and TBB correspondence while Ms. Rowe was on maternity leave.

1 representation of Ms. Bacon. Mr. Sykes also denied ever  
2 offering to help Ms. Bacon obtain more money from her late  
3 husband's trust, and denied authorship of a document called  
4 "Trust Strategy" that was forwarded to Ms. Bacon's lawyers.<sup>9</sup> The  
5 court also finds that testimony willfully false.  
6

7 During Ms. Rowe's representation of Ms. Bacon, she first  
8 worked to correct the scrivener's error in the third amendment  
9 to Ms. Bacon's trust done by Mr. Barulich. Ms. Rowe initially  
10 believed that Mr. Brodka needed to sign the trust amendment  
11 removing himself as trustee in favor of Mr. Bartridge. Later,  
12 Mr. Brodka signed a declination to serve, meaning that Ms. Rowe  
13 was able to draft a version of the fourth amendment to the trust  
14 that only required Mr. Bartridge and Ms. Bacon to sign. Ms.  
15 Rowe also represented Ms. Bacon in her effort to have Mr. Brodka  
16 removed as co-trustee of her late husband's trust. Ms. Bacon  
17 was angry that Mr. Brodka billed the trust \$41,000 for his time  
18 spent dealing with Mr. Barulich in the discussions of her third  
19 trust amendment, preparation of the gift deed, and Mr.  
20 Barulich's communications with APS regarding their 2014  
21 investigation. Ms. Bacon was dissatisfied with the refusal of  
22 the other trustees of her husband's trust to approve her desired  
23 discretionary distributions from trust principal. Ms. Rowe  
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28 <sup>9</sup> Testimony of James Sykes, 9/21/2021, R.T. p. 182, L. 6-9.

1 testified that Ms. Bacon was upset with reductions in the  
2 discretionary distributions and wanted Mr. Brodka removed as a  
3 trustee based on the breakdown of their relationship. Ms. Rowe  
4 also represented Ms. Bacon in connection with a 2016 APS  
5 investigation initiated based on concerns expressed by Ms.  
6 Bacon's long-term gardener, Daniel Torres.  
7

8       Efforts to increase Ms. Bacon's trust income and remove  
9 Mark Brodka as trustee generated litigation. Union Bank and  
10 Mark Brodka, as co-trustees of the Frank Rogers Bacon, Jr.  
11 Testamentary Trust, filed a petition for instructions in Los  
12 Angeles County Superior Court on September 1, 2016 alleging in  
13 part that Mr. Sykes was unduly influencing Ms. Bacon and that he  
14 had already been or might in the future be a recipient of  
15 wrongfully diverted distributions intended for Ms. Bacon. Ms.  
16 Rowe, on Ms. Bacon's behalf, filed a petition in San Mateo  
17 County Superior Court case 16-PRO-00299 seeking return of trust  
18 assets (alleging Mr. Brodka billed the \$41,000 bill to the  
19 trust); removal of Mr. Brodka as co-trustee; and asserting  
20 causes of action against Mr. Brodka for financial elder abuse  
21 and breach of fiduciary duty to Ms. Bacon. The parties  
22 commenced mediation on December 15, 2016. The parties reached a  
23 settlement agreement in mediation. In the San Mateo County  
24 action, Ms. Rowe filed a petition seeking court approval of the  
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1 settlement agreement on May 5, 2017. The hearing on the  
2 petition occurred on June 6, 2017, and Judge George Miram  
3 approved the settlement agreement. Mr. Sykes asserts this  
4 agreement as a complete defense to all alleged causes of action  
5 in this petition, and Ms. Dolch seeks to set aside the  
6 settlement agreement.  
7

8 Ms. Rowe met with Ms. Bacon nineteen times face to face  
9 during her representation of her. Some of those meetings  
10 occurred alone. Others occurred in the presence of Mary Jo  
11 Murphy. Ms. Rowe's notes reflected that Mr. Sykes was present  
12 at some meetings but she had no independent recollection of his  
13 level of participation in the meetings. She recalled that Ms.  
14 Bacon had some lapses of memory and that Ms. Bacon was hard of  
15 hearing. She recalled meeting Ms. Bacon in her home on some  
16 occasions, and Ms. Bacon making reference to frustration with  
17 the effect of aging on her brain and body. Ms. Bacon told Ms.  
18 Rowe about her life with Roger, about meeting and being friends  
19 with Coco Chanel, and about being frustrated that her hands were  
20 holding a walker when they used to hold ski poles. Ms. Rowe  
21 noted that Ms. Bacon had trouble tracking conversations when she  
22 was tired. Ms. Rowe's notes demonstrate that in connection with  
23 the trust amendment representation in 2015, on one occasion Ms.  
24 Bacon told Ms. Rowe that she owned her home after she had  
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1 previously told Ms. Rowe she gifted it to Mr. Sykes. Ms. Rowe  
2 did not attach significance to that statement because she  
3 thought it would be normal for a client with a life estate to  
4 believe they owned the property in which they had the life  
5 estate. Ms. Bacon told Ms. Rowe that she believed that Roger's  
6 granddaughters were working with Mr. Brodka to reduce her  
7 income, and expressed that she did not want to see them because  
8 of that. When Ms. Rowe received Mr. Barulich's file in  
9 approximately July 2015, she became aware that Mr. Barulich had  
10 retained Dr. Mueller to assess Ms. Bacon's capacity. She never  
11 contacted Dr. Mueller to ascertain the contents of his report.  
12 E-mails that she received from wriggle@sonic.net caused her to  
13 form the impression that Ms. Bacon believed that any test  
14 results "not in her favor" could not be used against her. Ms.  
15 Rowe did consult with a Dr. Abbey on at least three occasions to  
16 get his impressions of Ms. Bacon's capacity. Ms. Rowe appeared  
17 in court to oppose Ms. Dolch's initial application for a  
18 temporary conservatorship of Ms. Bacon's person and estate  
19 without first meeting with Ms. Bacon in person on the date of  
20 the hearing. Ms. Rowe sought to be confirmed as Ms. Bacon's  
21 counsel at that hearing, Ms. Dolch's present counsel opposed her  
22 request, and the court denied it.  
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1 Ms. Dolch was appointed temporary conservator of the person  
2 and estate of Ms. Bacon on April 19, 2018. In her capacity as  
3 temporary conservator, Ms. Dolch obtained an Elder Abuse  
4 Prevention Act Restraining Order restraining Mr. Sykes from  
5 contact with Ms. Bacon and requiring him to vacate the Brewer  
6 Drive residence on May 25, 2018. Over the opposition of Mr.  
7 Sykes, Ms. Dolch was appointed probate conservator of Ms.  
8 Bacon's person and estate on July 27, 2018. The court conducted  
9 a court trial of Ms. Dolch's restraining order petition over the  
10 course of three days. The court issued a two-year restraining  
11 order at the conclusion of the hearing preventing Mr. Sykes from  
12 contacting Ms. Bacon or coming onto the Brewer Drive property.  
13  
14

15 The trial evidence demonstrated that during the period in  
16 which Ms. Dolch was co-trustee of Ms. Bacon's personal trust and  
17 exercising authority over arrangements for her personal care  
18 pursuant to the terms of the 2017 settlement agreement, Mr.  
19 Sykes repeatedly interfered with caregivers hired by Ms. Dolch.  
20 He engaged in an e-mail campaign to enlist the assistance of Dr.  
21 Zaphiris and Mary Jo Murphy to try to replace the care agency  
22 hired by Ms. Dolch and ultimately to try to encourage the  
23 removal of Ms. Dolch. While the restraining order proceedings  
24 were pending, Mr. Sykes continued to use e-mail to try to  
25 encourage friends of Ms. Bacon whom he perceived to be loyal to  
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1 him to visit her and attend the restraining order hearing on his  
2 behalf.

3 Trial evidence also established, in summary, that after  
4 issuance of the restraining order Ms. Bacon was withdrawn, sad,  
5 and angry about Mr. Sykes' removal. Ms. Bacon was so distraught  
6 on being informed of Mr. Sykes' removal that Regina Bortolus had  
7 to stay overnight with her for a period of four days. After the  
8 first four days Ms. Bortolus went to see Ms. Bacon every day,  
9 going home only to sleep, for a few weeks after Mr. Sykes was  
10 removed until Ms. Bacon calmed down. Ms. Bacon made statements  
11 to Ms. Bortolus and some caregivers expressing that accusations  
12 of abuse against Mr. Sykes were not true. She looked for him  
13 and asked caregivers to find him or take her to him. Sometimes  
14 she referred to him as her husband, and sometimes she also  
15 expressed that she missed her husband Roger. Both Ms. Bortolus  
16 and Antoinette Von Grone opined that the separation imposed by  
17 the restraining order was cruel to Ms. Bacon. Ms. Bacon  
18 sometimes resisted caregiver efforts to assist her. She stopped  
19 engaging with exercise and acupuncture treatments as frequently  
20 as she had. She slept longer into the morning. She was offered  
21 more choices in her diet and ate a greater variety of foods, and  
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1 she did gain weight.<sup>10</sup> Toward the end of her life she did not  
2 engage in conversation when people came to visit. Antoinette  
3 Von Grone described her as being uninterested in looking at  
4 pretty images in Ms. Von Grone's art catalog and facing the wall  
5 in a fetal position after a time. Ms. Bortolus stated that she  
6 visited less frequently because a member of her own family was  
7 dying of cancer and Ms. Bacon didn't seem to acknowledge her  
8 presence anymore in the period just before she died. From this  
9 evidence, the court concludes that Ms. Bacon was aware of Mr.  
10 Sykes' absence, opposed his removal from her life, missed him,  
11 and did not perceive herself to be abused.  
12

13  
14 **B. Weight Accorded to Other Witness Testimony**

15 **1. Expert witnesses**

16 **A. Dr. Firestone**

17  
18 Dr. Firestone testified as an expert in mental incapacity,  
19 susceptibility to undue influence, the consequences of undue  
20 influence, and the hallmarks of elder abuse. He performed an  
21 evaluation of Ms. Bacon in August 2018. Prior to the  
22 evaluation, he reviewed Ms. Bacon's medical records. He  
23 conducted the evaluation meeting in the library of Ms. Bacon's  
24 home. She was in a wheelchair at the time of the evaluation, and  
25

26  
27 <sup>10</sup> Photographs of Ms. Bacon from when she was served with the conservatorship  
28 application document that she was petite and appeared very frail. The  
increased appetite and gaining of weight were positive developments in her  
care in the court's view.

1 the caregiver assisting Ms. Bacon left the room for the  
2 evaluation. Ms. Bacon initially appeared cooperative with the  
3 evaluation. She answered Dr. Firestone's initial questions  
4 about history of treatment for pain and other medical problems.  
5 He asked her who she had been married to. She turned around and  
6 was looking for someone. Dr. Firestone asked her who she was  
7 looking for, and she said "Jim". She pointed to a picture on  
8 the wall and said "that's my husband." Dr. Firestone had never  
9 seen either Mr. Sykes or Roger Bacon, so he could not identify  
10 the subject of the photograph that Ms. Bacon indicated. Dr.  
11 Firestone continued to converse with Ms. Bacon, and she suddenly  
12 became irate and started shouting at him. She pounded her fist  
13 at him and made hand gestures that he interpreted as demanding  
14 that he leave. Dr. Firestone did not understand what caused her  
15 to be upset. He left.

19 Dr. Firestone returned two days later to re-attempt the  
20 evaluation. She behaved in a similar manner. He spoke briefly  
21 with her caregivers, and then formulated his opinion based on  
22 Ms. Bacon's medical records and the limited information he  
23 gathered from observing her. Dr. Firestone did not recall the  
24 specific question he asked just before Ms. Bacon got upset, but  
25 it was something "benign" and not a task that might cause  
26 frustration.  
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1 Dr. Firestone observed that Ms. Bacon exhibited emotional  
2 lability and concluded that she had pseudobulbarism. He  
3 explained that pseudobulbarism results from an injury to the  
4 emotional center of the brain and causes impulsive expression of  
5 feelings. He opined that her stroke had likely caused that  
6 effect. Dr. Firestone found Ms. Bacon "quite cognitively  
7 impaired". He referenced Dr. Mueller's November 2014 evaluation  
8 as having "diagnosed" findings consistent with Alzheimer's  
9 dementia.  
10  
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12 Dr. Firestone concluded Ms. Bacon was delusional at the  
13 time of his evaluation based on her belief that Mr. Sykes was  
14 her husband, and her apparent lack of awareness that her husband  
15 had died over thirty years prior. He observed both receptive  
16 and expressive aphasia, meaning both an inability to understand  
17 what is being told and an inability to express herself. Both  
18 types of aphasia are consistent with both Alzheimer's dementia  
19 and strokes or other brain injury. Although Dr. Firestone was  
20 unable to perform any cognitive testing, he concluded based on  
21 his observations of Ms. Bacon that she would not have been able  
22 to provide a reliable response to any cognitive testing because  
23 she was too significantly demented.  
24  
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26 Dr. Firestone reviewed imaging records in Ms. Bacon's  
27 medical record documenting what parts of her brain had been  
28

1 damaged by her stroke. Dr. Firestone also noted that Dr.  
2 Zaphiris did not continue to prescribe the medications for  
3 stroke that Ms. Bacon had been administered while in the  
4 hospital. He opined that Ms. Bacon had been well-cared for  
5 while hospitalized and that Dr. Zaphiris' discontinuation of  
6 that medication was "not the best treatment".  
7

8 Based on his review of other medical records and the lack  
9 of what he considered appropriate treatment by Dr. Zaphiris for  
10 Ms. Bacon's high cholesterol over the years, Dr. Firestone  
11 concluded that it was likely that Ms. Bacon had suffered a  
12 series of "mini-strokes" or transient ischemic attacks (TIAs)  
13 for years prior to her 2017 major stroke. Dr. Firestone opined  
14 that to be exhibiting the impairment Dr. Mueller observed in  
15 November 2014, Ms. Bacon had likely been suffering TIAs for  
16 years before 2014. He concluded that it was more likely than  
17 not that she had been experiencing TIAs in 2009 and 2010, but  
18 that it would be speculation on his part to conclude she had any  
19 such TIAs before 2009.  
20  
21

22 Based on his 2018 evaluation, Dr. Firestone diagnosed Ms.  
23 Bacon with vascular dementia with aphasia, and possibly  
24 Alzheimer's dementia as well. Dr. Firestone opined that Ms.  
25 Bacon was susceptible to undue influence beginning in 2009 or  
26 2010 because she likely had early signs of Alzheimer's dementia.  
27  
28

1 Dr. Firestone concluded that by 2009, Ms. Bacon exhibited  
2 dependency, debilitation, and the beginning of cognitive  
3 deterioration. Based on his conclusion that Alzheimer's  
4 dementia was likely present, Dr. Firestone described his opinion  
5 that Ms. Bacon's cognitive deterioration would have proceeded,  
6 on average, at 10% a year.

8 Dr. Firestone concluded that by 2013, Ms. Bacon would not  
9 have been mentally competent to sign a title transfer to her  
10 home. He based that opinion on Dr. Mueller's conclusion that  
11 Ms. Bacon's demonstration of cognitive impairment in November  
12 2014 was consistent with Alzheimer's dementia. Based on Dr.  
13 Mueller's qualitative description of his observation of Ms.  
14 Bacon's cognitive impairment, Dr. Firestone assumed Ms. Bacon  
15 would have had a Mini-Mental Status Exam (MMSE) score of 12. If  
16 her mental deterioration was consistent with the average decline  
17 observed in Alzheimer's dementia, her projected MMSE score in  
18 2013 would have been 14 or 15, which Dr. Firestone identified as  
19 "moderately demented". Most moderately demented individuals  
20 cannot enter into a contract for transfer of property.

23 Extrapolating back another year using the same method, Dr.  
24 Firestone opined that Ms. Bacon might have had contractual  
25 capacity with assistance, but it would have been difficult. Dr.  
26

1 Firestone was of the opinion that Ms. Bacon lacked both  
2 contractual and testamentary capacity in 2013.

3         The court found Dr. Firestone qualified and credible, but  
4 did not find all of his opinions persuasive or well-founded.  
5 Having heard Dr. Mueller testify, the court does not find that  
6 his testimony supports Dr. Firestone's foundational premise that  
7 Dr. Mueller "diagnosed" Ms. Bacon with Alzheimer's dementia.  
8 Dr. Mueller did not perform a MMSE and had no record of his  
9 actual test result observations for Dr. Firestone's examination.  
10 The court was not persuaded that back-extrapolation of an  
11 average rate of cognitive decline from a presumed MMSE score  
12 when such a test was never given is a reliable basis for Dr.  
13 Firestone's opinion about Ms. Bacon's likely MMSE score in 2013,  
14 2010, or 2009.

15         The court does find Dr. Firestone's conclusion that Ms.  
16 Bacon suffered mini-strokes that impacted her cognitive  
17 capabilities prior to both 2017 and 2014 credible based on his  
18 review of her medical records, high cholesterol condition, and  
19 lack of effective treatment.<sup>11</sup> Those observations are also

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25 <sup>11</sup> The court does not mean to imply any lack of competence on Dr. Zaphiris'  
26 part by this finding. Dr. Zaphiris testified that she employs a "patient  
27 centered" mode of medical treatment, which works with the patient to  
28 formulate a treatment that the patient is willing to accept even if it not  
the treatment the doctor believes is most effective. Dr. Zaphiris expressly  
testified that Ms. Bacon refused to take a statin, a commonly prescribed  
medication for cholesterol reduction. Dr. Zaphiris substituted a homeopathic  
remedy called red yeast rice based on Ms. Bacon's expressed preference.



1 consistent with the medical history questionnaire obtained by  
2 Dr. Mueller demonstrating that Ms. Bacon suffered a cerebellum  
3 stroke in 2009 that was not diagnosed until a later CT scan.  
4  
5 The court further finds Dr. Firestone's opinions regarding Ms.  
6 Bacon's testamentary and contractual capacity in 2013 persuasive  
7 based on Dr. Mueller's observations of Ms. Bacon's cognitive  
8 impairment in 2014 and Dr. Firestone's description of the  
9 likelihood of TIAs occurring within the year before the Mueller  
10 evaluation. Those opinions are consistent with Ms. Broadbeck's  
11 observations of Ms. Bacon's decline in attentiveness to her  
12 financial affairs and declining level of energy between 2012 and  
13 2014.  
14

15         The court does not find Dr. Firestone's opinion of Ms.  
16 Bacon's experience of Alzheimer's dementia symptoms as early as  
17 2009 or 2010 persuasive and does not accept that opinion.  
18 Likewise, the court does not find persuasive and does not accept  
19 his opinion that dementia rendered Ms. Bacon susceptible to  
20 undue influence in 2009. The court does find that Dr.  
21 Firestone's conclusion that Ms. Bacon exhibited dependency on  
22 Mr. Sykes in 2009 is well-founded and consistent with the  
23 evidence presented, and accepts that conclusion in its own  
24 assessment of whether Ms. Bacon was in fact, unduly influenced.  
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1                                    **B. Dr. Spar**

2            Dr. Spar testified as an expert in testamentary capacity,  
3 contractual capacity, and vulnerability to undue influence. He  
4 reviewed Ms. Bacon's medical records from Stanford Hospital,  
5 Peninsula Hospital, and the Palo Alto Medical Center. He also  
6 reviewed Dr. Zaphiris' records and the records of Drs. Patel,  
7 Abbey, Lansberg, and Bersing. He described the difference  
8 between Alzheimer's dementia and dementia caused by  
9 cerebrovascular disease (the underlying disease associated with  
10 risk of stroke). Alzheimer's dementia progresses gradually,  
11 where dementia associated with cerebrovascular events can occur  
12 suddenly. The difference impacts the reliability of attempting  
13 to extrapolate backwards in time from an observed level of  
14 dementia. Where both Alzheimer's dementia and cerebrovascular  
15 dementia are present, it is not possible to reliably offer a  
16 backward-looking opinion of dementia because the  
17 cerebrovascular-associated dementia can occur suddenly and cause  
18 a dramatic impact overnight (as in the case of a major stroke).

19            The level of cognitive impairment present when someone  
20 scores a 17 out of 30 on a MMSE varies based on age and  
21 education level of the subject based on how the test is normed.  
22 In Dr. Spar's experience, most people scoring a 17 out of 30 on  
23 the MMSE retain contractual capacity unless there is excessive  
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1 language comprehension impairment, which can occur in the case  
2 of a stroke in the language area of the brain. Dr. Spar  
3 described the difference between spontaneous recall, queued  
4 recall, and recognition memory and explained the way that he  
5 uses those concepts in conducting capacity evaluations. He  
6 described the difference between a delusion and a false belief -  
7 the first being fixed even in the face of contrary evidence and  
8 indicative of mental illness or impairment; the second being a  
9 common occurrence of mistaken belief that is changed when faced  
10 with contrary evidence. He described the differences in  
11 cognitive skill sets that are necessary for contractual capacity  
12 versus testamentary capacity, in that contractual capacity  
13 generally requires an ability to presently understand a contract  
14 but does not generally require use of memory; whereas  
15 testamentary capacity requires a person to be able to remember  
16 what they have and who they want to give it to, in addition to  
17 understanding that the document being signed is a set of  
18 instructions about how to do that.

19 Dr. Spar opined that Ms. Bacon retained testamentary  
20 capacity through 2016. Dr. Spar never examined Ms. Bacon face-  
21 to-face. He also opined that she was vulnerable to undue  
22 influence as of January 2016, and that she became vulnerable to  
23 undue influence when she started becoming cognitively impaired.

1           The court found Dr. Spar both credible and competent, and  
2 found his testimony helpful in assessing the persuasiveness of  
3 Dr. Firestone's conclusions. It did not find his direct  
4 opinions regarding Ms. Bacon particularly useful based on the  
5 limitations on his ability to interview her face-to-face in  
6 formulating his opinion.  
7

8   **C. Dr. Patel**

9           Dr. Patel testified as an expert in diagnosis and treatment  
10 of medical and mental disorders and capacity or lack of capacity  
11 to give informed consent to medical treatment. Dr. Patel  
12 evaluated Ms. Bacon on May 2, 2018 at the request of Ms. Dolch  
13 in connection with the conservatorship of Ms. Bacon. When Dr.  
14 Patel met with Ms. Bacon, Ms. Bortolus and Mr. Sykes were  
15 present at the home. Ms. Bortolus stayed in the room with Ms.  
16 Bacon during the evaluation and Mr. Sykes was outside in the  
17 back yard. Ms. Bacon wore hearing aids and demonstrated  
18 aphasia. She could only offer short responses, nods, grunts and  
19 gestures indicating affirmation or negation. She engaged in  
20 some parts of the interview and did not engage in others. Dr.  
21 Patel also spoke with Mr. Sykes after he finished evaluating Ms.  
22 Bacon.  
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26           Based on his observation of Ms. Bacon, and her inability  
27 and unwillingness to complete portions of the cognitive testing,  
28

1 Dr. Patel concluded that Ms. Bacon lacked capacity to manage her  
2 own financial affairs but retained the capacity to give opinions  
3 about her medical care. He based his conclusion about her  
4 capacity to give informed consent to medical treatment on her  
5 increased engagement in that part of the evaluation, and that  
6 both in the evaluation and historically in her medical records  
7 she had expressed opinions and preferences about her medical  
8 care. He also concluded that she did not need to be cared for  
9 in a locked facility. He offered no opinion of Ms. Bacon's  
10 capacity on any date prior to his evaluation of her. Based on  
11 the timing of his evaluation in relation to the financial  
12 transactions at issue in the case, the court found Dr. Patel's  
13 opinion to be of limited relevance.

