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Fees -- Gov. Code § 6103**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/12/2019** at 10:22:30 AM  
Clerk of the Superior Court  
By Maria Galvan, Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 PROBATE DIVISION

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13  
14 **IN RE: THE MAURY AND LILLIAN NOVAK  
CHARITABLE TRUST**

**ROA #1**

Case No. 37-2019-00019242-PR-TR-CTL

**PETITION FOR REMOVAL OF  
TRUSTEE; FOR AN ORDER  
COMPELLING EARL FELDMAN,  
TRUSTEE, TO RENDER A FULL AND  
COMPLETE ACCOUNTING; AND FOR  
A SURCHARGE OF EARL FELDMAN  
FOR BREACH OF TRUST**

**[Probate Code §§ 15642 and 17200]**

Date:  
Time:  
Dept:  
Judge:  
Trial Date:  
Action Filed:

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24 1. Xavier Becerra, the Attorney General of the State of California, brings this Petition  
25 pursuant to Probate Code section 17200 for removal of Earl Feldman, Trustee of the Maury and  
26 Lillian Charitable Trust; for an order compelling Earl Feldman to render a full and complete  
27 accounting; and for surcharge of Earl Feldman for Breach of Trust (Prob. Code §§15642, 17200),  
28 and respectfully alleges as follows:

1           2.     The Attorney General for the State of California is charged with the general  
2 supervision of all charitable trusts and represents the beneficiaries of all charitable trusts.

3           3.     Maury and Lillian Novak created a charitable trust on April 21, 1981. A true and  
4 correct copy of the Trust is submitted as Exhibit A to the Notice of Lodgment, and incorporated  
5 herein by this reference.

6           4.     The Trust named Earl Feldman (Feldman) as Trustee of the Trust. Petitioner is  
7 informed and believes that Feldman has acted as the Trustee of the Trust since 1996, and  
8 continues in this position.

9           5.     Petitioner is informed and believes that the principal place of administration of the  
10 Trust is San Diego, California.

11           6.     **Trust Provisions Regarding Beneficial Distributions.** In the First Amendment to  
12 the Declaration of the Maury and Lillian Novak Trust dated March 6, 1989, the Trust provides  
13 that after specific distributions were made, “at the Trustee’s discretion, [the Trustee] shall  
14 distribute such amounts of income and principal of the trust as the Trustee shall deem appropriate  
15 for charitable, religious, scientific, medical research, educational or other public benefit activities  
16 and functions, provided, that at the time a distribution is to be made, the recipient organization  
17 must be an organization described in Section 170(c), 2055(a) and 2522(a) of the Internal Revenue  
18 Code of 1986.” A true and correct copy of the First Amendment is submitted as Exhibit B to the  
19 Notice of Lodgment, and incorporated herein by this reference.

20           7.     **Breach of Trust.** Petitioner is informed and believes that Feldman did not comply  
21 with the terms of the Trust and failed to make the distributions to charitable organizations as  
22 required. Instead, Feldman made distributions to himself and has taken unauthorized and  
23 excessive payments for his own personal benefit under the guise of managing the trust, and for  
24 travel, car, insurance and office expenses. Petitioner is informed and believes that Feldman was  
25 not managing the Trust for the benefit of the charitable beneficiaries, but was taking funds for  
26 himself. Petitioner is informed and believes that Feldman misappropriated \$1,684,722 in Trust  
27 assets from 2010 to 2015.

1 8. Feldman was required to file Forms 990 with the IRS for the Trust. Although he  
2 swore under penalty of perjury that the information he submitted was true and correct, Feldman  
3 filed false and misleading information. The following table illustrates the amounts Feldman  
4 claimed that he made to charities, the amount he actually made, and the amounts he paid himself:  
5

6 <b>Year</b>	<b>Amount Reported on 990</b>	<b>Donations Actually Made</b>	<b>Amount Paid to Feldman</b>
7 2010	\$55,745	\$45,591	\$160,337
8 2011	\$70,099	\$50,665	\$167,110
9 2012	\$215,273	\$10,000	\$463,681
10 2013	\$350,384	\$15,000	\$418,919
11 2014	\$15,000	\$27,100	\$383,437
12 2015	n/a	\$1,958,608	\$91,237

13  
14 9. **Breach of Fiduciary Duties.** A trustee owes the trust and its beneficiaries all of the  
15 duties set forth under the trust and applicable law, and is obligated to conduct himself in  
16 accordance with the highest fiduciary standards. A trustee has a duty to administer the trust  
17 according to its terms. (Prob. Code, § 16000.) A trustee has a duty to administer the trust solely  
18 in the interest of the beneficiaries. (Prob. Code, § 16002, subd. (a).) A trustee has a duty not to  
19 use or deal with trust property for the trustee's own profit, or for any other purpose unconnected  
20 with the trust, nor to take part in any transaction in which the trustee has an interest adverse to a  
21 trust beneficiary. (§ 16004.) A trustee has a duty to take reasonable steps to take and keep  
22 control of and to preserve trust property. (§ 16006.) A trustee has a duty to administer the trust  
23 with reasonable care, skill, and caution, to accomplish the purposes of the trust according to its  
24 terms. (§ 16040, subd. (a).) Feldman was obligated to satisfy each of the above-referenced  
25 fiduciary duties, among others, and failed to do so.

