

1 ALEXIS S. GUTIERREZ, ESQ. (Bar No. 190487)
agutierrez@higgslaw.com
2 SCOTT J. INGOLD, ESQ. (Bar No. 254126)
ingolds@higgslaw.com
3 HIGGS FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
4 San Diego, CA 92101-7913
TEL: 619.236.1551
5 FAX: 619.696.1410

FILED
Clerk of the Superior Court

NOV 01 2019

6 Attorneys for Respondents
CLINTON K. ABRAMS and CRISARA ABRAMS,
7 co-trustees

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9 **CENTRAL DIVISION**

10 In the Matter of

CASE NO. 37-2019-00030018-PR-TR-CTL

11 THE RESTATEMENT OF THE CLEM
12 ABRAMS TRUST AGREEMENT DATED
1991

ROA#:

**CO-TRUSTEES' OBJECTION TO
PETITION: FOR AN ACCOUNTING; TO
MODIFY THE TRUST PURSUANT TO
PROBATE CODE SECTION 15409; AND
TO INVALIDATE THE PRENUPTIAL
AGREEMENT BETWEEN CLEM ABRAMS
AND LYDIA KENSHALO ABRAMS**

[IMAGED FILE]

Date: November 8, 2019

Time: 10:00 a.m.

Dept.: 502

Judge: HON. ROBERT LONGSTRETH

20
21 NOW COMES, Respondents CLINTON ABRAMS and CRISARA ABRAMS, as co-
22 trustees of the Restatement of the Clem Abrams Trust Agreement Dated 1991 (the "Trust"), and
23 hereby OBJECT to Petitioner's Petition: For an Accounting; To Modify the Trust Pursuant to
24 Probate Code section 15409; and To Invalidate the Prenuptial Agreement Between Clem Abrams
25 and Lydia Kenshalo Abrams, as follows:

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11/8
10:00
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HIGGS FLETCHER &
MACK LLP
ATTORNEYS AT LAW
SAN DIEGO

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9302396.1

I.

BACKGROUND FACTS

“The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument.” (Probate Code §21102(a).) “In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it.” (*Scharlin v. Superior Court* (1992) 9 Cal.App.4th 162, 168.) The Petition of LYDIA KENSHALO ABRAMS (“Petitioner” or “Dia”¹) in this matter must be denied because it seeks to entirely derail the intention of settlor and decedent, Clem Abrams (“Clem”), seeking to re-write the trust to entirely frustrate his intent as expressed therein.

It is undisputed among the parties that Clem was a successful developer prior to his marriage to Petitioner, bringing substantial separate property assets into the marriage. It is also undisputed that his pre-marriage assets continued to generate funds that supported the lifestyle that he and Dia enjoyed. It is *also* undisputed that, during Dia’s marriage to the older Clem, she was well provided-for through Clem’s efforts and from the proceeds from his separate-property assets. Clem left property in joint tenancy with Dia, which she inherited and currently enjoys ownership over. Despite living a very nice lifestyle during her marriage to Clem and having her own assets, Dia is now, only after Clem’s death, seeking to sidestep the fully-informed agreements she made and seize more of Clem’s assets, seeking to entirely derail his efforts as a real estate developer. Aside from the assets that Clem left to her in joint tenancy, Dia is well provided-for in the Trust through being the sole income beneficiary of the Marital Trust created therein.

Dia’s petition must be denied for several reasons. First, the prenuptial agreement among Clem and Dia, a college graduate herself, was informed, reasoned, and validly executed by both of them. Contrary to Dia’s claims, the prenuptial agreement governs not only their assets during life, but also following either of their passing. Dia agreed to be bound by the prenuptial agreement during her life, but now that Clem has passed away, is seeking to avoid the agreement

¹ First names are used herein out of convenience only because multiple parties share a surname; no disrespect is intended by the use of first names.

1 she made. Second, the Trust that Clem established was designed to continue effectuating his
2 life's work: real estate development, which Clem envisioned would be continued through his
3 children. Both the prenuptial agreement and the Trust are designed to preserve his labors as a real
4 estate developer and pass the business on to Clem and Dia's children as their legacy, while still
5 adequately providing for Dia during her life. Finally, there were, in fact, very good and
6 legitimate reasons for Clem's estate planning decisions. This Court need not (indeed, under
7 applicable law, *cannot*) second-guess Clem's intent, as unambiguously expressed in his Trust, nor
8 the wisdom of his estate planners. As such, Dia's petition must be denied.