## 17 **2. Lay witnesses**

18 Friends, neighbors, household employees, and other  
19 acquaintances of Ms. Bacon were aware of Mr. Sykes' presence in  
20 Ms. Bacon's life, but to most of them she never explained his  
21 role in her life or how they met. Some of the trial witnesses  
22 called appeared to have had very little day-to-day interaction  
23 with Ms. Bacon and Mr. Sykes during the relevant periods of  
24 time.

26 Three of Ms. Bacon's neighbors testified - William and  
27 Libby O'Leary, and Christopher Polizzi. The court found that  
28

1 both the manner and content Mr. Polizzi's testimony demonstrated  
2 clear animus toward Mr. Sykes. Aspects of his testimony  
3 regarding Ms. Bacon's personality and interests were  
4 inconsistent with many of the other witnesses who knew her. He  
5 described Frank Bacon, Jr.'s granddaughters as Ms. Bacon's  
6 nieces, and claimed a familiarity with her estate planning  
7 intentions that was inconsistent with all of the other evidence  
8 on that subject received in the trial. Mr. Polizzi testified  
9 that he and Ms. Bacon had a falling out because Mr. Sykes  
10 accused him of stealing a scrap of crown molding from Mr. Sykes'  
11 trash during a remodel of his residence at 610 Dorchester. At  
12 some point after that, Mr. Polizzi conceded on cross-examination  
13 that he bumped Mr. Sykes' car bumper with his own in a  
14 supermarket parking lot to get Mr. Sykes' attention, so that he  
15 could greet him. Given Mr. Polizzi's testimony of the falling  
16 out and that he did not like being around Mr. Sykes, the court  
17 found his explanation of the parking lot incident bizarre and  
18 not credible. The court did not find Mr. Polizzi credible and  
19 accorded no weight to his testimony.

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24 William O'Leary only saw Ms. Bacon outside of her home and  
25 in passing while she watched Mr. Sykes walk Ms. Bacon's dogs at  
26 the Burlingame Country Club. He recalled that she came to his  
27 home once but had no other specific recollection of the  
28

1 occasion. Libby O'Leary identified that occasion as a cocktail  
2 party, and testified that she went to Ms. Bacon's home for tea  
3 once sometime between 2000 and 2010, but couldn't remember when.  
4 Ms. Bacon was apparently well-known in the neighborhood for  
5 passing out large chocolate bars at Halloween, but the testimony  
6 established that the youngest of the O'Leary's children stopped  
7 trick-or-treating around 2006. Ms. O'Leary most frequently  
8 interacted with both Ms. Bacon and Mr. Sykes on the golf course  
9 at the Burlingame Country Club when all were walking their dogs.  
10 They usually did not either start or end their walks together,  
11 but did have short conversations. Ms. O'Leary's most specific  
12 recollection of Ms. Bacon was of being taken aback when Ms.  
13 Bacon mentioned, unprompted, at the cocktail party that Mr.  
14 Sykes was not her lover.

15  
16  
17  
18 The general impression the court acquired from the trial  
19 testimony was that even prior to the decline in her health, Ms.  
20 Bacon had a busy social calendar but few very close friends.  
21 Her secretaries testified to an extensive binder of contacts  
22 from all over the world to whom she sent Christmas cards and  
23 letter correspondence, which changed frequently as contacts were  
24 added and removed. She hosted parties at a social club in San  
25 Francisco called Villa Taverna, and she met for lunches and  
26 dinners with other members of the Burlingame Country Club. She  
27  
28

1 maintained a friendship with Kathryn Crosby and they visited in  
2 each other's homes. Prior to the litigation related to Ms.  
3 Bacon's dissatisfaction with trust distributions from her late  
4 husband's trust, Mark Brodka was described by Ms. Broadbeck as a  
5 friend and frequent visitor to Ms. Bacon's home. She was  
6 generally described as a private person who could be gracious  
7 and charming, but also "formidable" and "austere" until one got  
8 to know her.<sup>12</sup>

10  
11 **C. Findings Related to Acquisition of Specific**  
12 **Property**

13 In the instant petition, Ms. Dolch asserts that Mr. Sykes  
14 took, appropriated, obtained, or retained artwork and antiques,  
15 stocks, bonds, cash, and real property of Thea B. Bacon both for  
16 a wrongful use and with intent to defraud from 1991 forward.  
17 The admitted portions of her trial Exhibit 271 assert that Sykes  
18 acquired real property with asserted value of \$10,750,000; bonds  
19 and securities valued at \$1,615,256; cash or cash equivalents  
20 from miscellaneous bank account and credit card statements  
21 totaling \$4,570,234<sup>13</sup>; and two transfers of Swiss francs from  
22 Bank Sarasin in the amounts of \$2,514,618 and \$250,000. Ms.

25  
26 <sup>12</sup> Trial testimony of Libby O'Leary, 10/13/2021, R.T. p. 135, L. 1-5.

27 <sup>13</sup> Trial testimony of Sally White, 9/20/2021, R.T. p. 6, L. 6-23 - amounts of  
28 \$1,634,971 from Line 1, p. 4 of 164, \$895,291 from Line 2, p. 4 of 164, and  
\$51,900 from L. 3, p. 5 of 164, all subtracted from L. 3 of p. 1 of 164  
results in the following calculation: \$7,208,396 - \$1,634,971 - \$895,291 -  
\$107,900 = \$4,570,234.



1 White credited \$110,000 to Mr. Sykes based on identified  
2 transactions from him to Thea Bacon, resulting in a total claim  
3 before interest or other punitive damages of \$19,589,481. Mid-  
4 trial, Ms. White compiled a second tally introduced as Exhibit  
5 283 based on testimony offered by Mr. Sykes during trial. Ms.  
6 White testified that she reviewed Mr. Sykes' trial testimony  
7 regarding monies he had received from Ms. Bacon between 1991 and  
8 2017, checked it against her original spreadsheet, excluded  
9 those amounts she could identify as already having been claimed  
10 in Exhibit 271, and totaled the remainder. Exhibit 283 asserts  
11 that Mr. Sykes obtained an additional \$1,815,987 in payments  
12 from Ms. Bacon. As to the particulars of the alleged  
13 transactions, the court finds that in some instances Ms. Dolch's  
14 admitted evidence fails to prove by a preponderance that Mr.  
15 Sykes acquired<sup>14</sup> the asserted property at all, or that the  
16 property has the value that she claims, as detailed below. For  
17 those claims where the court does find that the evidence  
18 demonstrates Mr. Sykes' acquisition of property by a  
19 preponderance, the court will proceed to analyze whether those  
20 acquisitions meet the elements of the causes of action asserted  
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27 <sup>14</sup> The court uses the term "acquired" and "acquisition" as shorthand for the  
28 statutory language of taking, secreting, appropriating, obtaining or  
retaining property for the (perhaps belated) sake of brevity.

1 by Ms. Dolch and the effects of any defenses asserted by Mr.  
2 Sykes.

3           **A. Real property**

4                   **1. 613 Stanford Avenue, Palo Alto**

5           Exhibits 14, 15, 16, and 17 document the acquisition of  
6 this real property by Ms. Bacon in 1994, its subsequent transfer  
7 to Mr. Sykes, and its eventual sale by Mr. Sykes. Exhibit 14  
8 demonstrates that Ms. Bacon acquired the property on August 24,  
9 1994, from the estate of Margaret Patton. Exhibit 15 contains a  
10 sale agreement between Ms. Bacon and Mr. Sykes dated October 8,  
11 1994 by which he agrees to pay her \$400,000 for the property.  
12 The letter purports to be accompanied by a \$60,000 check from  
13 Mr. Sykes' Bank of America account. Both Mr. Sykes' and Ms.  
14 Bacon's notarized signatures appear on the letter, but no copy  
15 of the check is attached. Exhibit 15 also contains a series of  
16 five letters signed by Thea Bacon<sup>15</sup>, dated October 16, 1994, May  
17 8, 1995, October 30, 1995, June 28, 1995, and November 7, 1995.  
18 The letter of May 8, 1995 is accompanied by a photocopy of the  
19 face of a check for \$10,000 drawn on a Bank of America account  
20  
21  
22  
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25 <sup>15</sup> Throughout trial, the court encountered several examples of signatures of  
26 Ms. Bacon that were either authenticated by a witness who saw her sign the  
27 document or contemporaneously notarized and thereby presumptively genuine  
28 pursuant to Evidence Code §§ 664 and 1453. Based on the court's comparison  
of the signatures on the letters in Exhibit 15 to those authenticated  
examples, the court finds under Evidence Code § 1417 that Ms. Bacon signed  
the sale agreement and letters in Exhibit 15.

1 in Mr. Sykes' name and payable to Ms. Bacon. The text of the  
2 letters sequentially acknowledges receipt of the second through  
3 sixth payments on the property from Mr. Sykes to Ms. Bacon. One  
4 of the letters is on stationary printed with Ms. Bacon's home  
5 address at Brewer Drive. Three are generated on stationary  
6 bearing Mr. Sykes' address in Palo Alto. One does not have any  
7 letterhead. Collectively, the letters purport to document  
8 payment of a total of \$165,000 from Mr. Sykes to Ms. Bacon for  
9 the purchase of 613 Stanford Avenue. Exhibit 16 demonstrates  
10 that Ms. Bacon signed a grant deed transferring title to the  
11 property to Mr. Sykes on June 20, 1996, which was recorded on  
12 July 8, 1996. Exhibit 17 demonstrates that Mr. Sykes then  
13 transferred the property to John R. Baumann on November 3, 1997.  
14 Mr. Sykes testified that he sold it for \$460,000. The evidence  
15 demonstrates that Mr. Sykes acquired this property from Ms.  
16 Bacon.

## 20           **2. 610 Dorchester Road, San Mateo**

21           Shelley Avellar testified without corroboration at trial  
22 that Frank Rogers Bacon and Thea Bacon had their wedding at this  
23 property. Mr. Sykes testified that Thea Bacon told him that she  
24 and Frank Rogers Bacon got married at city hall. Exhibits 57  
25 and 58 demonstrate that Mr. Sykes purchased this property from a  
26 Marjorann Stowers on October 3, 2000. He transferred title to  
27  
28

1 the property to his living trust on January 3, 2003. Ms.  
2 Dolch's closing argument asserts that Mr. Sykes admitted that  
3 Thea Bacon bought this property for him, citing to a portion of  
4 the reporter's transcript. The citation is in error, and  
5 actually references testimony by Christopher Polizzi that Ms.  
6 Bacon bought the Dorchester Road property for Mr. Sykes. As  
7 described above, the court found Mr. Polizzi's testimony not  
8 credible in its entirety and accorded it no weight. Mr. Polizzi  
9 was not asked and did not volunteer any foundation for how he  
10 would know who paid for the Dorchester property. Mr. Sykes  
11 testified that Thea Bacon did not buy the property for him or  
12 lend him the money to buy it, and that he did not believe that  
13 she lent him any money to remodel it either. The court  
14 concludes that there is insufficient evidence to prove by a  
15 preponderance that Mr. Sykes acquired this property from Ms.  
16 Bacon.  
17  
18  
19

### 20 **3. 700 Brewer Drive, Hillsborough**

21 The evidence described in the court's factual findings  
22 establishes that on May 14, 2013, Ms. Bacon executed a deed  
23 gifting the Brewer drive residence to Mr. Sykes outright. After  
24 initiation of an APS investigation in 2014, Ms. Bacon and Mr.  
25 Sykes executed a corrective deed reserving a life estate to Ms.  
26  
27  
28

1 Bacon. The evidence establishes that Mr. Sykes obtained this  
2 property from Ms. Bacon.

3 The parties also dispute the value of the Brewer Drive  
4 property. Ms. Dolch, as owner or potential owner of the  
5 property, offered an opinion of value of \$9,000,000 as of the  
6 date of trial. She offered no support other than her asserted  
7 duty to ascertain the value as a basis for her opinion. The  
8 court did not find that opinion persuasive. Mr. Sykes offered  
9 the testimony of Brock Riddle, an experienced residential real  
10 estate appraiser. He appraised the property on or around  
11 February 5, 2020 and opined that it was worth \$6,150,000. The  
12 court found Mr. Riddle's use of neighborhood comparisons fair  
13 and appropriate, and finds that the value of the Brewer Drive  
14 property as of February 5, 2020 was \$6,150,000.  
15  
16  
17

#### 18 **B. Stocks, Bonds, and Securities**

19 Exhibit 271 identifies a total of \$1,615,256 in various  
20 stocks, bonds, and foreign currency that Ms. Bacon gave to Mr.  
21 Sykes.<sup>16</sup> The gifts of stocks and bonds occurred on September 13  
22 and 14, 2004 and were documented in a federal gift tax return  
23 prepared by trial witness Mary Jo Murphy on Ms. Bacon's behalf,  
24 introduced as Exhibit 64. Video deposition testimony of Sally  
25  
26

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27 <sup>16</sup> The court has modified this amount wherever it occurs in response to Ms.  
28 Dolch's objection that the original Tentative and Proposed Statement of  
Decision misidentified the value of the Swiss francs reflected on the 2012  
gift tax return.

1 Megear established that Ms. Bacon caused the transfer of these  
2 assets, valued at the time at \$1,000,000, from her investment  
3 account to an account created for Mr. Sykes so that he could  
4 learn to invest. Exhibit 65, a 2012 gift tax return also  
5 prepared by Ms. Murphy, demonstrates the gift of Swiss francs  
6 from Ms. Bacon to Mr. Sykes. Mr. Sykes does not dispute that he  
7 received these assets, but contests that his acquisition was  
8 wrongful. The court finds that Mr. Sykes acquired the property  
9 from Ms. Bacon.  
10  
11

### 12 C. Artwork and Antiques

13 Exhibit 18 is a collection of documents purporting to  
14 memorialize an agreement between Ms. Bacon and Mr. Sykes to sell  
15 him certain items of furniture, rugs, tapestries, paintings, and  
16 "all objects". As introduced, the exhibit appears to contain  
17 documents that were generated or produced at different times and  
18 combined into a single exhibit. The sixth page of the exhibit,  
19 bearing a Bates stamp DDRS 00312, is a handwritten document  
20 authored and signed by Ms. Bacon<sup>17</sup> dated November 23, 1997  
21 acknowledging receipt of \$100,000 in exchange for all of her  
22 furniture, rugs, tapestries, paintings, and "all objects". It  
23 contains a photocopy of the face of a check dated the same day  
24  
25  
26  
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28 <sup>17</sup> The court, as trier of fact, finds that the handwriting is Ms. Bacon's based on comparison of other authenticated exemplars submitted into evidence.

1 for \$100,000 to Ms. Bacon drawn on Mr. Sykes' Bank of America  
2 checking account. Page seven of the exhibit, bearing Bates  
3 stamp DDRS 00313, is a notary acknowledgement of a one-page  
4 document dated November 28, 1997 attesting to Ms. Bacon's proof  
5 of identification and authorship of the one-page document.  
6

7 Based on the Bates stamp numbering of these two pages, and the  
8 absence of consistent Bates stamping on any other page of the  
9 exhibit, the court concludes that the notary acknowledgement in  
10 the exhibit pertains to the handwritten document authored by Ms.  
11 Bacon.  
12

13 The balance of the exhibit consists of five pages: first, a  
14 "Bill of Sale" dated November 24, 1997 and signed by Ms. Bacon;  
15 second, a three-page undated and unsigned list purporting to  
16 itemize the furniture, paintings, and objects of art purchased  
17 by Mr. Sykes from Ms. Bacon and "on loan" to her during her  
18 lifetime with a list of check numbers and amounts; and third, a  
19 single page entitled "Payments: J. Sykes" with a list of dates,  
20 amounts, and check numbers. The dates, amounts, and check  
21 numbers on the list correspond to the check numbers and amounts  
22 on the itemized list of property.  
23  
24

25 The Bill of Sale conveys to the buyer "all of the  
26 furniture, rugs, tapestries and objects of art *presently located*  
27  
28

1 at" Ms. Bacon's residence<sup>18</sup>, "including but not limited to, those  
2 items listed on Exhibit 'A' attached hereto and incorporated  
3 herein." The three-page list of items and list of payments are  
4 not labeled Exhibit A, and the dates on those documents  
5 demonstrate that they were not generated at the same time as the  
6 bill of sale. Ms. Bacon's signature on the bill of sale is  
7 dated November 24, 1997. The list of checks and amounts  
8 documents the \$100,000 paid on 1997, but includes eight more  
9 checks totaling \$84,519 between March 11, 1998 and July 30,  
10 1998. There is no Exhibit A attached to the Bill of Sale from  
11 which the court can determine what property was actually in the  
12 Brewer Drive residence to be conveyed at the time of its  
13 execution.  
14  
15

16 Exhibit 275 consists of a 122-page inventory of personal  
17 property in Ms. Bacon's home at her death. Mr. Sykes was asked,  
18 item by item, to identify which items he asserted were his. The  
19 list contains photographs of most of the items. For the vast  
20 majority of items he indicated that he didn't know, was unsure,  
21 or that he did not claim any interest. Mr. Sykes offered  
22 general testimony that he claimed ownership of some of the items  
23 based on Ms. Bacon's sale of them to him during her lifetime.  
24 For the items Mr. Sykes testified he owns, the court attempted  
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<sup>18</sup> Emphasis added by court.



1 to match each item to the list of items attached to Exhibit 18.  
2 The items to which Mr. Sykes answered "yes" to the question of  
3 ownership and the court's determination regarding whether he  
4 acquired each item are listed as follows:  
5

6 1: a framed 10' x 6'7" equestrian painting with a pack of  
7 hunting hounds by Charles Wellington Furse. Not listed in  
8 Exhibit 18. No specific testimony presented regarding date or  
9 manner of acquisition. The court finds insufficient evidence to  
10 demonstrate that Mr. Sykes has any ownership claim to this  
11 painting based on an inter vivos transfer from Ms. Bacon and  
12 therefore finds insufficient evidence that he acquired it during  
13 Ms. Bacon's lifetime.  
14

15 5: A pair of Chippendale style side chairs, green, circa  
16 19<sup>th</sup> century. Not listed in Exhibit 18. No specific testimony  
17 presented regarding date or manner of acquisition. The court  
18 finds insufficient evidence to demonstrate that Mr. Sykes has  
19 any ownership claim to this item based on an inter vivos  
20 transfer from Ms. Bacon and therefore finds insufficient  
21 evidence that he acquired it during Ms. Bacon's lifetime.  
22

23 8: German baroque chest of three drawers, mahogany and  
24 hardwood. Not listed in Exhibit 18. No specific testimony  
25 presented regarding date or manner of acquisition. The court  
26 finds insufficient evidence to demonstrate that Mr. Sykes has  
27  
28

1 any ownership claim to this item based on an inter vivos  
2 transfer from Ms. Bacon and therefore finds insufficient  
3 evidence that he acquired it during Ms. Bacon's lifetime.

4  
5 9: Pair of Venetian acid-etched armorial mirrors, circa 18<sup>th</sup>  
6 century. Not listed in Exhibit 18. No specific testimony  
7 presented regarding date or manner of acquisition. The court  
8 finds insufficient evidence to demonstrate that Mr. Sykes has  
9 any ownership claim to this item based on an inter vivos  
10 transfer from Ms. Bacon and therefore finds insufficient  
11 evidence that he acquired it during Ms. Bacon's lifetime.  
12

13 10: Louis XV Kingwood Marquetry commode. Not listed in  
14 Exhibit 18. No specific testimony presented regarding date or  
15 manner of acquisition. The court finds insufficient evidence to  
16 demonstrate that Mr. Sykes has any ownership claim to this item  
17 based on an inter vivos transfer from Ms. Bacon and therefore  
18 finds insufficient evidence that he acquired it during Ms.  
19 Bacon's lifetime.  
20

21 11: Irish Chippendale concertina game table, 18<sup>th</sup> century,  
22 mahogany veneer. Not listed in Exhibit 18. No specific  
23 testimony presented regarding date or manner of acquisition.  
24 The court finds insufficient evidence to demonstrate that Mr.  
25 Sykes has any ownership claim to this item based on an inter  
26  
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1 vivos transfer from Ms. Bacon and therefore finds insufficient  
2 evidence that he acquired it during Ms. Bacon's lifetime.

3 12: Queen Anne wing chair, tapestry upholstered with silk  
4 panel sides and back. Not listed in Exhibit 18. No specific  
5 testimony presented regarding date or manner of acquisition.  
6 The court finds insufficient evidence to demonstrate that Mr.  
7 Sykes has any ownership claim to this item based on an inter  
8 vivos transfer from Ms. Bacon and therefore finds insufficient  
9 evidence that he acquired it during Ms. Bacon's lifetime.  
10

11 12: English Queen Anne walnut veneer double arched  
12 secretary. Listed on Exhibit 18 in transaction dated July 30,  
13 1998 at a price of \$7,500. The court finds by a preponderance  
14 of the evidence that Mr. Sykes acquired this item inter vivos  
15 from Ms. Bacon on or about July 30, 1998.  
16

17 16: Japanese export lacquer cabinet on carved giltwood stand.  
18 Not listed in Exhibit 18. No specific testimony presented  
19 regarding date or manner of acquisition. The court finds  
20 insufficient evidence to demonstrate that Mr. Sykes has any  
21 ownership claim to this item based on an inter vivos transfer from  
22 Ms. Bacon and therefore finds insufficient evidence that he  
23 acquired it during Ms. Bacon's lifetime.  
24

25 18: George I Gilt-Gesso side table, circa 1720. Not listed  
26 in Exhibit 18. No specific testimony presented regarding date  
27  
28

1 or manner of acquisition. The court finds insufficient evidence  
2 to demonstrate that Mr. Sykes has any ownership claim to this  
3 item based on an inter vivos transfer from Ms. Bacon and  
4 therefore finds insufficient evidence that he acquired it during  
5 Ms. Bacon's lifetime.  
6

7 28: Pair of polychrome Faience lidded urns with animal  
8 finials, 22" high. Not listed in Exhibit 18. No specific  
9 testimony presented regarding date or manner of acquisition.  
10 The court finds insufficient evidence to demonstrate that Mr.  
11 Sykes has any ownership claim to this item based on an inter  
12 vivos transfer from Ms. Bacon and therefore finds insufficient  
13 evidence that he acquired it during Ms. Bacon's lifetime.  
14

15 41: Pressed gilt brass photograph frame with fruit at top.  
16 Not listed in Exhibit 18. No specific testimony presented  
17 regarding date or manner of acquisition. The court finds  
18 insufficient evidence to demonstrate that Mr. Sykes has any  
19 ownership claim to this item based on an inter vivos transfer  
20 from Ms. Bacon and therefore finds insufficient evidence that he  
21 acquired it during Ms. Bacon's lifetime.  
22  
23

24 46: Four sterling silver gold gilt tapersticks. Not listed  
25 in Exhibit 18. No specific testimony presented regarding date  
26 or manner of acquisition. The court finds insufficient evidence  
27 to demonstrate that Mr. Sykes has any ownership claim to this  
28

1 item based on an inter vivos transfer from Ms. Bacon and  
2 therefore finds insufficient evidence that he acquired it during  
3 Ms. Bacon's lifetime.

