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County of San Diego
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By Maria Galvan, Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 PROBATE DIVISION

13 **ROA #1**

14 **IN RE: THE YVONNE H. MITCHELL
CHARITABLE TRUST**

Case No. 37-2019-00019222-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:

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 Yvonne H.
26 Mitchell 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. Yvonne H. Mitchell created a charitable trust on September 25, 1989. 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 2003, 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 Second Amendment
12 to the Declaration of the Yvonne H. Mitchell Trust dated March 6, 2003, the Trust provides that
13 after specific distributions were made, that “[a]ny of the Trust Estate not disposed of under the
14 foregoing provisions shall be distributed to the Community Foundation of San Diego, but if the
15 Community Foundation of San Diego or its successor is not then in existence, such Trust Estate
16 shall be distributed to one or more organizations that are an exempt entity under Section 401(c)(3)
17 of the Internal Revenue Code of 1986.” A true and correct copy of the Second Amendment is
18 submitted as Exhibit B to the Notice of Lodgment, and incorporated herein by this reference.

19 7. **Breach of Trust.** Petitioner is informed and believes that Trustee did not comply
20 with the terms of the Trust and failed to make the distributions to charitable organizations as
21 required. Instead, Feldman made distributions to himself and has taken unauthorized and
22 excessive payments for his own personal benefit under the guise of managing the trust, and for
23 travel, car, insurance and office expenses. Petitioner is informed and believes that Feldman was
24 not managing the Trust for the benefit of the charitable beneficiaries, but was taking funds for
25 himself. Petitioner is informed and believes that Feldman misappropriated \$650,000 in Trust
26 assets from 2010 to 2014.

27 8. Feldman was required to file Forms 990 with the IRS for the Trust. Although he
28 swore under penalty of perjury that the information he submitted was true and correct, Feldman

1 filed false and misleading information with the IRS for the Trust. The following table illustrates
2 the amounts Feldman claimed under penalty of perjury that he made to charities, the amount he
3 actually made, and the amounts he paid himself:

4	5	6	7	8
Year	Amount Reported on 990	Donations Actually Made	Amount Paid to Feldman	
2010	\$15,510	\$15,040	\$37,393	
2011	\$21,477	\$10,670	\$80,821	
2012	\$88,252	\$5,000	\$159,848	
2013	\$194,700	\$5,000	\$241,291	
2014	\$0	\$0	\$138,899	

11
12 **9. Breach of Fiduciary Duties.** A trustee owes the trust and its beneficiaries all of the
13 duties set forth under the trust and applicable law, and is obligated to conduct himself in
14 accordance with the highest fiduciary standards. A trustee has a duty to administer the trust
15 according to its terms. (Prob. Code § 16000.) A trustee has a duty to administer the trust solely
16 in the interest of the beneficiaries. (Prob. Code § 16002, subd. (a).) A trustee has a duty not to
17 use or deal with trust property for the trustee's own profit, or for any other purpose unconnected
18 with the trust, nor to take part in any transaction in which the trustee has an interest adverse to a
19 trust beneficiary. (Prob. Code § 16004.) A trustee has a duty to take reasonable steps to take and
20 keep control of and to preserve trust property. (Prob. Code § 16006.) A trustee has a duty to
21 administer the trust with reasonable care, skill, and caution, to accomplish the purposes of the
22 trust according to its terms. (Prob. Code § 16040, subd. (a).) Feldman was obligated to satisfy
23 each of the above-referenced fiduciary duties, among others, and failed to do so.

24 **10.** A violation by a trustee of any trustee's duty constitutes a breach of trust. (Prob.
25 Code § 16400.) Petitioner is informed and believes the Trustee has converted, lost, and/or
26 improperly disbursed assets that were to benefit charitable entities. Petitioner is informed and
27 believes that the Trustee breached his duties by, inter alia, (1) failing to administer the Trust in
28 accordance with its terms; (2) failing to distribute the assets to charitable beneficiaries; (3) failing

1 to properly account and provide accurate information; (4) improperly converting Trust assets to
2 his own ownership and use; (5) improperly disbursing or distributing Trust assets to himself and
3 others to pay for expenses unrelated to the trust administration ; (6) improperly allowing others to
4 use or obtain Trust assets; (7) improperly failing to maintain Trust records; (8) filing false and
5 misleading Internal Revenue Service Forms 990 and (9) improperly failing to avoid conflicts of
6 interest in Trust transactions.

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

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

25 13. **Remedies Owed to Beneficiary for Breach of Trust.** If a trustee commits a breach
26 of trust, available remedies include, but are not limited to: (1) redress by payment of money (i.e.,
27 surcharge) or otherwise; (2) imposition of an equitable lien or constructive trust on trust property;
28 (3) trustee removal; or (4) any other appropriate remedy provided by statute or the common law.

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

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

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

22 WHEREFORE, Petitioner prays for relief, as follows:

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

27 2. A surcharge order, in redress for Feldman's breaches of trust, in an amount according
28 to proof, together with interest at the legal rate;

- 1 3. An order imposing a constructive trust on all Trust property but which is in the
2 possession or under the control of Feldman or any person or entity constituting his agent or
3 assign, and ordering that (a) such person or entity holds such property as constructive trustee for
4 the benefit of Petitioner; and (b) such person or entity is obligated to immediately deliver such
5 property to Petitioner;
- 6 4. An order removing Feldman as trustee of the Trust, and appointing a successor
7 Trustee;
- 8 5. An order prohibiting Feldman from acting as Trustee of any trust;
- 9 6. An order for Petitioner's court costs and costs of suit incurred herein;
- 10 7. An order for Petitioner's attorneys' fees and investigation and litigation expenses;
- 11 8. For penalties under Government Code section 12591.1 for each false report Feldman
12 filed with the Registry of Charitable Trusts;
- 13 9. For pre-judgment interests pursuant to Civil Code section 3288; and
- 14 10. An order granting such other and further relief as the Court may deem proper.

15
16 Dated: April 12, 2019

Respectfully Submitted,

17 XAVIER BECERRA
18 Attorney General of California

19 /s/ Sandra I. Barrientos

20 SANDRA I. BARRIENTOS
21 Deputy Attorney General
22 *Attorneys for Xavier Becerra, Attorney
General, State of California*

23
24 **VERIFICATION**

25 The Attorney General of the State of California, acting in his official capacity, is exempt
26 from the verification requirements pursuant to Code of Civil Procedure section 446.

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