9 **II.**

10 **OBJECTION TO PETITION**

11 1. Respondents state that Section I², paragraph 1 of the Petition is a legal conclusion
12 that requires neither admission nor denial.

13 2. As to the allegations of Section I, paragraph 2 of the Petition, Respondents admit
14 that the principal place of administration of the Trust is San Diego, California.

15 3. As to the allegations of Section I, paragraph 3 of the Petition, Respondents admit
16 that venue is proper in San Diego, California.

17 4. As to the allegations of Section I, paragraph 4 of the Petition, on information and
18 belief, Respondents admit the allegations of the same.

19 5. On information and belief, Respondents admit the allegations of paragraph 1 of the
20 Petition.

21 6. As to the allegations of paragraph 2 of the Petition, on information and belief,
22 Respondents admit that Clem and Dia became engaged approximately five years after meeting.
23 As to the remaining allegations, Respondents lack sufficient information to form a belief to
24 respond to said allegations, and on that basis deny the same.

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27 ² The Petition begins with paragraphs 1 through 4, and then re-starts numbering at paragraphs 1 under Section II.
28 The first four paragraphs of Section I will be identified as such herein, and the remaining paragraphs of the Petition
(in Sections II and III) will not be identified by section, but references to a paragraph absent a section designation
will refer to those paragraphs in Sections II and II of the Petition.

1 7. As to the allegations of paragraph 3 of the Petition, Respondents lack sufficient
2 information to form a belief to respond to said allegations, and on that basis deny the same.

3 8. Respondents deny the allegations of paragraph 4 of the Petition.

4 9. Respondents admit the allegations of paragraph 5 of the Petition.

5 10. As to the allegations of paragraph 6 of the Petition, respondents state that the
6 prenuptial agreement speaks for itself, and as such the allegations of paragraph 6 do not require
7 admission or denial.

8 11. On information and belief, Respondents deny the allegations of paragraph 7 of the
9 Petition.

10 12. As to the allegations of paragraph 8 of the Petition, Respondents deny that Dia was
11 not adequately cared for or that it was not her decision not to work. On information and belief,
12 Respondents admit the remaining allegations of paragraph 8.

13 13. Respondents deny the allegations of paragraph 9 of the Petition.

14 14. On information and belief, Respondents admit the allegations of paragraph 10 of
15 the Petition.

16 15. As to the allegations of paragraph 11 of the Petition, Respondents admit that Dia
17 inherited several properties via joint tenancy, and that Dia maintains paid employees for one or
18 more of these properties. Respondents deny that Dia lacks adequate assets to maintain her assets.

19 16. Respondents deny the allegations of paragraph 12 of the Petition.

20 17. As to the allegations of paragraph 13 of the Petition, Respondents admit that Clem
21 created a trust in 1991 and restated it on April 3, 2015. Respondents state that the remaining
22 allegations of paragraph 13 of the Petition do not require admission or denial.

23 18. As to the allegations of paragraph 14, Respondents state that the terms of the Trust
24 speak for themselves, and as such paragraph 14 does not require admission or denial.

25 19. Respondents admit the allegations of paragraph 15 of the Petition.

26 20. Respondents admit the allegations of paragraph 16 of the Petition.

27 21. Respondents lack sufficient information to form a belief to respond to the
28 allegations of paragraph 17 of the Petition and on that basis deny the same.