4  
5 62: Gobelins or Beauvais Aubusson tapestry, French, circa  
6 1650-1700 celebrating Louis XIV and depicting a military  
7 campaign. Listed in Exhibit 18 in the November 24, 1997  
8 transaction. The court finds by a preponderance of the evidence  
9 that Mr. Sykes acquired this item inter vivos from Ms. Bacon on  
10 November 24, 1997.

11  
12 63: Pair of sterling silver tapersticks, circa 1735,  
13 London, England. Exhibit 18 lists two silver English  
14 tapersticks purchased on July 30, 1998. The court finds by a  
15 preponderance of the evidence that Mr. Sykes acquired this item  
16 inter vivos from Ms. Bacon on or about July 30, 1998.

17  
18 66: English Georgian walnut candlestand. Exhibit 18 lists  
19 a tripod candlestick table with a rectangular top, which is  
20 consistent with the photograph of the item in Exhibit 275. The  
21 court finds by a preponderance of the evidence that Mr. Sykes  
22 acquired this item inter vivos from Ms. Bacon on or about July  
23 30, 1998.

24  
25 73: John Chin Young framed painting of a horse, oil on  
26 canvas. Exhibit 18 lists a John Young painting of a red horse.  
27 Exhibit 275 was produced in black and white, but based on the  
28

1 photograph of the item the court finds by a preponderance of the  
2 evidence that Mr. Sykes acquired this item from Ms. Bacon inter  
3 vivos on April 3, 1998.

4  
5 74: Reproduction Jupe table, mahogany, round. Not listed  
6 in Exhibit 18. No specific testimony presented regarding date  
7 or manner of acquisition. The court finds insufficient evidence  
8 to demonstrate that Mr. Sykes has any ownership claim to this  
9 item based on an inter vivos transfer from Ms. Bacon and  
10 therefore finds insufficient evidence that he acquired it during  
11 Ms. Bacon's lifetime.

12  
13 75: English Wake/Hunt table - drop leaf swing leg table.  
14 There is a "round English Drop Leaf Table" described on Exhibit  
15 18. This item is specifically described as a "wake" or "hunt"  
16 table, and Exhibit 18 specifies "Wake" table in other instances  
17 where that style of table is meant. Based on the ambiguity, the  
18 court is unable to conclude by a preponderance of the evidence  
19 that this table is the same item. The court finds insufficient  
20 evidence to demonstrate that Mr. Sykes has any ownership claim  
21 to this item based on an inter vivos transfer from Ms. Bacon and  
22 therefore finds insufficient evidence that he acquired it during  
23 Ms. Bacon's lifetime.

24  
25  
26 76: Chinese 12-panel lacquer and carved screen. This item  
27 is listed on Exhibit 18. The court finds by a preponderance of  
28

1 the evidence that Mr. Sykes acquired this item inter vivos from  
2 Ms. Bacon on May 13, 1998.

3         77: Irish mahogany carved console table. Not listed in  
4 Exhibit 18. No specific testimony presented regarding date or  
5 manner of acquisition. The court finds insufficient evidence to  
6 demonstrate that Mr. Sykes has any ownership claim to this item  
7 based on an inter vivos transfer from Ms. Bacon and therefore  
8 finds insufficient evidence that he acquired it during Ms.  
9 Bacon's lifetime.  
10

11         85: Georgian giltwood mirror, described as flanked by Hoho  
12 birds. There is a Hoho mirror described on Exhibit 18, but Mr.  
13 Sykes' testimony identified two items from Exhibit 275 that fit  
14 that description. Based on the price listed in Exhibit 18, the  
15 court concludes that the preponderance of the evidence supports  
16 the determination that item 217 discussed below is the Hoho  
17 mirror Mr. Sykes acquired from Ms. Bacon on April 25, 1998.  
18 Since Exhibit 18 lists only one Hoho mirror, the court finds  
19 insufficient evidence to demonstrate that Mr. Sykes has any  
20 ownership claim to this item based on an inter vivos transfer  
21 from Ms. Bacon and therefore finds insufficient evidence that he  
22 acquired it during Ms. Bacon's lifetime.  
23

24         94: Twelve Chinese 18<sup>th</sup> century screen panels, 8' x 24".  
25 Not listed in Exhibit 18. No specific testimony presented  
26  
27  
28

1 regarding date or manner of acquisition. The court finds  
2 insufficient evidence to demonstrate that Mr. Sykes has any  
3 ownership claim to this item based on an inter vivos transfer  
4 from Ms. Bacon and therefore finds insufficient evidence that he  
5 acquired it during Ms. Bacon's lifetime.  
6

7 95: Italian library table. Not listed in Exhibit 18. No  
8 specific testimony presented regarding date or manner of  
9 acquisition. The court finds insufficient evidence to  
10 demonstrate that Mr. Sykes has any ownership claim to this item  
11 based on an inter vivos transfer from Ms. Bacon and therefore  
12 finds insufficient evidence that he acquired it during Ms.  
13 Bacon's lifetime.  
14

15 96: Large bronze wild cat. This item is listed on Exhibit  
16 18. The court finds by a preponderance of the evidence that Mr.  
17 Sykes acquired this item from Ms. Bacon inter vivos on August 1,  
18 1998.  
19

20 99: Tapestry upholstered English Georgian settee. Not  
21 listed in Exhibit 18. No specific testimony presented regarding  
22 date or manner of acquisition. The court finds insufficient  
23 evidence to demonstrate that Mr. Sykes has any ownership claim  
24 to this item based on an inter vivos transfer from Ms. Bacon and  
25 therefore finds insufficient evidence that he acquired it during  
26 Ms. Bacon's lifetime.  
27  
28



1           103: Neoclassical Bureau plat. Not listed in Exhibit 18.  
2 No specific testimony presented regarding date or manner of  
3 acquisition. The court finds insufficient evidence to  
4 demonstrate that Mr. Sykes has any ownership claim to this item  
5 based on an inter vivos transfer from Ms. Bacon and therefore  
6 finds insufficient evidence that he acquired it during Ms.  
7 Bacon's lifetime.  
8

9           104: Italian Louis XV parquetry bureau plat. Not listed  
10 in Exhibit 18. No specific testimony presented regarding date  
11 or manner of acquisition. The court finds insufficient evidence  
12 to demonstrate that Mr. Sykes has any ownership claim to this  
13 item based on an inter vivos transfer from Ms. Bacon and  
14 therefore finds insufficient evidence that he acquired it during  
15 Ms. Bacon's lifetime.  
16  
17

18           112: Queen Anne Japanned English tall case clock. This  
19 item is listed on Exhibit 18. The court finds by a  
20 preponderance of the evidence that Mr. Sykes acquired this item  
21 inter vivos from Ms. Bacon on March 18, 1998.  
22

23           115: Boulle style bracket clock. Not listed in Exhibit  
24 18. No specific testimony presented regarding date or manner of  
25 acquisition. The court finds insufficient evidence to  
26 demonstrate that Mr. Sykes has any ownership claim to this item  
27 based on an inter vivos transfer from Ms. Bacon and therefore  
28

1 finds insufficient evidence that he acquired it during Ms.  
2 Bacon's lifetime.

3           116: Georgian mahogany drop leaf table. There is a round  
4 English drop leaf table described on Exhibit 18, but the table  
5 pictured under this item number on Exhibit 275 does not appear  
6 to be fully round. Based on the inconsistent description, the  
7 court finds insufficient evidence to demonstrate that Mr. Sykes  
8 has any ownership claim to this item based on an inter vivos  
9 transfer from Ms. Bacon and therefore finds insufficient  
10 evidence that he acquired it during Ms. Bacon's lifetime.  
11  
12

13           119: John Chin Young graphite and colored pencil on paper  
14 depiction of a horse. Exhibit 18 describes two works by John  
15 Young - one of a red horse, already listed in item 73 above, and  
16 another of a woman. The court finds insufficient evidence to  
17 demonstrate that Mr. Sykes has any ownership claim to this  
18 painting based on an inter vivos transfer from Ms. Bacon and  
19 therefore finds insufficient evidence that he acquired it during  
20 Ms. Bacon's lifetime.  
21  
22

23           124: Oil on canvas portrait of five hunting dogs, signed  
24 M. North. Not listed in Exhibit 18. No specific testimony  
25 presented regarding date or manner of acquisition. The court  
26 finds insufficient evidence to demonstrate that Mr. Sykes has  
27 any ownership claim to this painting based on an inter vivos  
28

1 transfer from Ms. Bacon and therefore finds insufficient  
2 evidence that he acquired it during Ms. Bacon's lifetime.

3       128: Oil on canvas painting titled *A Couple of Hounds*,  
4 John Emms. Not listed in Exhibit 18. No specific testimony  
5 presented regarding date or manner of acquisition. The court  
6 finds insufficient evidence to demonstrate that Mr. Sykes has  
7 any ownership claim to this painting based on an inter vivos  
8 transfer from Ms. Bacon and therefore finds insufficient  
9 evidence that he acquired it during Ms. Bacon's lifetime.  
10

11       130: Oil on board untitled painting of fir trees by  
12 William Herbert "Buck" Dunton. This item appears to be listed  
13 on Exhibit 18 as "1 Painting (Herbert Duncon). The court finds  
14 that it is more likely than not that this item is the same item  
15 referred to in Exhibit 18, and therefore concludes by a  
16 preponderance of the evidence that Mr. Sykes acquired this item  
17 inter vivos from Ms. Bacon on July 30, 1998.  
18

19       135: Pair of Canosan ceramic polo ponies, circa 270-200  
20 BC. Not listed in Exhibit 18. No specific testimony presented  
21 regarding date or manner of acquisition. The court finds  
22 insufficient evidence to demonstrate that Mr. Sykes has any  
23 ownership claim to this work based on an inter vivos transfer  
24 from Ms. Bacon and therefore finds insufficient evidence that he  
25 acquired it during Ms. Bacon's lifetime.  
26  
27  
28

1           145: John Chin Young framed watercolor on handmade paper  
2 depicting a horse. Exhibit 18 describes two works by John Young  
3 - one of a red horse, already listed in item 73 above, and  
4 another of a woman. The court finds insufficient evidence to  
5 conclude that this item was acquired inter vivos by Mr. Sykes  
6 from Ms. Bacon.

8           146: Chinese painting on paper depicting Pekingese dogs.  
9 Listed on Exhibit 18. The court concludes by a preponderance of  
10 the evidence that Mr. Sykes acquired this item inter vivos from  
11 Ms. Bacon on November 24, 1997.

13           147: John Chin Young, oil on canvas, seated woman with a  
14 "horse-like" face. This item is listed on Exhibit 18. The  
15 court concludes by a preponderance of the evidence that Mr.  
16 Sykes acquired this item inter vivos from Ms. Bacon on April 3,  
17 1998.

19           149: Angel Botello painting, oil on canvas, depicting head  
20 of a woman. Exhibit 18 lists one Botello painting purchased by  
21 Mr. Sykes from Ms. Bacon for \$5,000 on April 3, 1998, but  
22 contains no further identifying description. Exhibit 275 lists  
23 multiple Botello paintings. The court finds insufficient  
24 evidence to demonstrate that Mr. Sykes has any ownership claim  
25 to this painting based on an inter vivos transfer from Ms. Bacon  
26  
27  
28

1 and therefore finds insufficient evidence that he acquired it  
2 during Ms. Bacon's lifetime.

3         150: Angel Botello painting, oil on canvas, depicting girl  
4 with a bird. Exhibit 18 lists one Botello painting purchased by  
5 Mr. Sykes from Ms. Bacon for \$5,000 on April 3, 1998, but  
6 contains no further identifying description. Exhibit 275 lists  
7 multiple Botello paintings. The court finds insufficient  
8 evidence to demonstrate that Mr. Sykes has any ownership claim  
9 to this painting based on an inter vivos transfer from Ms. Bacon  
10 and therefore finds insufficient evidence that he acquired it  
11 during Ms. Bacon's lifetime.

12         151: Self-portrait entitled *The Heart of the Matter* by  
13 Antoinette Von Grone. Antoinette Von Grone testified at trial.  
14 She testified to multiple occasions where she saw Ms. Bacon and  
15 Mr. Sykes, and to Ms. Bacon's acquisition of various pieces of  
16 art from her. She was not asked about this piece. The work was  
17 created in 2002, so it could not have been transferred to Mr.  
18 Sykes by Exhibit 18. Mr. Sykes did not offer any specific  
19 testimony about why he claimed to own this work. The court  
20 finds insufficient evidence to demonstrate that Mr. Sykes has  
21 any ownership claim to this painting based on an inter vivos  
22 transfer from Ms. Bacon and therefore finds insufficient  
23 evidence that he acquired it during Ms. Bacon's lifetime.  
24  
25  
26  
27  
28

1           190: Northern Italian or Southern German Rococo pierced  
2 giltwood mirror. Not listed in Exhibit 18. No specific  
3 testimony presented regarding date or manner of acquisition.  
4 The court finds insufficient evidence to demonstrate that Mr.  
5 Sykes has any ownership claim to this mirror based on an inter  
6 vivos transfer from Ms. Bacon and therefore finds insufficient  
7 evidence that he acquired it during Ms. Bacon's lifetime.  
8

9           204: Haji Jalili carpet, northwest Iran, circa 1880.  
10 Exhibit 18 lists two "Persian rugs", and one "Large Persian rug"  
11 with no further descriptors. Exhibit 275 demonstrates that Ms.  
12 Bacon owned at least thirteen rugs whose appearance would fall  
13 under a lay witness's rubric of "Persian". Neither party  
14 produced evidence distinguishing which "Persian" rugs were  
15 referenced in Exhibit 18, and Mr. Sykes asserted ownership of  
16 more rugs than are listed on Exhibit 18 with no specific  
17 testimony as to how he acquired any particular rug. The court  
18 finds insufficient evidence to demonstrate that Mr. Sykes has  
19 any ownership claim to this item based on an inter vivos  
20 transfer from Ms. Bacon and therefore finds insufficient  
21 evidence that he acquired it during Ms. Bacon's lifetime.  
22

23           207: Turkish Ushak carpet, last quarter 19<sup>th</sup> century. For  
24 the same reasons described on item 204, the court finds  
25 insufficient evidence to demonstrate that Mr. Sykes has any  
26  
27  
28

1 ownership claim to this item based on an inter vivos transfer  
2 from Ms. Bacon and therefore finds insufficient evidence that he  
3 acquired it during Ms. Bacon's lifetime.

4  
5 208: Bijar carpet described as red, ivory, and shades of  
6 blues, teal and gold with a dark blue geometric floral and  
7 foliate border. For the same reasons described on item 204, the  
8 court finds insufficient evidence to demonstrate that Mr. Sykes  
9 has any ownership claim to this item based on an inter vivos  
10 transfer from Ms. Bacon and therefore finds insufficient  
11 evidence that he acquired it during Ms. Bacon's lifetime.

12  
13 213: Sultanabad "Mahal" carpet, northwest Iran, last  
14 quarter 19<sup>th</sup> century. For the same reasons described on item  
15 204, the court finds insufficient evidence to demonstrate that  
16 Mr. Sykes has any ownership claim to this item based on an inter  
17 vivos transfer from Ms. Bacon and therefore finds insufficient  
18 evidence that he acquired it during Ms. Bacon's lifetime.

19  
20 216: Mahal carpet, northwest Iran, circa 1910, midnight  
21 blue floral border framing ivory, pink, shades of blue and green  
22 on crimson red ground. For the same reasons described on item  
23 204, the court finds insufficient evidence to demonstrate that  
24 Mr. Sykes has any ownership claim to this item based on an inter  
25 vivos transfer from Ms. Bacon and therefore finds insufficient  
26 evidence that he acquired it during Ms. Bacon's lifetime.  
27  
28

1           217: Georgian style mirror, 19<sup>th</sup> century, flanked by Ho-ho  
2 birds. This item is listed on Exhibit 18. The court finds by a  
3 preponderance of the evidence that Mr. Sykes acquired this item  
4 inter vivos from Ms. Bacon on April 25, 1998.  
5

6           All guitars - Exhibit 275 contains a single page  
7 spreadsheet listing 23 guitars, 11 empty guitar cases, and an  
8 amplifier. The descriptions of the guitars (electric, Fenders,  
9 Les Paul) on the inventory are consistent with use of the  
10 guitars for rock and roll style music rather than classical  
11 guitar. Mr. Sykes testified that he purchased all of these  
12 items with his own funds and that Ms. Bacon permitted him to  
13 store them on her property. Based on the complete absence of  
14 evidence that Ms. Bacon ever expressed any interest in rock  
15 music or collected musical instruments, the court finds Mr.  
16 Sykes' testimony on this point credible. Ms. Dolch introduced  
17 no evidence from which the court could draw any conclusion about  
18 when Mr. Sykes acquired each guitar or what funds he used to  
19 acquire them. The court finds insufficient evidence to  
20 demonstrate wrongful acquisition of any of these items.  
21  
22

23           All motorcycles - Exhibit 275 lists three motorcycles,  
24 including a 1959 Indian Chief by Royal Enfield referenced in Ms.  
25 Broadbeck's testimony. In summary, Ms. Broadbeck testified that  
26 she returned to the Brewer Drive residence to work at a time  
27  
28



1 that Mr. Sykes did not expect her, and he told her that he was  
2 awaiting delivery of the Indian motorcycle. He asked her not to  
3 tell Ms. Bacon about it. Based on Ms. Broadbeck's testimony  
4 providing evidence of the timing of the acquisition of the  
5 motorcycle, and the evidence presented that at the time of the  
6 acquisition of the motorcycle Mr. Sykes was receiving large  
7 transfers of funds from Ms. Bacon's accounts, the court finds  
8 sufficient evidence to conclude by a preponderance that Mr.  
9 Sykes acquired these items by use of funds he acquired from Ms.  
10 Bacon.  
11  
12

13 Exhibit 275 contains a single page spreadsheet of paintings  
14 and prints not valued by the appraiser who inventoried Ms.  
15 Bacon's fine art and furniture. Of these items, Mr. Sykes  
16 testified that he claimed to own a striped, overlaid, black-ink  
17 water color Japanese print; 10 Kiyoko abstracts, and one work by  
18 Kyuko Kusuda. As to these items, Mr. Sykes testified that he  
19 purchased them directly from the artist with his own money, and  
20 that he never charged Ms. Bacon for them. The court finds that  
21 testimony credible. The court finds insufficient evidence to  
22 conclude that Mr. Sykes acquired these items from Ms. Bacon or  
23 in a manner constituting elder abuse.  
24  
25

26 Exhibit 275, page 116 (on the lower right corner of the  
27 page) has a table labeled "miscellaneous" describing various  
28

1 clothing and luggage. Mr. Sykes identified "men's tie cabinet -  
2 20 silk ties", "rugs (8)" and some unspecified portion of the  
3 eight "clothes closets filled with assorted clothes and shoes"  
4 as his. Based on the evidence that established that Mr. Sykes  
5 lived in Ms. Bacon's home from 2009 until his exclusion by  
6 restraining order in 2018, the court finds his testimony  
7 claiming the ownership of men's ties and various men's clothing  
8 and shoes located in Ms. Bacon's residence credible. The  
9 inventory identifies by brand certain items that might be  
10 valuable based on designer (e.g. Louis Vuitton luggage), but  
11 makes no attempt to attach either individual or collective value  
12 to the clothing, shoes, or ties described. The court concludes  
13 by that omission that the clothing is not asserted to be of  
14 substantial value. Even assuming that Ms. Bacon bought Mr.  
15 Sykes every piece of men's clothing, shoes, or ties found in her  
16 closets, the evidence demonstrates that he lived with her for a  
17 period of nine years and that she had trust income exceeding  
18 \$500,000 annually in all of those years. Gifts of ready-to-wear  
19 clothing and shoes would not have caused her financial harm.  
20 The court does not find sufficient evidence to demonstrate that  
21 Mr. Sykes acquired the men's clothing, ties, and shoes listed in  
22 this inventory by any means that would constitute financial  
23 elder abuse.  
24  
25  
26  
27  
28

1           **D. Cash and cash equivalents**

2           The admitted portions of Exhibit 271 describe five  
3 categories of cash and cash equivalents under Schedule C for  
4 which Ms. Dolch claims Mr. Sykes wrongfully acquired Ms. Bacon's  
5 property. Those categories are described on page 4 of Exhibit  
6 271 as follows:  
7

- 8           1. "Bank Accounts - Funds to J. Sykes" in the amount of  
9           **\$1,638,322.**

10           These were transactions that Ms. White identified in Ms.  
11 Bacon's bank records where transfers of funds were made to Mr.  
12 Sykes by check or to an account titled in his name. The court  
13 finds that the evidence demonstrates to a preponderance standard  
14 that Mr. Sykes received some of those funds from Ms. Bacon. Mr.  
15 Sykes objected generally to the court's acceptance of Ms.  
16 White's calculations without individual analysis of each check.  
17 Of the total amount claimed in this category, Mr. Sykes also  
18 specifically objected to the court's inclusion of \$457,822. The  
19 court finds parts of both objections meritorious and has  
20 modified its conclusion to eliminate the following claimed  
21 amounts from its award: \$189,922 from Schedule C-6 of Exhibit  
22 271, both because the funds were withdrawn from a jointly titled  
23 account and because the transactions at issue occurred between  
24 2007 and 2009 in a time frame before the court concluded that  
25  
26  
27  
28

1 the evidence demonstrated any impairment to Ms. Bacon's ability  
2 to attend to and manage her own financial affairs; \$51,900 from  
3 Schedule C-3 of Exhibit 271, because that schedule was not  
4 admitted into evidence based on the lack of the foundational  
5 bank records; and \$178,032.23 of \$216,000 included in Ms.  
6 White's calculation. Schedule C-10 of Exhibit 271 demonstrates  
7 that one day after Mr. Sykes transferred the \$216,000 with the  
8 memo line "auction" from Ms. Bacon's account, his account was  
9 debited \$178,032.23 to Bonhams & Butler Fields, an art auction  
10 dealer. This evidence corroborates Mr. Sykes' contention that  
11 the debited funds were used to acquire artwork on behalf of Ms.  
12 Bacon, and the court therefore finds that Ms. Dolch failed in  
13 her burden of proof to demonstrate that the entirety of these  
14 funds were acquired wrongfully.