26 10. A violation by a trustee of any trustee's duty constitutes a breach of trust. (Prob.  
27 Code § 16400.) Petitioner is informed and believes Feldman has converted, lost, and/or  
28 improperly disbursed assets that were to benefit charitable entities. Petitioner is informed and

1 believes that Feldman breached his duties by, inter alia, (1) failing to administer the Trust in  
2 accordance with its terms; (2) failing to distribute the assets to charitable beneficiaries; (3) failing  
3 to properly account and provide accurate information; (4) improperly converting Trust assets to  
4 his own ownership and use; (5) improperly disbursing or distributing Trust assets to himself and  
5 others to pay for expenses unrelated to the trust administration; (6) improperly allowing others to  
6 use or obtain Trust assets; (7) failing to maintain Trust records; (8) filing false and misleading  
7 Internal Revenue Service Forms 990; and (9) failing to avoid conflicts of interest in Trust  
8 transactions.

9       11. Feldman had a legal and fiduciary obligation as Trustee to accurately report the  
10 donations the Trust made to the Internal Revenue Service and the Registry of Charitable Trusts.  
11 Feldman submitted Forms 990 signed by him under penalty of perjury that were false and  
12 misleading. Feldman reported making numerous donations to charitable organizations throughout  
13 the United States, but did not make the reported donations and instead converted the charitable  
14 assets for his own use.

15       12. In light of Feldman's breaches of his fiduciary duty, this Court should enter orders  
16 addressing his conduct. Probate Code section 17200, subdivision (b)(12), provides the Court with  
17 overarching authority to "compel redress of a breach of trust by any available remedy." The  
18 remedies include removing the trustee, (§ 17200, subd. (b) (10)); to instruct the trustee (§ 17200,  
19 subd. (b)(6)); and to compel an accounting (§ 17200, subd. (b)(7)(C)). The breaches of trust  
20 caused damage to the Trust estate and to Petitioner, as representative of the unnamed charitable  
21 beneficiaries, in that the Trust estate was improperly depleted, and the value of the charitable  
22 beneficial interest was significantly diminished. Petitioner is informed and believes that, as a  
23 direct and proximate result of Feldman's breaches of trust, the Trust and Petitioner have been and  
24 will be damaged in a sum that is presently unascertained. Petitioner will amend or supplement  
25 this petition to allege the exact amount of such damages when ascertained.

26       13. **Remedies Owed to Beneficiary for Breach of Trust.** If a trustee commits a breach  
27 of trust, available remedies include, but are not limited to: (1) redress by payment of money (i.e.,  
28 surcharge) or otherwise; (2) imposition of an equitable lien or constructive trust on trust property;

1 (3) trustee removal; or (4) any other appropriate remedy provided by statute or the common law.  
2 (Prob. Code §§ 16420, 16442). If a trustee commits a breach of trust, the trustee is chargeable  
3 with (1) any loss or depreciation in the value of the trust estate resulting from the breach of trust,  
4 with interest; (2) any profit made by the trustee through the breach of trust, with interest; and (3)  
5 any profit that would have accrued to the trust estate if the loss of profit is the result of the breach  
6 of trust. (Prob. Code §§ 16440, 16441).

7 **14. Petitioner is Entitled to Redress.** By reason of the foregoing facts and law, Petitioner  
8 is entitled to redress for Feldman's breaches of trust. Petitioner is entitled to a complete and  
9 accurate accounting by Feldman, under Court supervision, of all Trust assets, and all Trust  
10 transactions during his trusteeship. Petitioner is also entitled to an order surcharging Feldman,  
11 personally, in an amount to be determined, but equivalent to all amounts converted, lost, and/or  
12 improperly disbursed or withheld by him during his trusteeship, with interest thereon. Petitioner  
13 is also entitled to imposition of a constructive trust on all Trust property to which it is entitled but  
14 which is in the possession or under the control of the Trustee or any person or entity constituting  
15 the Trustee's agent or assign, such that (a) such person or entity holds such property as  
16 constructive trustee for the benefit of Petitioner; and (b) such person or entity is obligated to  
17 immediately deliver such property to Petitioner.

18 **15. Parties Entitled to Notice.** Pursuant to Probate Code section 17203, notice of  
19 hearing of this Petition shall be provided to Trustee EARL FELDMAN c/o Patrick Swan, Esq.,  
20 Jones Day, 4655 Executive Drive, Suite 1500, San Diego, California 92121. This notice will be  
21 given least thirty (30) days before the time set for hearing of this Petition. Petitioner is not aware  
22 of any other parties entitled to notice.

23 WHEREFORE, Petitioner prays for relief, as follows:

24 1. An order compelling a complete and accurate accounting by Feldman, under  
25 supervision of this Court, of all Trust assets and Trust transactions during the period in which he  
26 served as Trustee or otherwise controlled or possessed Trust property, including but not limited to  
27 calendar years 2005 through the present.

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