- 1 22. Respondents deny the allegations of paragraph 18 of the Petition.
- 2 23. As to the allegations of paragraph 19, Respondents state that the Trust speaks for
3 itself and as such paragraph 19 does not require admission or denial.
- 4 24. As to the allegations of paragraph 20, Respondents state that the Trust speaks for
5 itself and as such paragraph 20 does not require admission or denial.
- 6 25. Respondents deny the allegations of paragraph 21 of the Petition.
- 7 26. Respondents deny the allegations of paragraph 22 of the Petition.
- 8 27. As to the allegations of paragraph 23, Respondents state that the Trust speaks for
9 itself and as such paragraph 23 does not require admission or denial.
- 10 28. As to the allegations of paragraph 24, Respondents state that the Trust speaks for
11 itself and as such paragraph 24 does not require admission or denial.
- 12 29. As to the allegations of paragraph 25, Respondents admit that the estate tax
13 *exemption* in 2015 was \$5,430,000. Respondents deny the remaining allegations of paragraph 25
14 of the Petition.
- 15 30. As to the allegations of paragraph 26, Respondents admit that President Trump
16 signed the Tax Cuts and Jobs Act into law in December of 2017, which increased the 2018 estate
17 tax *exemption* to \$11,180,000. Respondents deny the remaining allegations of paragraph 26 of
18 the Petition.
- 19 31. Respondents deny the allegations of paragraph 27 of the Petition.
- 20 32. Respondents deny the allegations of paragraph 28 of the Petition.
- 21 33. Respondents deny the allegations of paragraph 29 of the Petition.
- 22 34. As to the allegations of paragraph 30 of the Petition, Respondents state that the
23 Trust speaks for itself and as such the allegations of paragraph 30 do not require either admission
24 or denial.
- 25 35. As to the allegations of paragraph 31 of the Petition, Respondents state that the
26 Trust speaks for itself and as such the allegations of paragraph 31 do not require either admission
27 or denial.
- 28 36. Respondents deny the allegations of paragraph 32 of the Petition.

1 37. As to the allegations of paragraph 33 of the Petition, Respondents state that the
2 Trust speaks for itself and as such the allegations of paragraph 33 do not require either admission
3 or denial. As to the remaining allegations of paragraph 33, Respondents lack sufficient
4 information to form a belief to admit or deny the allegations and on that basis deny the same.

5 38. Respondents deny the allegations of paragraph 34 of the Petition.

6 39. Respondents deny the allegations of paragraph 35 of the Petition.

7 40. Respondents deny the allegations of paragraph 36 of the Petition.

8 41. Respondents state that the allegations of paragraph 37 of the Petition are a legal
9 conclusion that do not require admission or denial.

10 42. Respondents deny the allegations of paragraph 38 of the Petition.

11 43. Respondents deny the allegations of paragraph 39 of the Petition.

12 44. Respondents deny the allegations of paragraph 40 of the Petition.

13 45. Respondents deny the allegations of paragraph 41 of the Petition.

14 46. Respondents deny the allegations of paragraph 42 of the Petition and object to the
15 request for relief contained therein.

16 47. Respondents state that the allegations of paragraph 43 of the Petition are a legal
17 conclusion that do not require admission or denial.

18 48. Respondents deny the allegations of paragraph 44 of the Petition.

19 49. Respondents deny the allegations of paragraph 45 of the Petition.

20 50. Respondents state that the allegations of paragraph 46 of the Petition are a legal
21 conclusion that do not require admission or denial. Respondents deny any allegations of
22 paragraph 46 of the Petition that are not a legal conclusion.

23 51. Respondents deny the allegations of paragraph 47 of the Petition.

24 52. Respondents state that the allegations of paragraph 48 of the Petition are a legal
25 conclusion that do not require admission or denial. Respondents deny any allegations of
26 paragraph 48 of the Petition that are not a legal conclusion.

27 53. Respondents deny the allegations of paragraph 49 of the Petition.

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1 54. Respondents deny the allegations of paragraph 50 of the Petition and object to the
2 request for relief contained therein.

3 55. Respondents state that the allegations of paragraph 51 of the Petition do not
4 require admission or denial.

5 III.

6 **AFFIRMATIVE DEFENSES**

7 Respondents allege the following separate affirmative defenses to the Petition:

8 **First Affirmative Defense**

9 **(Failure to State a Cause of Action)**

10 Respondents state that the Petition and all allegations therein fail to state a cause of action
11 on which relief may be granted by this Court.

12 **Second Affirmative Defense**

13 **(Statutes of Limitation)**

14 Respondents are informed and believe, and based on such information and belief allege
15 that the Petition, and each and every prayer for relief asserted therein, is barred by the applicable
16 statutes of limitation, including without limitation, Code of Civil Procedure sections 337, 338,
17 339, 340, 366.2, 366.3, and/or Probate Code sections 16061.7, 9100.