15  
16  
17  
18 The court reviewed all of the individual transactions  
19 reflected in Schedules C-1 and C-2 claimed by Ms. Dolch to be  
20 wrongful. There were a total of eight transactions from an  
21 account ending in x1201 reflected in Schedule C-1 of Exhibit  
22 271. Of those, the only transaction the court modified based on  
23 Mr. Sykes' objection was the \$216,000 amount referenced above.  
24 There were a total of seven transactions reflected in Schedule  
25 C-2 from an account ending x4152. Three of those transactions  
26 reflected payments of \$20,800 to Mr. Sykes, and one was a  
27  
28

1 payment of \$41,600 (or 2x \$20,800) to Mr. Sykes. The trial  
2 testimony established that Ms. Bacon, Mark Brodka, and Albert  
3 Bartridge met at one point during the dispute over discretionary  
4 principal distributions from the Frank Rogers Bacon Trust and  
5 that the amount of \$20,800 in compensation to Mr. Sykes as  
6 monthly compensation for the services he provided to her was  
7 agreed on as a part of the monthly budget that Ms. Bacon was to  
8 provide to the trust to document her expenses. Schedule C-2  
9 demonstrates that Mr. Sykes received one payment of \$20,800 in  
10 January 2016, two in April 2016, and a payment of \$41,600 on May  
11 31, 2016. Those payments total five payments of \$20,800 over  
12 the course of those five months of \$20,800. Based on the trial  
13 evidence, the court concludes that as to those transactions Ms.  
14 Dolch has failed in her burden of proof to demonstrate that they  
15 were wrongful on Mr. Sykes' behalf, since the payments were made  
16 with the knowledge and apparent consent not only of Ms. Bacon  
17 but of the then-acting co-trustee of the Frank Rogers Bacon  
18 trust from which the funds originated. The court has deducted  
19 \$104,000 from the original damage amount based on these  
20 transactions in response to Mr. Sykes' objections.

21  
22  
23  
24  
25 Based on the above deductions, the court finds that Mr.  
26 Sykes acquired \$1,094,467.77 in funds from Ms. Bacon via check  
27 withdrawal.  
28

1           2. "Bank Accounts - Unexplained Withdrawals" in the amount  
2           of \$1,771,321.

3           The admitted portions of Exhibit 271 include sub-schedules  
4           for various bank accounts titled in Ms. Bacon's name. For each  
5           account, Ms. White testified that she reviewed the bank records  
6           and compiled the sub-schedules reflecting withdrawals from each  
7           account. She further testified that for those transactions  
8           where she could not identify the payee of a particular  
9           transaction (e.g. circumstances where a bank statement reflected  
10          a withdrawal but no check image or payee was available), and Mr.  
11          Sykes' accounting in Exhibit 110 did not include reference to  
12          the transaction or an explanation of its purpose, she included  
13          it in her damage analysis as an amount acquired by Mr. Sykes.<sup>19</sup>

14          The transactions in this category were all conducted by  
15          check where no check images were provided in the bank records  
16          and no payees were listed on the statements. There is simply no  
17          evidence to demonstrate that Mr. Sykes actually received any of  
18          the funds in this category. The court finds insufficient  
19          evidence to conclude by a preponderance that Mr. Sykes acquired  
20          any of the funds claimed in this category.

21           3. "Bank Accounts - Legal Fees" in the amount of \$108,603  
22  
23  
24

25  
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27  
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<sup>19</sup> Testimony of Sally White, 9/20/2021, R.T. p. 36, L.17 to p. 38, L. 21.

1           The admitted portions of Exhibit 271 show amounts expended  
2 from Ms. Bacon's bank accounts to the following lawyers or law  
3 firms: Henry Eavey, Barulich Dugoni Law Group, McGlashan &  
4 Sarrail, and Aaron, Riechert, Carpol & Riffle (hereinafter  
5 ARCR). Ms. Dolch testified in response to the court's question  
6 that the information she was provided regarding what services  
7 were for Ms. Bacon's benefit and which were to be included in  
8 the damage analysis was based on unspecified input from Ms.  
9 Dolch's counsel's office about the nature of the services  
10 performed. The damage analysis includes \$1,431 in fees to Henry  
11 Eavey paid on December 1, 2014; a total of \$33,468 for fees paid  
12 to Barulich Dugoni Law Group from November 3, 2014 to May 22,  
13 2015; \$1,615 for fees paid to McGlashan & Sarrail on March 17,  
14 2015; and the balance of \$72,089 for fees paid to ARCR. The  
15 evidence demonstrates that the fees paid to ARCR were for Ms.  
16 Rowe's services. The fees to Barulich Dugoni Law Group were for  
17 Mr. Barulich's representation in the 2014 APS investigation,  
18 trust amendment, and corrective deed. The court finds based on  
19 Mr. Eavey's testimony regarding his representation that the fees  
20 billed on December 1, 2014 likely related to his preparation of  
21 the gift deed and occupancy agreement.  
22

23           The court concludes that the evidence does not show that  
24 Mr. Sykes acquired any of these funds within the meaning of  
25  
26  
27  
28

1 Welfare and Institutions Code § 15610.30(a). The funds were  
2 paid to the various law firms or attorneys for legal services  
3 provided to Ms. Bacon. As to at least two of the legal  
4 providers, the evidence is also insufficient to demonstrate by a  
5 preponderance that the services provided benefitted Mr. Sykes to  
6 Ms. Bacon's detriment, or that they did not benefit Ms. Bacon.  
7 The record is simply silent as to what services McGlashan &  
8 Sarrail provided to either Mr. Sykes or Ms. Bacon. The evidence  
9 affirmatively demonstrates that Mr. Barulich's services  
10 benefitted Ms. Bacon to Mr. Sykes' detriment. Ms. Dolch's  
11 closing argument devotes substantial time to describing the ways  
12 in which Mr. Barulich's investigation of Ms. Bacon's competency  
13 and action to obtain the corrective deed were perceived by Mr.  
14 Sykes as "adverse" to him. Mr. Sykes' surreptitiously authored  
15 correspondence as "TBB" to Ms. Rowe was also highly critical of  
16 Mr. Barulich's representation. The court finds insufficient  
17 evidence to support the inclusion of fees to either McGlashan &  
18 Sarrail or the Barulich Dugoni Law Group in Ms. Dolch's damage  
19 claim for any cause of action.  
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24 The evidence regarding Mr. Sykes' conduct in driving Ms.  
25 Bacon to Mr. Eavey's office for execution of the gift deed of  
26 the Brewer residence in his favor at a time when Mr. Eavey  
27 represented both of them and when the evidence establishes that  
28



1 she lacked both testamentary and contractual capacity, and his  
2 e-mail impersonation of Ms. Bacon in correspondence with Ms.  
3 Rowe during the ARCR representation will be discussed in the  
4 court's analysis of Ms. Dolch's fraud claim below.

6 **4. "Bank Accounts - TB Bacon" in the amount of \$1,153,500.**

7 Exhibit 271 demonstrates a number of transactions where  
8 checks made payable to Ms. Bacon herself were negotiated. In  
9 this category of transactions, Ms. White was instructed to  
10 assume that where a check was negotiated with Ms. Bacon as a  
11 payee, and she could not trace the re-deposit of cash to any of  
12 Ms. Bacon's accounts, and Mr. Sykes' accounting in Exhibit 110  
13 did not explain the transaction, she was to include that  
14 withdrawal in her damage analysis as attributable to Mr. Sykes.  
15

16 The court finds that in this category, the trial evidence  
17 fails to demonstrate by a preponderance that Mr. Sykes received  
18 the funds attributed to him in Ms. White's analysis in whole or  
19 in part. Angela Broadbeck and Anna Gomez testified that they  
20 both worked at various points in Ms. Bacon's household as her  
21 part-time personal secretaries. The court found their testimony  
22 credible. Ms. Gomez worked for Ms. Bacon for a period of five  
23 years starting in 2004. When she started, she worked for Ms.  
24 Bacon three days per week. By the time she left Ms. Bacon's  
25 employ in 2009, she had another primary job and worked only on  
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1 Friday afternoons. Ms. Broadbeck's weekly schedule varied over  
2 her two different periods of employment with Ms. Bacon. Ms.  
3 Broadbeck could not recall the exact dates of her employment  
4 with Ms. Bacon. She was certain she ended her second stint  
5 working for Ms. Bacon in November 2014, and believed she first  
6 began working for Ms. Bacon in November of either 2009 or 2010.  
7 The court finds it more probable that she began work in 2009  
8 based on both her and Ms. Gomez's testimony about the number of  
9 secretaries Ms. Bacon had and their respective duties. During  
10 her first stint with Ms. Bacon, Ms. Broadbeck worked for five or  
11 six months before she was told by Mr. Sykes that Ms. Bacon was  
12 cutting back on her household employees and Ms. Broadbeck's  
13 services wouldn't be needed anymore. She estimated that it was  
14 about eight months before she returned to work for Ms. Bacon.  
15 At one point she was regularly working for Ms. Bacon for three  
16 days per week, and spent between four and eight hours per work  
17 day in Ms. Bacon's home.

21 Ms. Broadbeck and Ms. Gomez's testimony established that  
22 Ms. Bacon had other household employees, including her long-term  
23 gardener Daniel Torres, a housekeeper who came three times a  
24 week, and a cook who came on Mondays to prepare meals for the  
25 week and leave them in the refrigerator. Mr. Sykes also  
26 testified without contradiction that Ms. Bacon employed a dog  
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28

1 walker for the dog Wrigley, whom they acquired together from the  
2 SPCA in 2010. Both Ms. Broadbeck and Ms. Gomez testified that  
3 they were paid in cash, and that Ms. Bacon paid at least some of  
4 her other household employees in cash. Ms. Broadbeck testified  
5 that Ms. Bacon was the person who paid her. She recalled only  
6 two occasions where Mr. Sykes paid her instead of Ms. Bacon  
7 because Ms. Bacon was asleep when Ms. Broadbeck was ready to  
8 leave for the day. Ms. Gomez testified that Ms. Bacon did not  
9 like to have "any scent of debt", and that she generally paid  
10 the people who worked for her the same day that they worked,  
11 except that she paid the gardener monthly. Ms. Gomez recalled  
12 that Ms. Bacon went to the bank at least weekly for cash during  
13 the time Ms. Gomez worked for her, and there were occasions  
14 where Ms. Gomez drove her to the bank. Ms. Gomez testified that  
15 Ms. Bacon was very "money conscious," liked to have cash around  
16 the house to pay workers who came, and that she had someone  
17 there doing work for her "almost every day of the week".<sup>20</sup>

21 Mr. Sykes' and Ms. Broadbeck's trial testimony also  
22 demonstrated that Mr. Sykes frequently drove Ms. Bacon to the  
23 bank. On occasion, Ms. Broadbeck also drove Ms. Bacon to the  
24 bank to withdraw cash. She testified that "every once in  
25 awhile" when she drove Ms. Bacon to the bank for cash, the bank

28 <sup>20</sup> Testimony of Anna Gomez, 9/30/2021, R.T. p. 165, L. 9 to p. 166, L. 14.

1 manager said that the bank would prefer that Ms. Bacon call  
2 ahead to ensure the bank would have enough cash on hand to  
3 accommodate the size of Ms. Bacon's withdrawals.<sup>21</sup> Ms.  
4 Broadbeck's duties as Ms. Bacon's secretary involved writing or  
5 typing out checks for Ms. Bacon's signature. Ms. Broadbeck  
6 testified that she would prepare and Ms. Bacon would sign checks  
7 made out to Mr. Sykes, often in the amount of \$10,000, so that  
8 Mr. Sykes could go to the bank and get cash for Ms. Bacon at Ms.  
9 Bacon's request.  
10  
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12 Ms. Broadbeck and Ms. Gomez both testified to Ms. Bacon's  
13 daily activities. Ms. Broadbeck's testimony demonstrated a  
14 change in Ms. Bacon's level of energy and attentiveness over  
15 time. During Ms. Gomez's tenure of employment between 2004 and  
16 2009, she described that Ms. Bacon wanted bills paid promptly,  
17 usually the same day they arrived. She would review the bills  
18 and Ms. Gomez would write out the checks for Ms. Bacon's  
19 signature and take them to the post office after they were  
20 signed. Ms. Gomez described Ms. Bacon as being in the office  
21 every day, calling people, contacting people, and "working" even  
22 though she wasn't involved in her interior design business  
23 anymore. During Ms. Gomez's employment she observed Ms. Bacon  
24 attentively reading investment and financial publications,  
25  
26  
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28 <sup>21</sup> Testimony of Angela Broadbeck, 9/21/2021, R.T. p. 75, L. 9-14.

1 including underlining and highlighting various points in the  
2 articles. During that time period she had frequent visits from  
3 neighbors and friends for tea, as well as frequent lunches at  
4 her social clubs.  
5

6 Ms. Broadbeck testified that at the beginning of her  
7 employment with Ms. Bacon, Ms. Bacon spent a lot of time in the  
8 office with Ms. Broadbeck. During that period she also still  
9 left the house at times to go to appointments or lunches at the  
10 country club, or to dinner at the club after walking the dogs  
11 with Mr. Sykes. Ms. Broadbeck testified that as time went on,  
12 Ms. Bacon suffered more and more from dizziness. During the  
13 last year and a half to two years of Ms. Broadbeck's employment,  
14 Ms. Bacon spent more of her time lying down on a sofa in the  
15 library of her home. She also took less interest in the bill-  
16 paying process. When Ms. Broadbeck began working for Ms. Bacon,  
17 she testified that Ms. Bacon wanted to review each bill with the  
18 check that was presented for her signature. As time passed,  
19 there were only certain bills she wanted to see and with the  
20 others she began just signing the checks.<sup>22</sup> By 2013 she was no  
21 longer attending her regular holiday events at the country club  
22 in part because of her dizziness.  
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<sup>22</sup> Testimony of Angela Broadbeck, 9/21/2021, R.T. p. 89, L.10-14.

1 Ms. Bacon's secretaries' trial testimony establishes that  
2 for a period spanning ten years, Ms. Bacon employed multiple  
3 household workers that she paid in cash, almost daily, for their  
4 work. Her employees and Mr. Sykes drove her to the bank to get  
5 the cash herself. The pattern of transactions also show a  
6 marked reduction in the frequency of withdrawals after Ms.  
7 Bacon's hip fracture in October 2013, which corresponds with her  
8 decreased ability to leave the house after that point. By  
9 October 2014, the transactions reflecting negotiation of checks  
10 made out to Ms. Bacon on the Boston Private account contained in  
11 sub-schedule C-1 cease entirely, and all such transactions occur  
12 from the Boston Private account labeled "house account"  
13 reflected in sub-schedule C-2. Ms. Broadbeck quit in November  
14 2014. The C-2 sub-schedule reflects that Ms. Bacon's regular  
15 housekeeper, Elisa Reyes; and her gardener, Daniel Torres, were  
16 paid by check from that account after October 2014. The pattern  
17 of Thea Bacon check withdrawals decreases from multiple  
18 withdrawals of \$10,000 or more in a month to a relatively  
19 consistent pattern of withdrawal of \$9,000 spaced approximately  
20 one month apart from June 2015 until the withdrawals in this  
21 category cease entirely in January 2016. The timing  
22 demonstrated by these withdrawals coincides with the reduction  
23 or alternate payment method of Ms. Bacon's household staff. Ms.  
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1 White's assumption that any unexplained checks made out to Ms.  
2 Bacon and negotiated for cash were acquired by Mr. Sykes for a  
3 wrongful purpose is contradicted by trial evidence demonstrating  
4 that at least some of the funds were spent on household  
5 expenses. Ms. Dolch bears the burden of proof, and the court  
6 finds insufficient evidence that the withdrawals in this  
7 category of Exhibit 271 were wrongfully acquired by Mr. Sykes on  
8 any of the legal theories pled in Ms. Dolch's complaint.  
9

10  
11 **5. "Credit Card Charges - Legal Fees" in the amount of**  
12 **\$6,388.**

13 Exhibit 271 shows that all of the claimed charges in this  
14 category were for fees paid to ARCR by use of a credit card,  
15 where the credit card bill was in turn paid from one of Ms.  
16 Bacon's deposit accounts. Discussion of these charges is  
17 included in the court's analysis of Ms. Dolch's fraud claim  
18 below.  
19

20 **6. Amounts on Exhibit 283**

21 Sally White testified that she reviewed transcripts of Mr.  
22 Sykes' trial testimony acknowledging payments received from Ms.  
23 Bacon not reflected in the bank records she used to compile  
24 Exhibit 271. Based on Mr. Sykes' admission of receiving those  
25 payments, the court finds by a preponderance of the evidence  
26  
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28

1 that he acquired funds from Ms. Bacon in the total amount of  
2 \$1,815,987 between November 11, 1991 and November 20, 2017.

3  
4 **II. Causes of Action**

5 **A. Financial Abuse of an Elder Adult**

6 **1. Wrongful Acquisition or Retention of Property (Welfare**  
7 **and Institutions Code § 15610.30(a)(1)), or Assisting**  
8 **in Wrongful Acquisition or Retention of Property**  
9 **(Welfare and Institutions Code § 15610.30(a)(2))**

10 Welfare and Institutions Code § 15610.30(a)(1) and (2)

11 provide that:

12 (a) "Financial abuse" of an elder or dependent adult  
13 occurs when a person or entity does any of the  
14 following:  
15

- 16 (1) Takes, secretes, appropriates, obtains, or  
17 retains real or personal property of an elder or  
18 dependent adult for wrongful use or with intent  
19 to defraud, or both.  
20  
21 (2) Assists in taking, secreting, appropriating,  
22 obtaining, or retaining real or personal property  
23 of an elder or dependent adult for a wrongful use  
24 or with intent to defraud, or both.  
25

26 The Judicial Council of California Civil Jury Instructions  
27 (CACI) 3100 sets forth the following elements for proof of a  
28



1 financial elder abuse claim. First, that Sykes acquired or  
2 assisted in acquiring by any of the listed means the real or  
3 personal property of Thea Bacon. Second, that Thea Bacon was  
4 age 65 or older, or a dependent adult at the time of the  
5 conduct. Third, that Sykes acquired or assisted in acquiring  
6 the property by wrongful use or with intent to defraud. Fourth,  
7 that Thea Bacon was harmed. Fifth, that Sykes' conduct was a  
8 substantial factor in causing Thea Bacon's harm.  
9

10  
11 The court has found above sufficient evidence to  
12 demonstrate by a preponderance Mr. Sykes acquired the following  
13 property from Ms. Bacon at the following times:

- 14 1) The real property located at 613 Stanford Avenue on  
15 October 8, 1994.
- 16 2) The real property located at 700 Brewer Drive on May 14,  
17 2013
- 18 3) Stocks and bonds valued at \$1,000,000 from Ms. Bacon's  
19 Silvercrest investment account on September 13 and 14,  
20 2004
- 21 4) Swiss francs valued at \$615,256 on April 30, 2012
- 22 5) Eleven items of artwork and antiques acquired on and  
23 between November 24, 1997 and August 1, 1998
- 24 6) Three motorcycles acquired between 2009 and 2014  
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1 7) \$1,094,467.77 in funds transferred by check between  
2 February 8, 2012 and May 31, 2016

3 8) Cash or check payments totaling \$1,815,987 from 1991 to  
4 2017 reflected on Exhibit 283.  
5

6 Ms. Bacon was over 65 years old at the time of all of the  
7 transactions identified above. The parties dispute whether the  
8 transactions were either wrongful or done with the intent to  
9 defraud Ms. Bacon, and whether she suffered harm. Since the  
10 court has found that Mr. Sykes acquired all of the above  
11 property directly, if the court finds that the transactions  
12 harmed Ms. Bacon then his conduct would necessarily be a  
13 substantial factor in causing that harm. California Welfare &  
14 Institutions Code § 15610.30(b) provides in relevant part that a  
15 person "shall be deemed to have taken.. property for a wrongful  
16 use, if among other things, the person or entity takes.. the  
17 property and the person or entity knew or should have known that  
18 this conduct is likely to be harmful to the elder or dependent  
19 adult." Neither the code section nor any interpretive case law  
20 specifically define the terms "harm" and "harmful" in the  
21 context of determination of financial elder abuse, requiring the  
22 trier of fact to give the words their ordinary, everyday  
23 meaning. A financial transaction is harmful to someone when it  
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1 causes loss or deprives them of property without fair  
2 compensation for that property.

3           For the transactions identified above in lines 5 and 8, the  
4 court finds that Ms. Dolch has failed to prove that the  
5 transactions harmed Ms. Bacon. As to line five, Mr. Sykes  
6 testified that he paid Ms. Bacon for specific items of property,  
7 and that she set the prices that she wanted for the items.  
8 Exhibit 18, a notarized handwritten document by Ms. Bacon,  
9 acknowledges receipt of \$100,000 in payment for those items and  
10 corroborates Mr. Sykes' testimony that there was an agreement  
11 and that Ms. Bacon received payment. Ms. Dolch has submitted no  
12 evidence to support any contention that the amounts documented  
13 in Exhibit 18 were less than the fair market value of the items  
14 at the time of transfer. She made no attempt to establish their  
15 value at the time of purchase. There is insufficient evidence  
16 for the court to conclude by a preponderance that Mr. Sykes  
17 defrauded Ms. Bacon in this purchase. There is no evidence in  
18 the trial record suggesting that Ms. Bacon, who prior to  
19 marriage operated an antiques business, was mentally incapable  
20 of determining the fair market value of the items she sold at  
21 the time that she sold them. There is no evidence in the trial  
22 record suggesting that Ms. Bacon was infirm, demented, or  
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1 dependent in 1991. Photographic evidence demonstrates she was  
2 still capable of traveling internationally and did so.

3       As to the transactions listed in line 8, Mr. Sykes  
4 testified that the amounts received summarized on Exhibit 283  
5 were reimbursements to him of amounts that he actually paid for  
6 antiques that he acquired for Ms. Bacon. He testified that he  
7 bid on some of those items electronically through the use of  
8 online auction house accounts at Bonham's and Sotheby's. Ms.  
9 Broadbeck confirmed that Ms. Bacon received auction catalogs,  
10 and numerous witnesses testified to her inability with and  
11 aversion to computers. Ms. Bacon would not have bid herself in  
12 an online auction. Mr. Sykes testified extensively under  
13 examination by his own attorney to items that he purchased  
14 through Bonham's and Sotheby's for which the reimbursements were  
15 received. He was unable to match specific purchases to specific  
16 reimbursements either in Exhibit 271 or his own accounting in  
17 Exhibit 110, but his descriptions in testimony of specific items  
18 of property that he purchased and for which Ms. Bacon reimbursed  
19 him do match items contained in Exhibit 275, the inventory of  
20 the contents of the Brewer Drive home. Ms. Dolch bears the  
21 burden of proving that the specific transactions at issue were  
22 done with intent to defraud or that they harmed Ms. Bacon.  
23 Where the evidence demonstrates that Ms. Bacon's home was filled  
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1 with valuable artwork and antiques that Mr. Sykes testified he  
2 purchased for Ms. Bacon based on recollection refreshed by his  
3 online account records, Ms. Dolch has failed to do so with  
4 respect to this claim.<sup>23</sup>  
5

6 With regard to the remaining transactions listed in 1 and  
7 3, the court finds insufficient evidence to conclude by a  
8 preponderance that Mr. Sykes executed these transactions either  
9 with the intent to defraud Ms. Bacon or for wrongful use - ie  
10 when he either knew or should have known that the transaction  
11 would be harmful to Ms. Bacon. With regard to the real property  
12 at 613 Stanford Avenue, there is no evidence in the record other  
13 than Mr. Sykes' testimony regarding the purchase price Ms. Bacon  
14 paid for the home - \$400,000. Exhibit 15 demonstrates that Mr.  
15 Sykes entered into a notarized agreement to pay her the same  
16 amount for the property in installments, with title transfer  
17 occurring only on full payment. Ms. Bacon signed a series of  
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22 <sup>23</sup> Mr. Sykes objections to the \$1,094,467.77 that the court found were  
23 acquired in transaction #7 included an objection that any amount included in  
24 Exhibit 283 should be deducted from the \$1,094,467.77 because the court found  
25 that the amounts in Exhibit 283 were legitimate reimbursements. The court  
26 overrules this objection and has not made the requested deduction. Ms. White  
27 testified that the amounts compiled in Exhibit 283 were based on Mr. Sykes'  
28 oral testimony from the auction house records, and there was no attempt by  
either party to cross-reference the records from Exhibit 271 to identify the  
transactions that Mr. Sykes' oral testimony reflected. Such an effort would  
likely have been fruitless in any event based on Mr. Sykes' inability or  
unwillingness to offer specifics of most of the transactions at issue. There  
is no evidence that the amounts included in Exhibit 283 actually corresponded  
to any amount from Exhibit 271 that Mr. Sykes was found to have acquired  
wrongfully.

1 receipts acknowledging payments of \$165,000 over the course of  
2 the next year. At the time of the sale agreement, there is no  
3 evidence to suggest that Mr. Sykes acted with intent not to pay  
4 or to pay less than the value of the home. Mr. Sykes could not  
5 recall and had no records documenting the transfer of title, but  
6 Exhibit 16 demonstrates that Ms. Bacon executed a grant deed  
7 reciting receipt of valuable consideration for the transfer.  
8 The deed was executed in 1996 and notarized by Ms. Bacon's then-  
9 attorney, Thomas McNally. No evidence was introduced suggesting  
10 that the deed was obtained by duress, or that Mr. Sykes was even  
11 present when she executed it. The evidence is susceptible to  
12 three conclusions - 1) Mr. Sykes persuaded Ms. Bacon to forgive  
13 the remainder of his debt and transfer the property, 2) Mr.  
14 Sykes completed the agreed-upon payments, or 3) Ms. Bacon  
15 decided to forego the remaining amount due. There is  
16 insufficient evidence in the trial record for the court to  
17 conclude which of those three circumstances occurred, and Ms.  
18 Dolch bears the burden of proof. She has failed to carry it  
19 regarding this transaction.  
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24 For the transaction listed in 3, the deposition testimony  
25 of Sally Megear establishes that she was Ms. Bacon's investment  
26 advisor from the mid-1990's until 2008. She worked at a series  
27 of investment firms, and each time she changed firms Ms. Bacon  
28

1 transferred her assets under management to "follow" Ms. Megear.  
2 Ms. Megear met with Ms. Bacon in person approximately once a  
3 year, sometimes in New York and sometimes in California. Ms.  
4 Bacon introduced her to Mr. Sykes at some point while she was  
5 working for Credit Suisse. She had come to California to meet  
6 with Ms. Bacon. She and Ms. Bacon met for breakfast alone to  
7 discuss Ms. Bacon's investments. Ms. Bacon invited her to see  
8 her home, and it was there that Ms. Megear met Mr. Sykes. Their  
9 conversation on that occasion was social only. Ms. Megear saw  
10 Mr. Sykes and Ms. Bacon in New York on two occasions as well.  
11 Ms. Megear described Ms. Bacon as very attentive to financial  
12 news and global events, and active in the management of her  
13 investments in 2004. In 2004, Ms. Bacon contacted Ms. Megear to  
14 make a gift from her investment account to Mr. Sykes. Ms.  
15 Megear was not certain, but believed she spoke with Ms. Bacon  
16 about the transaction by phone. Ms. Megear assisted Ms. Bacon  
17 with the transfer and had contact with Mr. Sykes about setting  
18 up a Silvercrest account to receive the funds. Ms. Megear also  
19 advised Mr. Sykes regarding the management of his investments  
20 with Silvercrest. She recalled that Ms. Bacon was the more  
21 confident of the two, and that Mr. Sykes seemed to follow her  
22 lead in investing. Ms. Megear observed Mr. Sykes and Ms. Bacon  
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1 together on subsequent visits to San Francisco and described  
2 their relationship as a close and caring friendship.

3 Ms. Bacon's accountant, Mary Jo Murphy, testified that she  
4 prepared a gift tax return for Ms. Bacon documenting this  
5 transaction. Ms. Bacon first became her client in 2003. Ms.  
6 Bacon did not initially tell her about the gift, but when Ms.  
7 Murphy noticed a change in Ms. Bacon's investment income she  
8 called Ms. Megear to ask why. Ms. Megear explained the transfer  
9 and Ms. Murphy asked Ms. Bacon about the gift. Ms. Murphy did  
10 not know Mr. Sykes at that point and did not know anything about  
11 him or his relationship to Ms. Bacon. Ms. Murphy met with Ms.  
12 Bacon alone when she asked about the gift to Mr. Sykes. Ms.  
13 Bacon told Ms. Murphy that she had made the gift, but did not  
14 explain why to Ms. Murphy. Mr. Sykes did not become Ms. Murphy's  
15 client until his 2008 tax return.

16 The foregoing evidence is susceptible to two  
17 interpretations: one is that Mr. Sykes persuaded Ms. Bacon to  
18 make this gift, and the other is that Ms. Bacon decided to make  
19 the gift to Mr. Sykes. Ms. Megear's testimony established that  
20 Ms. Bacon was attentive to her investments and interested  
21 financial markets and financial news. Ms. Gomez worked in Ms.  
22 Bacon's household at this point and testified that Ms. Bacon  
23 subscribed to financial publications, actively read them, and  
24



1 underlined and highlighted parts that she found interesting.  
2 Nothing about the observations of the percipient witnesses to  
3 this transaction suggest that Ms. Bacon was incompetent to  
4 proceed with the transaction. In fact, Ms. Megear testified  
5 that at some point after this transaction Ms. Bacon contacted  
6 her to attempt to convince her husband's testamentary trust to  
7 move their asset management to Ms. Megear's firm because Ms.  
8 Bacon was frustrated with the performance of that trust's  
9 investments and thought they could do better. Neither Ms.  
10 Bacon's long-term financial advisor nor her accountant expressed  
11 concern that this transaction was harmful to her financial  
12 positions. This evidence is insufficient to prove that it is  
13 more likely than not that Mr. Sykes knew or should have known  
14 that accepting this gift would be harmful to Ms. Bacon.  
15  
16  
17

18 As to transactions 2 (Brewer Drive transfer), 4 (gift of  
19 Swiss francs in 2012), 6 (motorcycles acquired between 2009 and  
20 2013), and 7 (check transfers to Mr. Sykes from 2012 to 2016),  
21 the court does find by a preponderance that Mr. Sykes took,  
22 obtained, or retained property from Ms. Bacon either with intent  
23 to defraud or when he knew or should have known that it would be  
24 harmful to her, and that the transactions did harm Ms. Bacon.  
25

26 The Brewer Drive gift deed prepared by Henry Eavey was done  
27 at a time that the court concludes based on the testimony of  
28

1 both Dr. Firestone and Dr. Mueller that Ms. Bacon lacked  
2 testamentary and contractual capacity. The outright gift of her  
3 primary residence, at the time worth somewhere between \$3M and  
4 \$6,150,000<sup>24</sup> for no consideration is harmful by any standard, no  
5 matter how wealthy Ms. Bacon was. The adverse tax consequences  
6 were noted by both her accountant and Mr. Eavey. As Mr.  
7 Barulich pointed out in testimony, the "Occupancy Agreement"  
8 drafted by Mr. Eavey would not have protected Ms. Bacon's right  
9 to live in the house against any creditor of Mr. Sykes. The  
10 evidence established that Ms. Bacon was very attached to her  
11 home and her artwork and antiques. Endangering her right to  
12 remain there harmed Ms. Bacon beyond the simply financial  
13 measure. The harmful nature of the transaction should have been  
14 immediately apparent to any reasonable person. The evidence  
15 demonstrates that based on his pervasive involvement in Ms.  
16 Bacon's daily life by 2013, including scheduling and  
17 transportation to medical appointments, filling of  
18 prescriptions, cooking, shopping, managing household employees,  
19 and assisting her with purchases, Mr. Sykes both was and should

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24 <sup>24</sup> The \$3M figure comes from the appraisal attached to Ms. Bacon's 2013 gift  
25 tax return. It is the only evidence of value in the record at the time of  
26 the 2013 transfer. The court reviewed the opinion of value with some  
27 incredulity. The appraisal concluded that the value of Ms. Bacon's property  
28 was approximately \$500,000 less than a property across the street and one  
block away that had sold as a near-teardown. The appraiser also "rounded  
down" \$300,000 from his value based on price per square foot to get to the  
nearest even million. The court finds that the value of Ms. Bacon's home on  
May 14, 2013 was at least \$3.3M, but less than the Riddle valuation of 2020.

1 have been aware of Ms. Bacon's declining cognitive capabilities.  
2 The court also found Mr. Sykes' failure of recollection as to  
3 "when he learned" that Ms. Bacon intended to gift him her  
4 residence particularly lacked credibility. The court concludes  
5 that he was aware of Ms. Bacon's intent to transfer the house to  
6 him when he drove her to Mr. Eavey's office. As to this  
7 transaction, Ms. Dolch has proven both by a preponderance and to  
8 the standard of clear and convincing evidence that Mr. Sykes  
9 committed financial elder abuse.  
10  
11

12 The other three remaining transactions are found based on a  
13 preponderance of the evidence that Mr. Sykes took, obtained, or  
14 retained the check transfers and the Swiss francs for a wrongful  
15 use because he knew or should have known that the transactions  
16 were harmful to Ms. Bacon, and in the case of the motorcycles  
17 that he intended to defraud based on his attempts to conceal his  
18 acquisition of the motorcycles from Ms. Bacon based on the  
19 testimony of Ms. Broadbeck. The court's conclusions regarding  
20 Mr. Sykes' knowledge of the harm to Ms. Bacon are based on its  
21 factual findings that by 2012, Ms. Bacon's declining ability to  
22 attend to and manage her finances on a day-to-day basis, her  
23 impairment to short term memory, her deficits in hearing, and  
24 her declining energy were observable to Ms. Broadbeck. They  
25 were therefore also observable by Mr. Sykes, who was far more  
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1 pervasively involved in Ms. Bacon's day-to-day care. The  
2 evidence demonstrates that Mr. Sykes received the Swiss francs  
3 and other fund transfers for no consideration, establishing harm  
4 to Ms. Bacon.  
5

6 **2. Acquisition of Property by Undue Influence (Welfare**  
7 **and Institutions Code § 15610.30(a)(3))**

8 Welfare and Institutions Code § 15610.30(a)(3) provides  
9 that it is financial abuse of an elder to "take.. or assist in  
10 taking... real or personal property of an elder or dependent adult  
11 by undue influence, as defined in Section 15610.70." In turn,  
12 Welfare and Institutions Code § 15610.70 defines undue influence  
13 as excessive persuasion that causes another person to act or  
14 refrain from acting by overcoming that person's free will and  
15 resulting in inequity. The section requires the court to  
16 consider all of the following factors in determining whether a  
17 result was produced by undue influence:  
18  
19

- 20 1) Vulnerability of the victim, including incapacity,  
21 illness, disability, injury, age, education, impaired  
22 cognitive function, emotional distress, isolation, or  
23 dependency, and whether the influencer knew or should  
24 have known of the alleged victim's vulnerability.  
25  
26 2) The influencer's apparent authority including status as a  
27 fiduciary, family member, care provider, health care  
28

1 professional, legal professional, spiritual adviser,  
2 expert, or other qualification.

3 3) The actions or tactics used by the influencer, including  
4 control of necessities of life, medication, victim's  
5 interaction with others, access to information, or sleep;  
6 use of affection, intimidation, or coercion; initiation  
7 of changes in personal or property rights, use of haste  
8 or secrecy in effecting the changes, effecting changes at  
9 inappropriate times or places, and claims of expertise in  
10 effecting changes.  
11

12  
13 4) Equity of the result, which may include but is not  
14 limited to economic consequences to the victim,  
15 divergence from the victim's prior intent or course of  
16 conduct, relationship of the value conveyed to the value  
17 of any services or consideration received, and  
18 appropriateness of the change in light of the length and  
19 nature of the relationship.  
20

21 Evidence of an inequitable result alone is insufficient to prove  
22 undue influence.  
23

24 The court found that Mr. Sykes acquired the following  
25 property from Ms. Bacon:

26 1) The real property located at 613 Stanford Avenue on  
27 October 8, 1994.  
28

- 1           2) The real property located at 700 Brewer Drive on May 14,  
2           2013
- 3           3) Stocks and bonds valued at \$1,000,000 from Ms. Bacon's  
4           Silvercrest investment account on September 13 and 14,  
5           2004
- 6           4) Swiss francs valued at \$615,256 on April 30, 2012
- 7           5) Eleven items of artwork and antiques acquired on and  
8           between November 24, 1997 and August 1, 1998
- 9           6) Three motorcycles acquired between 2009 and 2014
- 10          7) \$1,094,467.77 in funds transferred by check between  
11          February 8, 2012 and May 31, 2016
- 12          8) Cash or check payments totaling \$1,815,987 from 1991 to  
13          2017 reflected on Exhibit 283.

14           Incorporating the findings and conclusions noted above, the  
15           court finds insufficient evidence of financial elder abuse by  
16           undue influence for transactions 1, 3, 5, and 8 based on the  
17           lack of any evidence of dependency, infirmity, vulnerability,  
18           apparent authority of Mr. Sykes, or inequity of the result at  
19           the time of the transactions in question. As to item 8, the  
20           court's finding is based on the lack of any inequitable result  
21           given the evidence corroborating Mr. Sykes' testimony that these  
22           funds were used to acquire antiques that remained in Ms. Bacon's  
23           ownership and possession.  
24  
25  
26  
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28

1           The court finds sufficient evidence to conclude by a  
2 preponderance that Mr. Sykes committed financial elder abuse by  
3 obtaining the property in transactions 2, 4, 6, and 7 by undue  
4 influence based on the following considerations.  
5

6           From 2009 forward, Ms. Bacon was vulnerable based on her  
7 age, dependency on Mr. Sykes, and isolation. That vulnerability  
8 increased in 2012 as she began to show signs of cognitive  
9 impairment including short term memory loss and declining  
10 ability to attend and concentrate. Her ability to understand  
11 communications with others was impaired by her hearing loss.  
12 Her vulnerability increased dramatically in October 2013 when  
13 she fractured her hip and became unable to stand or walk without  
14 assistance. Her vulnerability again increased in July 2017 when  
15 she suffered a major stroke. Post-stroke, her expressive and  
16 receptive aphasia reduced her ability to communicate to  
17 answering yes-or-no questions.  
18  
19

20           Mr. Sykes increased Ms. Bacon's vulnerability by isolating  
21 her from others. He used his status as a trusted friend to  
22 speak negatively about her late husband's grandchildren during  
23 Ms. Broadbeck's period of employment from 2009 to 2013. He told  
24 Ms. Bacon they were only after her money, and Ms. Broadbeck  
25 heard her begin to repeat it. He referred to her acquaintances  
26 as "spiders". He discouraged her from attending ballet classes  
27  
28

1 hosted by her long-time friend because he did not want to drive  
2 her there. He discouraged her from attending various social  
3 events that she wanted to attend by persuading her she was too  
4 dizzy or unwell to go.<sup>25</sup> He lied to Shelly Avellar about Ms.  
5 Bacon's ability to participate in a visit she had scheduled, and  
6 when Ms. Avellar would not be deterred from coming he attempted  
7 to remove Ms. Bacon from the home before she arrived to prevent  
8 the visit from taking place.  
9

10  
11 Mr. Sykes entered Ms. Bacon's life as a practitioner of  
12 acupressure, and represented himself as someone who could help  
13 her balance her energy. She perceived him to be helpful in the  
14 reduction of her hip pain. She preferred holistic health care,  
15 and the court finds that she first established trust in him  
16 based on her perception of his role as a health care provider  
17 when they met in 1984. This factor in and of itself is  
18 insufficient to persuade the court of either of the inception of  
19 a confidential relationship or the existence of undue influence  
20 causing the overcoming of Ms. Bacon's free will until she later  
21  
22  
23  
24

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25 <sup>25</sup> The court found credible evidence that Mr. Sykes also prevented a visit  
26 between Daniel Torres' grandchildren and Ms. Bacon, and encouraged Ms. Bacon  
27 to fire Mr. Torres when he reported his concerns to APS. Mr. Sykes' behavior  
28 in criticizing caregivers hired by Debra Dolch, causing Ms. Bacon to be  
removed from the room when Mark Brodka attempted to visit, and refusing to  
allow Ms. Dolch to meet with Ms. Bacon alone also isolated Ms. Bacon, but  
those actions post-dated the financial transactions at issue so the court has  
not included them in these findings.



1 became more vulnerable and dependent on Mr. Sykes due to age,  
2 infirmity, and isolation.

3         Mr. Sykes used the following actions or tactics to unduly  
4 influence Ms. Bacon from 2009 forward. He controlled her access  
5 to the necessities of life, including food, medication,  
6 interactions with others, and sleep. He did the bulk of the  
7 household shopping. He selected Ms. Bacon's food and prepared  
8 her meals. He located the doctors that she saw and drove her to  
9 appointments. He chose which medications she obtained by either  
10 filling or not filling her prescriptions himself or instructing  
11 other household staff about which prescriptions to fill. He  
12 drove her to social events or discouraged her from going when he  
13 did not wish to drive. He woke her up to attend appointments he  
14 perceived to be necessary and discouraged visits he did not  
15 approve of by telling people that Ms. Bacon was too unwell to  
16 see visitors. He drove her to her lawyers' offices for estate  
17 planning purposes. He used affection to gain her trust, and the  
18 evidence demonstrates that she came to view him as her  
19 "foundation", part of her "structure", and "her man". She  
20 questioned how she would function without him, both to Ms.  
21 Bortolus and eventually to Lynda Herrera during the 2014 APS  
22 investigation.  
23  
24  
25  
26  
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28

1           The evidence also supports the conclusion that Ms. Bacon  
2 valued her independence. Her comments to her doctor and to Ms.  
3 Rowe reflected frustration with the aging process and associated  
4 decline in her physical and mental health. She distrusted  
5 doctors and lawyers. She feared the consequences of a loss of  
6 capacity. When her bank initiated an APS report in 2009, she  
7 changed banks. After 2009, she actively avoided engaging in any  
8 process that would permit others to measure her capacity. She  
9 failed to provide information about many transfers of funds to  
10 Mr. Sykes to her lawyers and her accountant, even when that  
11 information was important to the planning of her estate or the  
12 satisfaction of her tax obligations - corroborating later  
13 observations that she did not remember having made them. When  
14 her attorney required her to get a doctor's letter before he  
15 would assist her with a transfer that he advised her was against  
16 her best interest, she sought a doctor who did not know her and  
17 would be unable to provide meaningful comparative information  
18 about her prior health to make that determination. Ms. Bacon  
19 very much wanted to be perceived to be competent, even as her  
20 faculties declined to the point where she was not. Part of Mr.  
21 Sykes' tactics in the exercise of undue influence was to  
22 encourage her in her distrust of those who raised questions  
23 about her competency by ascribing nefarious motives to them, and  
24  
25  
26  
27  
28

1 to reassure her of her continuing competency. By doing so, he  
2 further ingratiated himself to her and encouraged her isolation  
3 from others on the false premise that they were "after her  
4 money." In reality, the majority of concerned APS reporters -  
5 Union Bank officer Ray Cherry, co-trustee Mark Brodka, Angela  
6 Broadbeck, and gardener Daniel Torres could not have benefitted  
7 financially from expressing their concerns about Mr. Sykes' role  
8 in her life. To the contrary, the evidence demonstrates that  
9 Ms. Broadbeck withdrew from and Mr. Brodka and Mr. Torres were  
10 affirmatively excluded from Ms. Bacon's life because of their  
11 efforts to bring awareness to her vulnerability to Mr. Sykes.  
12

13  
14 Mr. Sykes argues that Ms. Bacon's estate planning documents  
15 reaching back to 1991 always included some form of benefit to  
16 him, whether as a lifetime income beneficiary of her trust or an  
17 outright inheritor of her home. He relies on the consistency of  
18 her estate planning intentions for the proposition that the lack  
19 of divergence from her prior intent or course of conduct in  
20 gifting him assets while she was still alive demonstrates that  
21 the result is equitable and therefore not the product of undue  
22 influence. The court rejects that argument. Divergence from an  
23 intended course of conduct or dealing is only one of a myriad of  
24 factors in the evaluation of undue influence. Equity of the  
25 result also includes economic consequences to the victim,  
26  
27  
28

1 relationship of the value conveyed by any services or  
2 consideration received, and appropriateness of the change in  
3 light of the length and nature of the relationship.  
4

5 In this case, the economic consequences to Ms. Bacon of the  
6 inter vivos transfer of her home to Mr. Sykes, the transfer of  
7 \$1,833,723.77 in assets in four years, and the use of her funds  
8 to surreptitiously acquire assets were substantial. She  
9 jeopardized her right to continue to live in her residence of  
10 over 20 years by gifting it outright against the advice of her  
11 own attorney. She received no consideration for the millions of  
12 dollars she transferred, and the amount of the transfer was  
13 dramatically out of proportion to the value of the services Mr.  
14 Sykes provided.<sup>26</sup> The court finds clear and convincing evidence  
15 that the totality of the factors described above demonstrate  
16 financial elder abuse by use of undue influence.<sup>27</sup>  
17  
18  
19  
20  
21

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22 <sup>26</sup> Mr. Sykes objects to this finding in part based on a purported lack of  
23 evidence of the value of any services he might have provided. The total  
24 amount transferred reflects an annual "salary" of \$458,430.94 - far out of  
25 proportion to any reasonable measure of compensation for a housekeeper,  
26 bookkeeper, caregiver, or all three combined.

27 <sup>27</sup> The court also rejects Mr. Sykes' argument that Ms. Bacon's wealth meant  
28 that the multi-million dollar transfers at issue were not harmful because she  
had the ability to "absorb" them. Mr. Sykes was aware that Ms. Bacon  
perceived the reduction in her trust income as harmful to her standard of  
living, as demonstrated by his e-mail correspondence with Mark Brodka in  
Exhibit 113 questioning a distribution shortfall from her husband's  
testamentary trust of \$101,432.97. This correspondence occurred a mere two  
months after a transfer of \$3.3M asset to him with no consideration.

1           **B. Breach of Fiduciary Duties**

2           CACI 4101 provides that a breach of fiduciary duty requires  
3 proof of the following elements:

- 4           1. A fiduciary relationship between Mr. Sykes and Ms. Bacon  
5  
6           2. That Mr. Sykes acted on Ms. Bacon's behalf in respect of  
7           some transaction or purpose  
8  
9           3. That he failed to act as a reasonably careful fiduciary  
10           in a like relationship would have acted under similar  
11           circumstances,  
12           4. That Ms. Bacon was harmed,  
13           5. That Mr. Sykes' conduct was a substantial factor in that  
14           harm.

15 A fiduciary relationship is:

16           Any relation existing between parties to a transaction  
17           wherein one of the parties is in duty bound to act  
18           with the utmost good faith for the benefit of the  
19           other party. Such a relation ordinarily arises where  
20           a confidence is reposed by one person in the integrity  
21           of another, and in such a relation the party in whom  
22           the confidence is reposed, if he voluntarily accepts  
23           or assumes to accept the confidence, can take no  
24           advantage from his acts relating to the interest of  
25           the other party without the latter's knowledge or  
26           consent... Traditional examples of fiduciary  
27           relationships in the commercial context include  
28           trustee/beneficiary, directors and majority  
            shareholders of a corporation, business partners,  
            joint adventurers, and agent/principal. Wolf v.  
            Superior Court of Los Angeles (2003) 107 Cal.App.4th  
            25.

A confidential relationship:

1 ...may be founded on a moral, social, domestic, or  
2 merely personal relationship as well as on a legal  
3 relationship. The essence of a fiduciary or  
4 confidential relationship is that the parties do not  
5 deal on equal terms, because the person in whom trust  
6 and confidence is reposed and who accepts that trust  
7 and confidence is in a superior position to exert  
8 unique influence over the dependent party. Richelle  
9 L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4<sup>th</sup>  
10 257 at 272.

11 The elements of a confidential or fiduciary relationship have  
12 been described as 1) vulnerability of one party to the other  
13 which 2) results in the empowerment of the stronger party by the  
14 weaker which 3) empowerment has been solicited or accepted by  
15 the stronger party and 4) prevents the weaker party from  
16 effectively protecting itself. Richelle L. v. Roman Catholic  
17 Archbishop, supra, at 272. Vulnerability is a "necessary  
18 predicate" of a confidential relational that the law treats as  
19 "absolutely essential." Such vulnerability usually arises from  
20 factors such as advanced age, weakness of mind, grief, sickness,  
21 or some other incapacity. Richelle L. v. Roman Catholic  
22 Archbishop, supra, at 273.

23 Based on the definition cited above, the court finds that  
24 the evidence supports the existence of both a confidential and a  
25 fiduciary relationship between Ms. Bacon and Mr. Sykes occurring  
26 at different times. The fiduciary relationship arose during the  
27 period of their business partnership. The confidential  
28 relationship arose concurrent with the period of Ms. Bacon's

1 increased vulnerability from 2009 forward described in the  
2 court's findings related to financial elder abuse by undue  
3 influence above.

4  
5 Exhibits 21 through 27 were asserted by Ms. Dolch to create  
6 an agency relationship between Mr. Sykes and Ms. Bacon. In the  
7 court's examination of those documents, they appear to  
8 demonstrate the creation of a joint bank account between Mr.  
9 Sykes and Ms. Bacon rather than the addition of Mr. Sykes as an  
10 agent for Ms. Bacon. Exhibit 28 reflects that in 2008 Ms. Bacon  
11 authorized UBS to follow Mr. Sykes' instructions with respect to  
12 her separate account (designated by a handwritten account number  
13 that differs from the account created by Exhibits 21 through 27)  
14 for the transfer of her assets to a different bank based on her  
15 concerns regarding bank security. The evidence does not  
16  
17 demonstrate that any agency relationship created by that letter  
18 continued beyond the specific transaction it authorized. That  
19 first movement of the Swiss francs to a United States bank  
20 account is not alleged to have deprived Ms. Bacon of those  
21 funds.  
22  
23

24 Mr. Sykes testified that he operated an interior design  
25 business focused on antiques, and that Ms. Bacon assisted him in  
26 operating the business. He testified that he ordered antiques  
27 for design clients and had them shipped to Ms. Bacon's home. He  
28

1 testified that when clients paid them for their services, Ms.  
2 Bacon decided how to distribute the profits. Exhibit 79 also  
3 establishes that Ms. Bacon retired from that business in 1999,  
4 and the testimony of Ms. Gomez verified that by 2004 Ms. Bacon  
5 was no longer working on interior design.  
6

7 Of the eight transactions identified above where the court  
8 has concluded that Mr. Sykes obtained Ms. Bacon's property, only  
9 three occurred during the existence of the fiduciary duty  
10 between them. With regard to the transfer of the Stanford  
11 Avenue real property on October 8, 1994, there is no evidence  
12 that Mr. Sykes acted as Ms. Bacon's fiduciary or undertook any  
13 action on her behalf with respect to the property. She signed  
14 the deed transferring the property to Mr. Sykes with the  
15 assistance of her attorney, and there is no evidence that Mr.  
16 Sykes was present when she did so. With regard to the purchase  
17 of antiques by Mr. Sykes between November 24, 1997 and August 1,  
18 1998, the evidence still fails to show any harm as a result of  
19 the transaction based on the lack of any evidence in the record  
20 that the amounts paid by Mr. Sykes for the items he actually  
21 received were less than their fair market value at the time.  
22 The evidence regarding reimbursements for purchases of antiques  
23 also fails to demonstrate that Mr. Sykes' actions in acquiring  
24 antiques at auction for Ms. Bacon, causing them to be shipped to  
25  
26  
27  
28



1 her, and collecting reimbursement for them caused harm to Ms.  
2 Bacon for the same reasons identified in the court's analysis of  
3 the financial elder abuse claim. The court finds insufficient  
4 evidence to support any damage claim for breach of fiduciary  
5 duty based on the business partner relationship.  
6

7 The court rejects Ms. Dolch's argument that Mr. Sykes'  
8 provision of acupuncture to Ms. Bacon starting in 1984 created  
9 an immediate confidential relationship or a fiduciary  
10 relationship akin to that of a doctor and a patient. In the  
11 court's view, the acupuncture services Mr. Sykes provided are  
12 more comparable to a masseur than a medical practitioner. Ms.  
13 Bacon's perception of the effectiveness of those services was  
14 relevant to the court's determination that Mr. Sykes' initial  
15 introduction in that manner assisted him in later exercising  
16 undue influence, but that does not equate to a legally  
17 recognized fiduciary duty. The evidence also fails to  
18 establish, at that point in time, the vulnerability that is the  
19 "absolutely essential" element of a confidential relationship.  
20 Ms. Bacon at that point was still a vibrant, active, "busy lady"  
21 with a wide social circle and keen attention to her own  
22 financial affairs.  
23  
24  
25

26 By 2009, the evidence demonstrates that Ms. Bacon was  
27 advanced in age (86), suffering from recurrent illnesses  
28

1 (dizziness, frequent urinary tract infections), impaired in  
2 short term memory and attention span, unable to drive, and  
3 dependent on Mr. Sykes for her necessities of life. Mr. Sykes  
4 accepted his empowerment over Ms. Bacon by assuming  
5 responsibility for the procurement and preparation of food, the  
6 making of her medical appointments and provision of medication,  
7 the provision of transportation to any location outside of her  
8 home. His role prevented Ms. Bacon from protecting herself from  
9 him, and put him in a superior position to exert unique  
10 influence over her.  
11  
12

13       The evidence shows that his influence over her was unique.  
14 She accepted behavior from him that she tolerated in no one  
15 else. He alone was allowed to question her decisions, as when  
16 they argued Daniel Torres' reinstatement when he quit the first  
17 time after an argument with Mr. Sykes. He alone could persuade  
18 her to do exercises she didn't want to do. He could insist on  
19 using a TENS device to the point where she was yelling for him  
20 to take it off because it hurt, but still permitted him to  
21 continue using it because he thought it would "help." He alone  
22 could persuade her, over her extreme reluctance<sup>28</sup>, to take  
23 multiple trips to Germany and leave her home and beloved dogs  
24  
25  
26

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27 <sup>28</sup> Ms. Broadbeck testified that Ms. Bacon cried in the car the entire way to  
28 the airport on the occasion that Ms. Broadbeck drove them, saying that she  
didn't want to go.

1 behind to engage in stem cell treatment for her dizziness.  
2 After the execution of the settlement agreement, Ms. Bacon  
3 resisted every new caregiver that came into her home until Mr.  
4 Sykes showed them the "proper" way to care for her, even when  
5 the caregivers perceived his instruction as intrusive. He  
6 exercised that unique influence over her to prevent her from  
7 accessing established relationships and forming new  
8 relationships with others who could have helped her maintain her  
9 independence without also accepting financially harmful "gifts".  
10  
11

12 The court finds that by virtue of the confidential  
13 relationship established between them, Mr. Sykes breached his  
14 fiduciary duty to Ms. Bacon in transaction 2. He acted on her  
15 behalf in the transfer of the Brewer Drive property by driving  
16 her to the lawyer's office to assist in her purpose of  
17 transferring the property. In doing so, he failed to exercise  
18 the care and caution of a reasonable fiduciary by accepting her  
19 transfer of the Brewer drive property without any consideration.  
20 His action caused her financial harm and was a substantial  
21 factor in that causation. The court makes this finding by clear  
22 and convincing evidence.<sup>29</sup>  
23  
24  
25

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26 <sup>29</sup> Mr. Sykes objects that this finding is inadequate to establish either  
27 fiduciary duty or harm, and that the court's decision as a whole is devoid of  
28 any finding that he affirmatively took action to persuade Ms. Bacon to make  
the harmful financial transactions at issue. In response, the court states  
expressly what its findings regarding Mr. Sykes' credibility in the Tentative  
and Proposed Statement of Decision implied. Mr. Sykes was deliberately

1           The court finds insufficient evidence to support the claim  
2 for breach of fiduciary duty for any other transaction based on  
3 the confidential relationship because as to each of the other  
4 transactions there is insufficient evidence to demonstrate that  
5 Mr. Sykes "acted on Ms. Bacon's behalf" in those instances.  
6

7           **C. Fraud**

8           Ms. Dolch asserts both actual and constructive fraud in her  
9 closing brief<sup>30</sup>. Civil Code § 1573 provides that constructive  
10 fraud consists:  
11

- 12           1. In any breach of duty which, without an actually  
13           fraudulent intent, gains an advantage to the person in  
14

15  
16           \_\_\_\_\_

17 evasive in testimony when asked about virtually every financial transaction  
18 at issue with Ms. Bacon. He was willfully false to the court about authoring  
19 e-mails using Ms. Bacon's e-mail address, and about authoring documents  
20 transmitted to her professional advisors attempting to obtain greater  
21 distributions from her late husband's trust. Given those findings, the court  
22 disbelieves Mr. Sykes' denial of any request or persuasion used to obtain the  
23 property at issue in this Statement of Decision. Based on the evidence of  
24 Mr. Sykes' residency in Ms. Bacon's home from 2010 forward, his unfettered  
25 access to her alone during that time, his isolation of her and his negative  
26 commentary about others in her life, his pervasive involvement in the  
27 management of her financial affairs attested by her household employees and  
28 one of her attorneys, the change from leaving the house to him after death to  
making an *inter vivos* gift to her demonstrated financial detriment, and his  
deception to the court about the circumstances of those transactions, the  
court draws the reasonable inference that Mr. Sykes affirmatively spoke to  
Ms. Bacon about her estate plans and influenced her to make the "gifts" in  
question.

30 Mr. Sykes objects that no cause of action for actual fraud was pled in Ms.  
Dolch's petition. He is correct. Ms. Dolch did seek, as relief, an order  
that Mr. Sykes has predeceased Ms. Bacon for purposes of inheritance, which  
requires the court to reach the issue of whether he acted fraudulently in  
that endeavor as discussed more fully below. The motion to set aside the  
settlement agreement also pled fraud in the procurement. The court's  
findings regarding actual fraud are included to further explain its analysis  
of the settlement agreement and disinheritance claims more fully discussed  
below.

1           fault, or anyone claiming under him, by misleading  
2           another to his prejudice or to the prejudice of anyone  
3           claiming under him, or

4  
5           2. In any such act or omission as the law specially declares  
6           to be fraudulent, without respect to actual fraud.

7 The elements of constructive fraud are set forth in CACI 4111,  
8 and require proof that the fiduciary acted on behalf of the  
9 person harmed for purposes of a transaction, and in doing so  
10 misled the person harmed by failing to disclose information in  
11 the fiduciary's possession or providing inaccurate or complete  
12 information. In her assertion of constructive fraud, Ms. Dolch  
13 relies on the finding of a fiduciary duty based on a  
14 confidential relationship between Mr. Sykes and Ms. Bacon. The  
15 court has found above that such a duty existed from 2009  
16 forward. The court finds the evidence insufficient to conclude,  
17 for any of the identified transactions, that Mr. Sykes misled  
18 Ms. Bacon or presented false or incomplete information while  
19 acting on her behalf. The claim for constructive fraud fails.

20  
21  
22           Civil Code § 1572 provides that actual fraud consists in  
23 any of the following acts:

24  
25           1. The suggestion as a fact of that which is not true by one  
26           who does not believe it to be true,  
27  
28

- 1 2. The positive assertion, in a matter not warranted by the
- 2 information of the person making it, of that which is not
- 3 true, though he believes it to be true,
- 4
- 5 3. The suppression of that which is true, by one having
- 6 knowledge or belief of the fact,
- 7
- 8 4. A promise made without any intention of performing it, or
- 9
- 10 5. Any other act fitted to deceive.

11 Ms. Dolch asserts that Mr. Sykes committed actual fraud by  
12 sending e-mails to Ms. Bacon's attorney from an e-mail address  
13 acquired by him on her behalf without disclosing to the  
14 recipients that he was the author of the correspondence rather  
15 than Ms. Bacon. The court finds by clear and convincing  
16 evidence, based on the information described earlier in its  
17 analysis, that Mr. Sykes did author every e-mail to Ms. Rowe  
18 from wriggle@sonic.net<sup>31</sup> and that both Ms. Rowe and Ms. Karlsten  
19 were deceived by the communications into believing that they  
20 were corresponding with Ms. Bacon. The e-mails contained  
21 substantive instructions about the content of both the trust  
22 amendment that Ms. Rowe drafted for Ms. Bacon executed on August  
23 27, 2015 and the settlement agreement of the litigation with her  
24 husband's testamentary trust, demonstrating that Mr. Sykes  
25 procured both instruments by fraud. Based on Ms. Dolch's  
26  
27

28 

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<sup>31</sup> Also referenced in transcript as "Wrig" and "TBB".

1 failure to plead actual fraud as a cause of action in the  
2 petition, the court has modified the Statement of Decision based  
3 on Mr. Sykes' objection to delete the amounts originally  
4 included as damages for attorney's fees incurred by Ms. Bacon as  
5 a result of Mr. Sykes' actual fraud in communicating under her  
6 assumed character.  
7

8 Ms. Dolch also included in her assessment of damages for  
9 all causes of action attorney's fees paid from Ms. Bacon's  
10 account to Henry Eavey in 2014. Ms. Dolch's brief repeatedly  
11 makes the assertion that Mr. Sykes took Ms. Bacon to see "his"  
12 attorney and "his" accountant. Those assertions ignore the  
13 uncontradicted evidence in the record that both Mary Jo Murphy  
14 and Mr. Eavey represented Ms. Bacon prior to doing any work for  
15 Mr. Sykes. In Ms. Murphy's case, she did tax returns for Ms.  
16 Bacon for five years before she did any returns for Mr. Sykes.  
17 The only lawyer that the evidence demonstrates Mr. Sykes  
18 acquired for Ms. Bacon in the first instance is Ms. Rowe. All  
19 other attorneys who represented both of them represented Ms.  
20 Bacon first. Mr. Eavey did estate planning services for Mr.  
21 Sykes at Ms. Bacon's request, and testified that in the estate  
22 plan he drafted Mr. Sykes left everything to Ms. Bacon except a  
23 \$300,000 gift to his brother. That circumstance in no way  
24 resembles the facts of the Payne v. Payne (1909) 12 Cal.App.251,  
25  
26  
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28

1 where the beneficiary of a deed set aside due to undue influence  
2 snuck her own attorney and a notary into her sister-in-law's  
3 home while her sister-in-law and husband were away so that the  
4 decedent could execute a grant deed to her home at a time when  
5 she was frail, enfeebled, and complaining of evil spirits around  
6 her. The court finds insufficient evidence of actual fraud in  
7 connection with Mr. Sykes' driving Ms. Bacon to Mr. Eavey's  
8 office to include Mr. Eavey's fees as damages for this cause of  
9 action.  
10  
11

12 **D. Undue Influence**

13 Civil Code § 1575 defines undue influence as:

- 14 1. In the use, by one in whom a confidence is reposed by  
15 another, or who holds real or apparent authority over  
16 him, of such confidence or authority for the purpose of  
17 obtaining an unfair advantage over him;
- 18 2. In taking an unfair advantage of another's weakness of  
19 mind; or,
- 20 3. In taking a grossly oppressive and unfair advantage of  
21 another's necessities or distress.  
22  
23

24 On the elements of this cause of action, the court finds by a  
25 clear and convincing evidence that Mr. Sykes utilized undue  
26 influence to take advantage of Ms. Bacon's weakness of mind and  
27 to take grossly oppressive and unfair advantage of her  
28



1 necessities and distress with regard to transactions 2, 4, 6,  
2 and 7 described above. The court incorporates all of its  
3 analysis related to each of Ms. Dolch's other asserted causes of  
4 action by reference.  
5

6 The court finds insufficient evidence to support this cause  
7 of action as to transactions 1, 3, 5, and 8, incorporating by  
8 reference all findings and conclusions discussed in connection  
9 with Ms. Dolch's other asserted causes of action.  
10

11 **E. Conversion**

12 As stated in Mr. Sykes' brief, the elements of conversion  
13 are as follows:

- 14 1) Ms. Bacon owned or possessed personal property
- 15 2) Mr. Sykes substantially interfered with Ms. Bacon's  
16 property knowingly and intentionally
- 17 3) Ms. Bacon did not consent
- 18 4) Ms. Bacon was harmed
- 19 5) Mr. Sykes' conduct was a substantial factor in causing  
20 such harm.  
21

22 Of the eight transactions identified by the court above,  
23 the court does not find sufficient evidence to support Ms.  
24 Dolch's claim for conversion on any of them. Transactions 1 and  
25 3 were accomplished with Ms. Bacon's consent at a time when no  
26 evidence demonstrated any lack of capacity to consent.  
27  
28

1 Transactions 5 and 8 were not demonstrated to have caused any  
2 harm to Ms. Bacon. While the court finds that transactions 4  
3 and 7 were substantial interference with Ms. Bacon's ownership  
4 of property by Mr. Sykes which harmed her, the conversion claim  
5 fails based on her consent at a time when the evidence did not  
6 demonstrate to a preponderance standard that she lacked capacity  
7 to do so. Having acquired the funds in transaction 7 by  
8 consent, their further use to purchase the motorcycles in  
9 transaction 6 does not support a conversion claim. Conversion  
10 applies only to personal property, not real property, so the  
11 conversion claim fails as to transaction 2. Munger v. Moore  
12 (1970) 11 Cal.App.3d 1.

13  
14  
15 **F. Incapacity**

16 The court agrees with the assertion in Mr. Sykes' closing  
17 brief that incapacity is not a separate cause of action, but a  
18 factor or element in the prior causes of action adjudicated by  
19 the court.  
20

21 **III. Asserted Complete Defenses**

22 **A. Effect of the June 6, 2017 Settlement Agreement**

23 On May 5, 2017, the parties to the Los Angeles and San  
24 Mateo County probate actions regarding the Frank Rogers Bacon,  
25 Jr. Testamentary trust filed a petition for approval of a  
26 settlement agreement. Both Mr. Sykes and Ms. Bacon signed the  
27  
28

1 agreement. Ms. Dolch did not, but her standing to prosecute  
2 this action arises from her "standing in the shoes" of Ms.  
3 Bacon. The court approved the petition on June 6, 2017. The  
4 settlement agreement contained a general release of all claims  
5 by the parties arising out of the action, known and unknown, and  
6 waiving the protection of Civil Code § 1542's limitation on the  
7 scope of general releases. The Civil Code § 1542 waiver  
8 contained the following language: "The parties understand an  
9 (sic) acknowledge that in consequence of this waiver of  
10 California Civil Code section 1542, even if any of them should  
11 suffer additional damages arising out of, *or in any way related*  
12 to the Actions, none of them will be able to make any claim for  
13 those damages" (emphasis added by court). The Los Angeles  
14 action by the co-trustees of the testamentary trust sought  
15 instructions regarding construction of the trust terms regarding  
16 distributions, instructions on what the co-trustees should do if  
17 the court found evidence that Ms. Bacon suffered from mental  
18 impairment or was a victim of undue influence, and instructions  
19 on what actions the trustees should take to recover any amounts  
20 of principal distributions of the trust wrongly diverted to him  
21 after distribution to Ms. Bacon. Ms. Bacon's San Mateo County  
22 action sought recovery of Mark Brodka's fee bill for the trust  
23 plus double damages, asserted a cause of action for financial  
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1 elder abuse against Mr. Brodka, and sought removal of Mr. Brodka  
2 as a trustee. She asserted no claims against Mr. Sykes. Mr.  
3 Sykes was not named as a party to the Los Angeles action. He  
4 did not assert any claims in either lawsuit prior to dismissal  
5 of the actions. No evidence demonstrates he ever appeared in  
6 either action. Ms. Bacon's resignation and Ms. Dolch's  
7 appointment as co-trustee of the Frank Rogers Bacon, Jr.  
8 Testamentary trust were based on the terms of the settlement  
9 agreement. Ms. Dolch accepted the appointment as co-trustee and  
10 served as co-trustee until her resignation when she became Ms.  
11 Bacon's conservator and the trustee of Ms. Bacon's personal  
12 trust. Ms. Dolch requested judicial notice of the settlement  
13 agreement in her restraining order action against Mr. Sykes on  
14 Ms. Bacon's behalf.

15  
16  
17  
18 Mr. Sykes asserts the general release provisions of the  
19 settlement agreement against Ms. Dolch as a complete bar to any  
20 claims pre-dating May 5, 2017. Ms. Dolch moved to set aside the  
21 settlement agreement on the grounds of Ms. Bacon's incapacity at  
22 the time of execution and fraud by Mr. Sykes in executing a  
23 document he never intended to perform. Mr. Sykes contends that  
24 Ms. Dolch's motion to set aside the settlement agreement is  
25 untimely and procedurally defective in that she neglected to  
26 give notice to the other parties to the settlement agreement.  
27  
28

1 As a preliminary matter, the court finds that Ms. Dolch is  
2 not judicially estopped from asserting the invalidity of the  
3 settlement agreement. The court previously denied Mr. Sykes'  
4 motion for summary judgment and summary adjudication based on  
5 the settlement agreement. In ruling on the claim of judicial  
6 estoppel in that context, Judge Runde stated: "This court does  
7 not view the current contentions of Petitioner and Opposing  
8 Party Debra Dolch concerning the enforceability of the  
9 Settlement Agreement and General Mutual Release as inconsistent  
10 with her contentions in prior related actions. She has brought  
11 no action to enforce the settlement agreement or seek a finding  
12 of contempt for violation of this court's June 6, 2017 order.  
13 Her primary contention, then as now, was that Respondent and  
14 Moving Party James Sykes entered into an agreement and then  
15 repeatedly breached it. This contention was especially relevant  
16 in the context of the Restraining Order to the contention that  
17 there should be no contact, as opposed to limited or supervised  
18 contact, between James Sykes and Thea Bacon." This court agrees  
19 in whole with those findings. Ms. Dolch's acts of seeking  
20 judicial notice and calling attention to Mr. Sykes' breach of  
21 the settlement terms in the context of seeking a no-contact  
22 order against him are not inconsistent with her assertion that  
23 Ms. Bacon lacked capacity to execute the agreement in the first  
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1 place. She was not a party to the settlement agreement. She is  
2 not estopped from asserting its invalidity.<sup>32</sup>

3  
4 As to the alleged procedural defects, the court notes that  
5 counsel Michael Desmarais indicated that he represents the other  
6 parties to the settlement agreement and notice of the motion was  
7 provided. On the issue of timeliness, Ms. Dolch filed her  
8 motion to set aside the order approving the settlement agreement  
9 on March 6, 2020, after Judge John Runde refused to permit  
10 collateral attack on the settlement agreement in the current  
11 action at a hearing on August 16, 2019. The order approving the  
12 settlement agreement was entered June 6, 2017. Zastrow v.  
13 Zastrow (1976) 61 Cal.App.3d 710 dealt with a situation where a  
14 wife alleged that she signed a marital property settlement  
15 agreement while mentally incompetent. She filed suit seeking to  
16 set aside the final marital dissolution judgment that had been  
17 merged with the interlocutory settlement decree three years and  
18 five months after regaining competency. The trial court  
19 sustained a demurrer based on the husband's assertion of a  
20 three-year statute of limitations on fraud. The Court of Appeal  
21 reversed, finding that relief based on mental incompetence is  
22 not premised on fraud, and therefore falls within the four year  
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28 <sup>32</sup> Order Denying Motion for Summary Judgment or, in the Alternative, Motion  
for Summary Adjudication filed August 16, 2019.

1 statute of limitations articulated in Code of Civil Procedure §  
2 338. In this action, Ms. Dolch asserts both Mr. Sykes' fraud  
3 and Ms. Bacon's incompetence as grounds to set aside the order  
4 approving the settlement agreement. Her filing on March 6, 2020  
5 is within three years of the court's order approving the  
6 settlement agreement and therefore not untimely based on  
7 Zastrow.

8  
9 Ms. Dolch contends that the current action does not "arise  
10 out of" the claims in the prior actions, and therefore is not  
11 barred by the release. The court rejects this argument. The  
12 Civil Code § 1542 waiver extends to damages arising out of or in  
13 any way related to the actions. In the Los Angeles action, Ms.  
14 Bacon's co-trustees sought instruction from the court regarding  
15 how to proceed if the court determined that Ms. Bacon was either  
16 mentally impaired or a victim of undue influence, and  
17 instructions on what actions to take to recover any principal  
18 funds wrongfully diverted to Mr. Sykes. The current action is  
19 unquestionably "related" to determination of Ms. Bacon's mental  
20 impairment and victimization by undue influence, and recovery of  
21 funds acquired by Mr. Sykes. If the release is enforceable, it  
22 extends to the claims asserted by Ms. Dolch on behalf of Ms.  
23 Bacon's estate in this action.  
24  
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1           The general release provisions of the settlement agreement  
2 are a contract. California law distinguishes between fraud in  
3 the execution of a contract and fraud in the inducement of a  
4 contract. Fraud in inception or execution of a contract occurs  
5 when the party to the contract is deceived as to the nature of  
6 her act and actually does not know what she is signing, or does  
7 not intend to enter into a contract at all. In that  
8 circumstance, mutual assent is lacking and the contract is void.  
9 A void contract may be disregarded without seeking rescission.  
10 Fraud in the inducement occurs when the promisor knows what she  
11 is signing but her consent is induced by fraud. In that  
12 circumstance, mutual assent is formed and the contract is  
13 voidable. To escape its obligations the aggrieved party must  
14 rescind the contract. Rosenthal v. Great Western Fin.  
15 Securities Corp. (1996) 14 Cal.4<sup>th</sup> 394.  
16  
17  
18

19           California Civil Code § 38 provides that "a person entirely  
20 without understanding has no power to make a contract of any  
21 kind, but the person is liable for the reasonable value of  
22 things furnished to the person necessary for the support of the  
23 person or the person's family." Thus, a contract made by  
24 someone mentally incompetent is void. When a contract is void  
25 rather than voidable, it may be disregarded without seeking  
26 rescission as in the case of fraud in the inception.  
27  
28



1 California Probate Code § 811(a) provides that a  
2 determination that a person is of unsound mind or lacks the  
3 capacity to make a decision or do a certain act "shall" be  
4 supported by evidence of "a deficit in at least one of the  
5 following mental functions" and "evidence of a correlation  
6 between the deficit or deficits and the decision or acts in  
7 question." A mere diagnosis of a mental or physical disorder is  
8 insufficient in and of itself to support a determination that a  
9 person is of unsound mind or lacks capacity to do a certain act.  
10 California Probate Code § 811(d). The statute lists four areas  
11 of mental function from which the court may determine existence  
12 of deficits: alertness and attention, information processing,  
13 thought processes, and ability to modulate mood and affect.  
14 Deficits in alertness or impairment include level of arousal or  
15 consciousness, orientation to time, person, place, and  
16 situation, and ability to attend and concentrate. Deficits in  
17 information processing include short- and long-term memory,  
18 including immediate recall, ability to understand or communicate  
19 with others verbally or otherwise, recognition of familiar  
20 objects and persons, ability to understand and appreciate  
21 quantities, ability to reason using abstract concepts, ability  
22 to plan, organize, and carry out actions in one's own rational  
23 self-interest, and ability to reason logically. Deficits in  
24  
25  
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1 thought processes may be demonstrated by severely disorganized  
2 thinking, hallucinations, delusions, and uncontrollable,  
3 repetitive, or intrusive thoughts. Deficits in ability to  
4 moderate mood or affect can be demonstrated by the presence of  
5 pervasive, persistent, or recurrent state of euphoria, anger,  
6 anxiety, fear, panic, depression, hopelessness or despair,  
7 helplessness, or apathy or indifference that is inappropriate in  
8 degree to the individual's circumstances.  
9

10  
11 Dr. Mueller's examination of Ms. Bacon in 2014  
12 demonstrated deficits in several areas identified by Probate  
13 Code § 811. In the area of alertness and attention, Dr.  
14 Mueller's cognitive testing demonstrated impairment to Ms.  
15 Bacon's orientation to time. In the domain of information  
16 processing, his cognitive testing identified moderate to severe  
17 impairment in short-term verbal memory and ability to reason  
18 logically - which Dr. Mueller described as "difficulty with  
19 practical judgment". His observations also support the  
20 conclusion that Ms. Bacon had deficits in long-term memory and  
21 ability to plan, organize, or carry out actions in her own  
22 rational self-interest. Specifically, Ms. Bacon was unable to  
23 recall or relate to him how she met Mr. Sykes or describe the  
24 nature of his role in her life. She could not recall what gifts  
25 of money or property she had given him. She could not describe  
26  
27  
28

1 either the nature or extent of her assets, nor could she  
2 describe her prior estate plans. These observations were  
3 corroborated by Lynda Herrera's 2014 observations of Ms. Bacon,  
4 which described Ms. Bacon as "confused" and unaware that she had  
5 signed over her home to Mr. Sykes. In Ms. Herrera's  
6 conversation with Ms. Bacon she was unable to name the family  
7 members who had visited her, nor could she answer any questions  
8 about her finances. She referred Ms. Herrera to Mr. Sykes to  
9 answer such questions. These observations were further  
10 supported by earlier observations of Shelley Avellar that Ms.  
11 Bacon's ability to converse was declining - she was limited to  
12 simple and repetitive observations, suggesting both an inability  
13 to attend and concentrate as well as inability with short-term  
14 recall in failing to recognize when she was repeating herself.

15  
16  
17  
18 Ms. Bacon's attorney, Ms. Rowe, observed her to lack  
19 attention and concentration when she was tired and to have  
20 lapses of memory. Ms. Rowe's notes demonstrate that one of  
21 those lapses of memory appeared quite significant to her ability  
22 to contract or make testamentary decisions - when asked to  
23 describe her assets, Ms. Bacon in May 2015 identified having  
24 given the Hillsborough drive property to Mr. Sykes. Two months  
25 later she identified it as hers despite having deeded it to Mr.  
26 Sykes, without any change in the title to the property having  
27  
28

1 occurred between the two meetings. Ms. Rowe concluded that was  
2 a reasonable mistake for even a competent client to make given  
3 the existence of the life estate. However, the court notes that  
4 Ms. Rowe's assessment of Ms. Bacon's capacity was also formed in  
5 part based on her belief that Ms. Bacon was the author of e-mail  
6 communications discussing the specifics of her trust amendment -  
7 even though those e-mails were really authored by Mr. Sykes. As  
8 such, the court accords little weight to Ms. Rowe's opinion of  
9 the significance of Ms. Bacon's inability to accurately describe  
10 the consequences of her prior execution of the gift deed of her  
11 home to Mr. Sykes.<sup>33</sup>

14 The court finds that the deficits described above, in  
15 combination, demonstrate by clear and convincing evidence that  
16 at the execution of the settlement agreement on May 5, 2017 Ms.  
17 Bacon was significantly impaired in her ability to understand  
18 and appreciate the consequences of signing the settlement  
19 agreement. By that point, the evidence demonstrates that she  
20 was unable to remember the nature or amount of assets she had  
21 given to Mr. Sykes over time. She was unable to remember how  
22 she met him. She was unable to accurately communicate her  
23 ownership of significant assets. She could not recall or  
24  
25  
26

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27 <sup>33</sup> For the same reason, the Court would have afforded little weight to Ms.  
28 Rowe's ultimate opinion on Ms. Bacon's competency in general if that  
testimony had been admitted into evidence.

1 recount her prior estate plans. Without accurate recall of  
2 those things, Ms. Bacon was unable to appreciate the  
3 consequences of executing a general release waiving any claims  
4 of financial elder abuse she had against Mr. Sykes. The court  
5 finds, pursuant to Probate Code § 811 and Civil Code § 38 that  
6 the general release contained in the settlement agreement is  
7 void and unenforceable by Mr. Sykes in this action based on Ms.  
8 Bacon's mental incapacity at the time of its execution. The  
9 court grants Ms. Dolch's request to set aside the June 6, 2017  
10 order approving the settlement agreement.<sup>34</sup>

#### 13 B. Statute of Limitations

14 Mr. Sykes asserts that the statutes of limitations on the  
15 various causes of action asserted by Ms. Dolch ran prior to her  
16 filing of the instant petition, and that her claims are time-  
17 barred. Ms. Dolch asserts tolling of the statute of limitations  
18 based on delayed discovery and the existence of a fiduciary duty  
19 from Mr. Sykes to Ms. Bacon.

20 Ms. Dolch filed the instant petition on August 30, 2018.  
21 The court has identified four categories of transactions where  
22  
23  
24  
25

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26 <sup>34</sup> Neither party has asserted that the original judge approving the settlement  
27 agreement should have heard the motion. For the sake of clarity of the  
28 record, the court notes that the original judge who heard the motion for  
approval of the settlement, Judge George A. Miram, retired from the bench  
prior to the commencement of trial of this action and was therefore  
unavailable to hear the issue.

1 Ms. Dolch has demonstrated Mr. Sykes' liability for various  
2 causes of action. Those are:

- 3 1) The May 14, 2013 transfer of 700 Brewer Drive based on  
4 all three species of statutory financial elder abuse  
5 under Welfare and Institutions Code § 15610.30, with a  
6 finding of clear and convincing evidence as to financial  
7 elder abuse by undue influence pursuant to Welfare and  
8 Institutions Code § 15610.30(a)(3); breach of fiduciary  
9 duty created by existence of a confidential relationship  
10 by clear and convincing evidence; and undue influence  
11 based on Civil Code § 1575 by clear and convincing  
12 evidence.  
13
- 14 2) The April 30, 2012 transfer of Swiss francs based on all  
15 three species of statutory financial elder abuse under  
16 Welfare and Institutions Code § 15610.30, with a finding  
17 of clear and convincing evidence as to financial elder  
18 abuse by undue influence pursuant to Welfare and  
19 Institutions Code § 15610.30(a)(3); and undue influence  
20 based on Civil Code § 1575 by clear and convincing  
21 evidence.  
22
- 23 3) The acquisition of three motorcycles on unspecified dates  
24 between 2009 and 2014 based on all three species of  
25 statutory financial elder abuse under Welfare and  
26  
27  
28

1 Institutions Code § 15610.30, with a finding of clear and  
2 convincing evidence as to financial elder abuse by undue  
3 influence pursuant to Welfare and Institutions Code §  
4 15610.30(a)(3); and undue influence based on Civil Code §  
5 1575 by clear and convincing evidence.  
6

7 4) Check transfers from Ms. Bacon's accounts to Mr. Sykes  
8 occurring from February 8, 2012 to May 31, 2016 based on  
9 all three species of statutory financial elder abuse  
10 under Welfare and Institutions Code § 15610.30, with a  
11 finding of clear and convincing evidence as to financial  
12 elder abuse by undue influence pursuant to Welfare and  
13 Institutions Code § 15610.30(a)(3); and undue influence  
14 based on Civil Code § 1575 by clear and convincing  
15 evidence.  
16  
17

18 Welfare and Institutions Code § 15657.7 provides that the  
19 applicable statute of limitations for financial elder abuse is  
20 four years from the time the plaintiff discovers or should have  
21 discovered through the exercise of reasonable diligence the  
22 facts constituting the financial abuse. Under California Code  
23 of Civil Procedure § 343, the causes of action for undue  
24 influence under Civil Code § 1575 and breach of fiduciary duty  
25 have a four-year statute of limitations from their accrual.  
26  
27 Leeper v. Beltrami (1959) 53 Cal.2d 195 holds that where a  
28

1 plaintiff seeks cancellation of a deed held by defendant based  
2 on allegations of fraud or other similar conduct, that the  
3 statute of limitations is determined by reference to the  
4 underlying cause of action giving rise to the basis for  
5 cancelling the deed, not based on the relief sought. Therefore,  
6 even as to the Brewer Drive transfer, the applicable statute of  
7 limitation is four years from date of discovery or accrual.  
8

9 Ms. Dolch's standing to sue in this action is derived from  
10 her authority as the representative of Ms. Bacon's estate. She  
11 stands in Ms. Bacon's shoes for purposes of this action, and her  
12 standing is dependent on Ms. Bacon's. Ms. Bacon participated in  
13 and had knowledge of all of the transactions identified by the  
14 court as giving rise to liability at the time that they were  
15 conducted, with the exception of the acquisition of motorcycles.  
16 Since the theory of liability for the motorcycles is based on  
17 use of wrongfully acquired funds to purchase them, and the funds  
18 were acquired by transfers from Ms. Bacon, she would also have  
19 been aware of those transfers at the time that they occurred.  
20  
21

22 Ms. Dolch alleges tolling based on Ms. Bacon's incapacity,  
23 Mr. Sykes' fiduciary duty arising from his confidential  
24 relationship with Ms. Bacon, and Mr. Sykes' continuing exercise  
25 of undue influence over Ms. Bacon after the causes of action  
26 arose. The court finds merit to all three tolling arguments.  
27  
28



1 In the context of fraud, the California Supreme Court has held  
2 that even after fraud is discovered, "for so long as the sheer  
3 economic duress or undue influence embedded in the fraud  
4 continues to hold the victim in place", the statute of  
5 limitations ought to be tolled. Wyatt v. Union Mortgage Co.  
6 (1979) 24 Cal.3d 773 at 788. "As a general rule, the statute of  
7 limitations does not run where the parties occupy a fiduciary  
8 relationship toward each other and the relationship has not been  
9 repudiated or terminated by the parties." Morris v. Berman  
10 (1958) 159.CalApp.2d 770 at 794-795. California Code of Civil  
11 Procedure § 352(a) provides that if a person entitled to bring  
12 an action is, at the time the cause of action accrued lacking  
13 the legal capacity to make decisions, the time of the disability  
14 is not part of the time limited for the commencement of the  
15 action.  
16  
17  
18

19 Based on the trial evidence, the court has found that Ms.  
20 Bacon lacked both testamentary and contractual capacity on May  
21 14, 2013. The court cited above evidence demonstrating that Ms.  
22 Bacon's the lack of capacity continued through the execution of  
23 the settlement agreement in the litigation related to her late  
24 husband's trust in May 2017. Subsequent to that date, the  
25 evidence demonstrates that Ms. Bacon's existing incapacity was  
26 exacerbated by the effects of a major stroke in July 2017, which  
27  
28

1 resulted in both receptive and expressive aphasia that  
2 diminished her ability to understand and communicate  
3 information. Dr. Firestone's testimony described additional  
4 deficits resulting from Ms. Bacon's stroke based on his  
5 evaluation of her in 2018. From the execution of the gift deed  
6 until the date of Ms. Dolch's commencement of the action, Ms.  
7 Bacon's lack of capacity tolled the statute of limitations for  
8 each of the causes of action asserted.  
9

10 The court also found that from 2009 forward, Mr. Sykes both  
11 occupied a confidential relationship with Ms. Bacon that gave  
12 rise to a fiduciary duty and exercised undue influence over her.  
13 That relationship and that influence continued unabated until  
14 Mr. Sykes' exclusion from Ms. Bacon's home by court-ordered  
15 restraining order in May 2018. The court finds that the statute  
16 of limitations as to each cause of action tolled during that  
17 period. Ms. Dolch commenced the action within three months of  
18 the termination of Mr. Sykes' undue influence and his  
19 confidential relationship with Ms. Bacon. This action is not  
20 time-barred.  
21  
22  
23

#### 24 **IV. Relief Sought**

##### 25 **A. Cancellation**

26 Ms. Dolch seeks cancellation of two instruments: 1) the May  
27 14, 2013 deed and the February 26, 2015 deed of the 700 Brewer  
28

1 Drive property to Mr. Sykes and 2) the Bill of Sale dated  
2 November 24, 1997 and the other assignments of her antiques and  
3 artwork to him. California Civil Code § 3412 provides for  
4 cancellation of a written instrument where if left outstanding  
5 it may cause serious injury to a person against whom it is void  
6 or voidable. The court has found that Ms. Bacon lacked  
7 contractual capacity at the time of execution of the May 14,  
8 2013 deed, it is void. The court further finds that the  
9 corrective gift deed is void based on the lack of capacity  
10 established by Dr. Mueller's 2014 examination as well. If left  
11 outstanding, both deeds may cause serious injury to her estate.  
12 The court orders cancellation of the deeds pursuant to  
13 California Civil Code § 3412. The court finds that Ms. Dolch,  
14 as the trustee of Ms. Bacon's trust, has sole equitable title to  
15 the property located at 700 Brewer Drive, Hillsborough, CA.

16  
17  
18  
19 The court found the evidence at trial insufficient to  
20 support any claim for invalidity of the November 24, 1997 Bill  
21 of Sale. The court denies the claim for cancellation, noting  
22 that Mr. Sykes' evidence failed to establish based on that  
23 instrument that he had any ownership claim to any item of  
24 artwork or antiques in Ms. Bacon's home other than the eleven  
25 specifically identified in the court's decision.  
26  
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28

1           **B. Constructive Trust**

2           Ms. Dolch seeks imposition of a constructive trust on  
3 whatever interest Mr. Sykes is found to have in Ms. Bacon's  
4 Hillsborough home, her antiques and artwork, and the devise to  
5 him in the fourth trust amendment in favor of Ms. Dolch for the  
6 benefit of the contingent residuary beneficiaries of the Fourth  
7 Amendment to the Amended and Restated Thea B. Bacon Living  
8 Trust, as follows: Best Friends Animal Society, Kanab, Utah  
9 (20%); Ironwood Pig Sanctuary, Marana, Arizona (4%); Farm  
10 Sanctuary, Orland, California (4%); California Wolf Center,  
11 Julian, California (4%); Defenders of Wildlife, Washington D.C.  
12 (4%); The Elephant Sanctuary, Hohenwald, Tennessee (4%); The  
13 Jane Goodall Institute, Arlington, Virginia (4%); The Animal  
14 Place, Vacaville, California (4%); American Anti-Vivisection  
15 Society, Jenkintown, Pennsylvania (4%); Peaceful Valley Donkey,  
16 Santa Clarita, California (4%); Peninsula Humane Society, San  
17 Mateo, California (20%); San Francisco SPCA, San Francisco,  
18 California (20%); Trustor's friend Albert Bartridge (4%).

19           California Civil Code § 2224 provides that "One who gains a  
20 thing by... undue influence, the violation of a trust, or other  
21 wrongful act, is, unless he or she has some other and better  
22 right thereto, an involuntary trustee of the thing gained, for  
23 the benefit of the person who would otherwise have had it."  
24  
25  
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28

1 The court has ordered cancellation of the deed transferring the  
2 Hillsborough home to Mr. Sykes and found that Ms. Dolch has sole  
3 equitable title as the trustee of Ms. Bacon's living trust. The  
4 court has found that Mr. Sykes has established an ownership  
5 interest in only eleven items of Ms. Bacon's artwork and  
6 antiques, as well as certain items of clothing and guitars in  
7 her residence. The court did not find sufficient evidence from  
8 which to conclude that he acquired any other ownership interest  
9 based on an inter vivos transfer in any of Ms. Bacon's other  
10 personal property. The court further found that he did not  
11 acquire the eleven items identified by the court, the guitars,  
12 or the clothing by undue influence. The court declines to  
13 impose a constructive trust on those items.

14  
15  
16 For the court to impose a constructive trust on the devise  
17 to Mr. Sykes contained in the Fourth Amendment to Amended and  
18 Restated Thea B. Bacon Living Trust (Exhibit 91), the court must  
19 find both that Mr. Sykes gained that devise by the use of undue  
20 influence on Ms. Bacon and that he does not have some other and  
21 better right to it. Ms. Bacon's living trust was amended and  
22 restated in 2010. The Second Amendment to the Amendment and  
23 Restatement of the Thea B. Bacon Living Trust was admitted as  
24 Exhibit J. It provided for Mr. Sykes (if he survived Ms. Bacon)  
25 to receive distribution of the trust balance after making  
26  
27  
28

1 specific gifts to the animal charities identified totaling  
2 \$1,100,000. The Third Amendment to the Amendment and  
3 Restatement of the Thea B. Bacon Living Trust (Exhibit 90)  
4 drafted by Mr. Barulich to appoint a co-trustee and modify the  
5 successor trustee provisions made no changes to the distributive  
6 provisions of Exhibit J. The Fourth Amendment to the Amendment  
7 and Restatement of the Thea B. Bacon Living Trust (Exhibit 91)  
8 drafted by Jessica Rowe made substantial changes to the  
9 distributive provisions. It reduced the collective gifts to the  
10 animal charities to \$285,000 and provided for distribution of  
11 the balance to Mr. Sykes.  
12

13  
14 Exhibits 297 through 310 consist of a series of e-mails  
15 between wriggle@sonic.net ("TBB"), Mr. Bartridge, and Jessica  
16 Rowe. Ms. Rowe's notes and billing records establish that she  
17 met with Ms. Bacon twice in person prior to the execution of  
18 Exhibit 91 - once for her initial meeting on May 12, 2015 and  
19 once on July 16, 2015. The notes of the July 16 meeting  
20 indicate that Ms. Bacon stated she wanted to make gifts to  
21 charity, but noted no specific amounts. Exhibit 299 contains an  
22 e-mail from "TBB" requesting that Ms. Rowe forward drafts of her  
23 estate planning documents via e-mail in advance of a proposed  
24 signing meeting so that she could review them prior to the  
25 meeting and asking that they also be forwarded to Mr. Bartridge.  
26  
27  
28

1 Ms. Rowe verbally confirmed with Ms. Bacon by telephone that Mr.  
2 Bartridge was authorized to receive the drafts. Exhibit 300  
3 contains an e-mail from the wriggle@sonic.net to Albert  
4 Bartridge dated July 12, 2015 with a typed attachment setting  
5 forth the amended charitable amounts that ended up in the  
6 executed version of Exhibit 91. In the e-mail, "TBB" directs  
7 Mr. Bartridge to forward the attachment to Ms. Rowe for  
8 incorporation in the latest draft of the trust documents.  
9  
10 Exhibit 301 contains an e-mail from "TBB" to Ms. Rowe, copied to  
11 Mr. Bartridge, purporting to confirm that the draft provisions  
12 forwarded by Mr. Bartridge were drafted and revised by Ms.  
13 Bacon. Exhibits 304, 305, and 306 reflect that Ms. Rowe edited  
14 the draft documents to incorporate the changes suggested by the  
15 prior e-mails and forwarded to "TBB" for Ms. Bacon's review on  
16 July 12, 2015. Ms. Bacon signed the documents in person on  
17 August 27, 2015 in a meeting which lasted for forty minutes  
18 based on Ms. Rowe's billing records. Ms. Rowe received Mr.  
19 Barulich's file on June 12, 2015 and was aware that Dr. Mueller  
20 had performed a capacity evaluation, but did not refer Ms. Bacon  
21 to Dr. Abbey until after the execution of Exhibit 91. Ms. Rowe  
22 believed she was corresponding with Ms. Bacon while e-mailing  
23 wriggle@sonic.net, but the court has concluded by clear and  
24 convincing evidence that Ms. Bacon did not use e-mail and Ms.  
25  
26  
27  
28

1 Rowe was actually corresponding with Mr. Sykes. Furthermore,  
2 the court concludes that Mr. Sykes concealed his involvement in  
3 the correspondence because the 2014 APS investigation had raised  
4 concerns about his involvement in Ms. Bacon's finances and  
5 resulted in Mr. Barulich's investigation of Ms. Bacon's  
6 capacity, and he feared that if he attempted to correspond with  
7 Ms. Rowe under his own name she would prevent his involvement in  
8 the drafting of Exhibit 91.  
9

10  
11 This correspondence occurred after Dr. Mueller observed Ms.  
12 Bacon to be exhibiting the deficits in attention and cognition  
13 described above in the court's discussion of the invalidity of  
14 the settlement agreement and after Lynda Herrera observed her to  
15 be unable to identify her assets and unaware of her gifting her  
16 home to Mr. Sykes. Her comments to Ms. Rowe on one occasion  
17 prior to the signing confirmed that she remained unable to  
18 consistently recall the gift of her home to Mr. Sykes. The  
19 court concludes that Mr. Sykes obtained the devise in Exhibit 91  
20 by undue influence and actual fraud.<sup>35</sup>  
21  
22

---

23 <sup>35</sup> In his objections, Mr. Sykes seeks a factual and legal basis for a finding  
24 by the court that the e-mails in question did not reflect Ms. Bacon's will  
25 and intent and were not prepared at Ms. Bacon's direction or with her  
26 knowledge, consent, or authorization. The basis for such finding is simple:  
27 there is no evidence in the record that they were prepared with her  
28 knowledge, will, consent, or authorization; and the evidence in the record  
amply supports the opposite conclusion. The evidence establishes clearly  
that Ms. Bacon did not use computers herself. Mr. Sykes didn't say he  
authored the communications at her direction, he testified falsely that he  
did not author them at all. Mr. Sykes' falsity is more consistent with the  
inference either that he knew she lacked capacity and authored the e-mails



1 The court also found that as to Swiss francs valued at  
2 \$615,256 transferred on April 30, 2012; \$1,094,467.77 in funds  
3 transferred by check between February 8, 2012 and May 31, 2016;  
4 and three motorcycles described as a 1959 Indian Chief By Royal  
5 Enfield 700cc, a 1968 Royal Enfield 750, and a Moto Guzzi 1000S  
6 Mr. Sykes acquired this property from Ms. Bacon by financial  
7 elder abuse and undue influence.  
8

9 The court imposes a constructive trust on Swiss francs  
10 valued at \$615,256 transferred on April 30, 2012; \$1,094,467.77  
11 in funds transferred by check between February 8, 2012 and May  
12 31, 2016; three motorcycles described as a 1959 Indian Chief By  
13 Royal Enfield 700cc, a 1968 Royal Enfield 750, and a Moto Guzzi  
14 1000S; and the devise to Mr. Sykes contained in Exhibit 91 in  
15 favor of Ms. Dolch for the benefit of the contingent residuary  
16 beneficiaries of the Fourth Amendment to the Amended and  
17 Restated Thea B. Bacon Living Trust, as follows: Best Friends  
18 Animal Society, Kanab, Utah (20%); Ironwood Pig Sanctuary,  
19 Marana, Arizona (4%); Farm Sanctuary, Orland, California (4%);  
20 California Wolf Center, Julian, California (4%); Defenders of  
21 Wildlife, Washington D.C. (4%); The Elephant Sanctuary,  
22  
23  
24  
25

26 \_\_\_\_\_  
27 for his own self-interest, or that he authored them without her knowledge and  
28 consent. Had they been legitimate expressions of her will and intent, he  
would not have needed to conceal his authorship from Ms. Rowe by using the  
TBB/Wrig e-mail address rather than his own, or to lie to the court in his  
testimony denying involvement in their authorship.

1 Hohenwald, Tennessee (4%); The Jane Goodall Institute,  
2 Arlington, Virginia (4%); The Animal Place, Vacaville,  
3 California (4%); American Anti-Vivisection Society, Jenkintown,  
4 Pennsylvania (4%); Peaceful Valley Donkey, Santa Clarita,  
5 California (4%); Peninsula Humane Society, San Mateo, California  
6 (20%); San Francisco SPCA, San Francisco, California (20%);  
7 Trustor's friend Albert Bartridge (4%).

8  
9 **C. Invalidity**

10 In the alternative, Ms. Dolch seeks an order invalidating  
11 the portions of Exhibit 91 devising any part of Ms. Bacon's  
12 estate to Mr. Sykes. Mr. Sykes' objections correctly specify  
13 that Ms. Dolch did not plead invalidity in her petition, and the  
14 court has modified this portion of the Statement of Decision to  
15 deny the alternative remedy of invalidity sought in Ms. Dolch's  
16 closing argument but not pled in her petition. Having sustained  
17 that objection, the court declines the further requests by Mr.  
18 Sykes for express findings regarding the validity of prior  
19 estate documents.  
20  
21

22 **D. Forfeiture**

23 Ms. Dolch further seeks relief pursuant to Probate Code §  
24 259 deeming Mr. Sykes to have predeceased Ms. Bacon. Probate  
25 Code § 259 requires proof of the following:  
26  
27  
28

- 1) By clear and convincing evidence that the person is liable for physical abuse, neglect, or financial abuse of the decedent elder or dependent adult,
- 2) That the person acted in bad faith,
- 3) That the person has been found to have been reckless, oppressive, fraudulent<sup>36</sup>, or malicious in the commission of any of these acts upon the decedent,
- 4) The decedent, at the time those acts occurred and thereafter until the time of his or her death, has been found to have been substantially unable to manage his or her own financial resources or to resist fraud or undue influence.

Probate Code § 259(c) provides in relevant part that any person found liable under the foregoing subdivision shall not receive any property, damages, or costs that are awarded to the decedent's estate in any action described in subdivisions (a) or (b), whether that person's entitlement is under a will, a trust, or laws of intestacy. Subdivision (c) does not apply to a decedent who regains the ability to substantially manage his or her financial resources and to resist fraud or undue influence after the acts described in subdivision (a). Estate of Dito (2011) 198 Cal.App.4<sup>th</sup> 791 at 803-804 clarifies in relevant part

1 that a person found liable under Probate Code § 859(a) is deemed  
2 to predecease the decedent only to the extent the person would  
3 have been entitled through trust to receive a distribution of  
4 the damages and costs the person is found to be liable to pay to  
5 the estate as a result of the abuse. A determination under  
6 Probate Code § 859(a) does not necessarily eliminate the  
7 abuser's entitlement to a share of the estate, but limits the  
8 value of the estate to which the abuser's percentage share is  
9 applied to prevent the abuser from benefitting from his wrongful  
10 conduct.  
11  
12

13 In this case, the court has already found by clear and  
14 convincing evidence that Mr. Sykes committed financial elder  
15 abuse of Ms. Bacon and that he acted fraudulently in his  
16 procurement of the devise contained in Exhibit 91. The court  
17 has found that from 2009 forward, Ms. Bacon was subject to undue  
18 influence by Mr. Sykes. Due to her dependence on him and the  
19 tactics used to exacerbate that dependence as described above,  
20 Ms. Bacon was substantially unable to manage her own financial  
21 resources or to resist his undue influence.  
22  
23

24 Bad faith is not defined in the statute. Black's Law  
25 Dictionary defines bad faith as the opposite of good faith, not  
26 prompted by an honest mistake as to one's rights or duties, but  
27 by some interested or sinister motive. It is not simply bad  
28

1 judgment or negligence, but implies the conscious doing of a  
2 wrong because of dishonest purpose or moral obliquity, and it  
3 contemplates a state of mind affirmatively operating with  
4 furtive design or ill will. In this instance, the forfeiture  
5 sought by Ms. Dolch is disinheritance based on Mr. Sykes' fraud  
6 directed at obtaining the devise introduced as Exhibit 91 under  
7 which he inherits. In his surreptitious correspondence with Ms.  
8 Bacon's attorney after Ms. Bacon's capacity had been recently  
9 evaluated by Dr. Mueller and found to be lacking, the court  
10 finds that his conduct was in bad faith. It was motivated by  
11 self-interest - the desire to reduce the share of Ms. Bacon's  
12 estate devised to charity and increase his own share. The  
13 correspondence done in Ms. Bacon's name, without disclosure that  
14 he was the actual correspondent, was done consciously and with  
15 the dishonest purpose of deceiving Ms. Bacon's attorney into  
16 drafting a favorable trust instrument believing she was  
17 corresponding with her client rather than an interested  
18 potential beneficiary. Mr. Sykes' conduct demonstrates a state  
19 of mind operating with furtive design. The court finds  
20 sufficient evidence to support Ms. Dolch's request for a  
21 determination that Mr. Sykes has predeceased Ms. Bacon pursuant  
22 to Probate Code § 259. Pursuant to Estate of Dito (2011) 198  
23 Cal.App.4<sup>th</sup> 791 and Probate Code § 259(c), Mr. Sykes is  
24  
25  
26  
27  
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1 prohibited from receiving any property, damages, or costs  
2 awarded under the judgment in this action to Ms. Bacon's estate.

3 **E. Damages**

4 **1. Compensatory Damages**

5  
6 As described above, the court did not find that Ms. Dolch  
7 carried her burden of proof in establishing the elements of her  
8 asserted causes of action as to all of the transactions she  
9 sought to invalidate. Based on those claims that she did prove,  
10 the court finds that the amount of compensatory damages due from  
11 Mr. Sykes to Ms. Dolch as trustee of Ms. Bacon's living trust is  
12 as follows. The court has taken the categories appearing on  
13 page one of 164 of Exhibit 271 and adjusted where appropriate  
14 based on its findings of liability.  
15

16  
17 Real property: \$6,150,000 based on the Riddle valuation of  
18 the Brewer Drive property dated February 15, 2020.

19 Bond/Securities per gift tax return: \$612,256 in Swiss  
20 francs from 4/30/2012.

21 Cash/cash equivalents per bank accounts:

22 \$1,094,467.77 in transactions identified as wrongfully  
23 acquired from Exhibit 271;  
24

25 Total amount of compensatory damages: \$7,856,723.77. The  
26 court's enumerated calculations make clear that the compensatory  
27 damage award includes the value of the Brewer Drive property.  
28

1 Mr. Sykes' objections include a request for an express finding  
2 that if the ultimate judgment provides for cancellation of the  
3 deed transferring the Brewer Drive property to him, that the  
4 court make an express finding that the unsatisfied compensatory  
5 damages are reduced accordingly. He makes that argument for the  
6 first time by way of objection to the Tentative and Proposed  
7 Statement of Decision with no citation to any authority  
8 supporting such a finding. The requested finding is also  
9 inconsistent with the holding of Estate of Ashlock (2020) 45  
10 Cal.App.5<sup>th</sup> 1066, which holds that the double damages provisions  
11 of Probate Code § 859 are available for the value of real  
12 property acquired by financial elder abuse even if the separate  
13 remedy of return of the real property to the estate is  
14 successfully asserted.

## 18 2. Interest

19 On Exhibit 271, Ms. White included a claimed interest  
20 amount at the annual rate of 10%. The use of 10% is based on  
21 California Probate Code § 16441, which fixes a trustee's  
22 liability for interest for breach of trust at the post-judgment  
23 interest rate of 10% in Code of Civil Procedure § 685.010. Mr.  
24 Sykes was not Ms. Bacon's trustee, and no judgment has been  
25 entered in this action. If interest is to be awarded,  
26 California Civil Code § 3287(c) provides that in the absence of  
27  
28

1 any statutory provision specifying a different rate, the legal  
2 rate of interest prejudgment is 7%. California Constitution,  
3 Article I, § 15, Section 1; Michelson v. Hamada (1994) 29  
4 Cal.App.4<sup>th</sup> 1566.

5  
6 Mr. Sykes objects to any inclusion of pre-judgment interest  
7 under Civil Code § 3287 on the basis of the court's denial of  
8 many of Ms. Dolch's claims and the consequent uncertainty of the  
9 damages prior to trial. He argues that the damages were not  
10 reasonably calculable, and that under Stein v. Southern Cal.  
11 Edison Co. (1992) 7 Cal.App.4<sup>th</sup> 565, the court should decline to  
12 award any prejudgment interest. The court concludes that his  
13 objection to award of interest under Civil Code § 3287 is well  
14 taken.  
15

16  
17 The court considered whether to award prejudgment interest  
18 based on Civil Code § 3288, which provides that: "In an action  
19 for the breach of an obligation not arising from contract, and  
20 *in every case of oppression, fraud, or malice*, interest may be  
21 given, in the discretion of the jury." (emphasis added by the  
22 court). The court's only finding of breach of fiduciary duty by  
23 Mr. Sykes related to the transfer of the Brewer Drive property,  
24 for which Ms. Dolch did not claim interest. While the court  
25 found that Mr. Sykes committed actual fraud in his procurement  
26 of the 2017 settlement agreement and the Fourth Amendment to the  
27  
28



1 trust, the court did not find that the compensatory damages  
2 awarded above resulted from any actual or constructive fraud  
3 committed by Mr. Sykes. Based on the definitions of malice and  
4 oppression stated in Civil Code § 3294, the court does not  
5 conclude that Ms. Dolch has proven by clear and convincing  
6 evidence that the compensatory damages awarded above resulted  
7 from malicious or oppressive conduct, and the court declines to  
8 award discretionary prejudgment interest.  
9

### 10 **3. Double Damages**

11  
12 Probate Code § 859 provides in relevant part that if a  
13 court finds that a person has taken, concealed, or disposed of  
14 an elder's property through the commission of elder or dependent  
15 adult financial abuse as defined by Section 15610.030 of the  
16 Welfare and Institutions Code, the person shall be liable for  
17 twice the value of the property recovered by an action under  
18 this part. The court has found Mr. Sykes liable for financial  
19 elder abuse and determined compensatory damages of  
20 \$7,856,723.77. The amount of double damages awarded pursuant to  
21 Probate Code § 859 is \$15,713,447.54.  
22  
23

### 24 **4. Treble Damages**

25 Ms. Dolch seeks \$27M in treble damages pursuant to  
26 California Civil Code § 3345 for the loss or encumbrance of  
27 Brewer Drive. She cites no case applying that statute to an  
28

1 action for financial elder abuse, and the cases cited in the  
2 annotations to the statute deal almost exclusively with actions  
3 related to deceptive business practices or unfair competition  
4 directed at elder and dependent adults. Even assuming the  
5 statute would apply to an individual action for financial elder  
6 abuse, the award of treble damages is discretionary. In light  
7 of the amount of double damages already imposed, the court  
8 exercises its discretion to deny the claim for treble damages.

9  
10  
11 **F. Attorney's Fees and Costs**

12 Ms. Dolch seeks an award of attorney's fees and costs  
13 pursuant to Welfare and Institutions Code § 15657.5(a) to be  
14 determined by later submission of a fee and cost bill. She  
15 seeks inclusion of her conservator fees. Mr. Sykes asserts that  
16 she is not entitled to fees under Terry v. Conlan (2005) 131  
17 Cal.App.4<sup>th</sup> 1445 and Whittlesey v. Aiello (2002) 104 Cal.App.4<sup>th</sup>  
18 1221 because she filed suit to disinherit a beneficiary without  
19 seeking approval of the court to file the action or use Ms.  
20 Bacon's funds to pay her attorneys for the litigation. Both  
21 cited cases are distinguishable. Neither dealt with any claim  
22 for financial elder abuse. Welfare and Institutions Code §  
23 15657.5(a) provides that when the court finds liability for  
24 financial elder abuse by a preponderance of the evidence, the  
25 court "shall" award reasonable attorney's fees and costs,  
26  
27  
28

1 including reasonable fees for the services of a conservator  
2 devoted to the litigation of a claim brought for financial elder  
3 abuse. The mandatory nature of this award was confirmed in the  
4 case of Arace v. Medico Investment LLC (2020) 48 Cal.App.5th 977,  
5 even where no compensatory damages are awarded. The court has  
6 found Mr. Sykes liable for financial elder abuse. Ms. Dolch is  
7 entitled by statute to recover her reasonable attorneys' fees  
8 and costs for litigation of this claim, including litigation  
9 costs for incurred for her services as conservator. The court  
10 reserves jurisdiction to determine the amount of reasonable  
11 costs based on post-trial briefing by the parties on a schedule  
12 to be determined by the probate court.

#### 15 ORDERS

16  
17 Based on the foregoing findings, the court makes the  
18 following orders.

- 19 1. The deeds to the property known as 700 Brewer Drive  
20 executed on May 14, 2013 and February 26, 2015 are  
21 ordered cancelled, and sole equitable title to the  
22 property is awarded to Debra Dolch as trustee of the Thea  
23 B. Bacon Living Trust;
- 24  
25 2. The court imposes a constructive trust on the following  
26 property of James Sykes:  
27  
28

- 1 a) Swiss francs valued at \$615,256 transferred on April  
2 30, 2012 and any accumulation thereon;  
3  
4 b) \$1,094,467.77 in funds transferred by check between  
5 February 8, 2012 and May 31, 2016 and any accumulation  
6 thereon;  
7  
8 c) Three motorcycles described as a 1959 Indian Chief By  
9 Royal Enfield 700cc, a 1968 Royal Enfield 750, and a  
10 Moto Guzzi 1000S;  
11  
12 d) The devise to Mr. Sykes contained in Exhibit 91;

13 The constructive trust as to the foregoing property is  
14 in favor of Debra Dolch as trustee of the Thea B.  
15 Bacon Living Trust for the benefit of the contingent  
16 residuary beneficiaries of the Fourth Amendment to the  
17 Amended and Restated Thea B. Bacon Living Trust, as  
18 follows: Best Friends Animal Society, Kanab, Utah  
19 (20%); Ironwood Pig Sanctuary, Marana, Arizona (4%);  
20 Farm Sanctuary, Orland, California (4%); California  
21 Wolf Center, Julian, California (4%); Defenders of  
22 Wildlife, Washington D.C. (4%); The Elephant  
23 Sanctuary, Hohenwald, Tennessee (4%); The Jane Goodall  
24 Institute, Arlington, Virginia (4%); The Animal Place,  
25 Vacaville, California (4%); American Anti-Vivisection  
26 Society, Jenkintown, Pennsylvania (4%); Peaceful  
27  
28

1 Valley Donkey, Santa Clarita, California (4%);  
2 Peninsula Humane Society, San Mateo, California (20%);  
3 San Francisco SPCA, San Francisco, California (20%);  
4 Trustor's friend Albert Bartridge (4%).  
5

6 3. Pursuant to Estate of Dito (2011) 198 Cal.App.4<sup>th</sup> 791 and  
7 Probate Code § 259(c), James Sykes is deemed to have  
8 predeceased Thea B. Bacon and is thereby prohibited from  
9 receiving any property, damages, or costs awarded under  
10 the judgment in this action to Ms. Bacon's estate.  
11

12 4. The court awards compensatory damages payable by James  
13 Sykes in the amount of \$7,856,723.77 to Debra Dolch as  
14 trustee of the Thea B. Bacon Living Trust.  
15

16 5. The court awards double damages pursuant to Probate Code  
17 § 859 payable by James Sykes to Debra Dolch as trustee of  
18 the Thea B. Bacon Living Trust in the amount of  
19 \$15,713,447.54.<sup>37</sup> Mr. Sykes' total liability to Ms.  
20 Bacon's estate for compensatory and § 859 damages is  
21 \$23,570,171.31.  
22

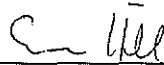
23 6. Pursuant to Welfare and Institutions Code § 15657.5(a),  
24 the court orders reasonable attorney's fees and costs,  
25

---

26 <sup>37</sup> In his objections, Mr. Sykes requests an express finding that his total  
27 monetary liability under the judgment is limited to the double damage award  
28 calculated by the court pursuant to Probate Code § 859. The court declines  
finding it to be both better reasoned and more persuasive than  
Conservatorship of Ribal (2019) 31 Cal.App.5<sup>th</sup> 519.

1 including conservator costs incurred during the  
2 litigation of this action, payable from James Sykes to  
3 Debra Dolch as trustee of the Thea B. Bacon Living Trust  
4 in an amount to be determined by the probate court on  
5 further proceedings on a schedule as directed by the  
6 Probate Judge.  
7

8  
9 DATED: September 16, 2022  
10

11  
12   
13 \_\_\_\_\_  
14 Elizabeth M. Hill  
15 Judge  
16 Superior Court of California,  
17 County of San Mateo  
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