18 **Third Affirmative Defense**

19 **(Laches, Estoppel and Waiver)**

20 Respondents are informed and believe, and based on such information and belief allege
21 that the Petition, and each and every prayer for relief asserted therein, is barred under the
22 doctrines of laches, estoppel, and waiver.

23 **Fourth Affirmative Defense**

24 **(Unclean Hands)**

25 Respondents are informed and believe, and based on such information and belief allege
26 that the Petition, and each and every prayer for relief asserted therein, is barred by the Unclean
27 Hands Doctrine, insofar as Petitioner has committed wrongful acts in connection with the matters

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1 about which she now complains, and is otherwise estopped from asserting the claims for relief
2 contained in the Petition.

3 **Fifth Affirmative Defense**

4 **(Additional Defenses)**

5 Respondents presently have insufficient knowledge or information upon which to form a
6 belief as to whether additional, presently unknown, affirmative defenses exist. Accordingly,
7 Respondents reserve the right to assert additional affirmative defenses in the event further
8 discovery indicates such defenses would be appropriate.

9 **IV.**


10 **PRAYER FOR RELIEF**

11 WHEREFORE, Respondents request as follows:

- 12 1. That Petitioner takes nothing by the Petition;
- 13 2. That all causes of action and relief sought under the Petition are denied with
14 prejudice;
- 15 3. That Respondents be awarded their costs, including reasonable attorneys' fees as
16 permitted by law, from Petitioner; and,
- 17 4. That Respondents be granted such other and further relief as the Court may deem
18 just and appropriate.

19
20 DATED: ^{November 1,} ~~October~~ __, 2019

HIGGS FLETCHER & MACK LLP

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22 By: 
23 ALEXIS S. GUTIERREZ, ESQ.
24 SCOTT J. INGOLD, ESQ.
25 Attorneys for Respondents
26 CLINTON K. ABRAMS and CRISARA
27 ABRAMS, co-trustees of the Restatement of
28 the Clem Abrams Trust Agreement Dated 1991

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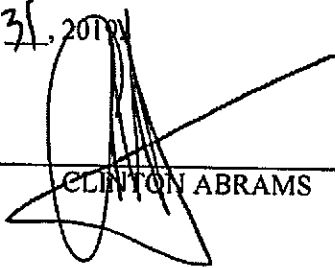
VERIFICATION

I, CLINTON ABRAMS, co-trustee of the Restatement of the Clem Abrams Trust Agreement Dated 1991, declare:

I am a Respondent and trustee with respect to the Petition on-file in the above-mentioned action at ROA #1. I have read the foregoing OBJECTION TO PETITIONER'S PETITION: FOR AN ACCOUNTING; TO MODIFY THE TRUST PURSUANT TO PROBATE CODE SECTION 15409; AND TO INVALIDATE THE PRENUPTIAL AGREEMENT BETWEEN CLEM ABRAMS AND LYDIA KENSHALO ABRAMS, and know the contents thereof; that the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters I believe them to be true.

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

Executed at San Diego, California on October 31, 2019



CLINTON ABRAMS

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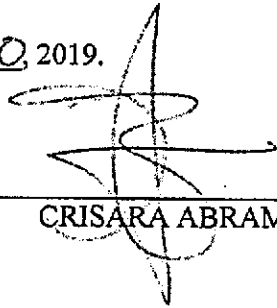
VERIFICATION

I, CRISARA ABRAMS, co-trustee of the Restatement of the Clem Abrams Trust Agreement Dated 1991, declare:

I am a Respondent and trustee with respect to the Petition on-file in the above-mentioned action at ROA #1. I have read the foregoing OBJECTION TO PETITIONER'S PETITION: FOR AN ACCOUNTING; TO MODIFY THE TRUST PURSUANT TO PROBATE CODE SECTION 15409; AND TO INVALIDATE THE PRENUPTIAL AGREEMENT BETWEEN CLEM ABRAMS AND LYDIA KENSHALO ABRAMS, and know the contents thereof; that the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters I believe them to be true.

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

Executed at San Diego, California on October 30, 2019.



CRISARA ABRAMS

1 ALEXIS S. GUTIERREZ, ESQ. (Bar No. 190487)
agutierrez@higgslaw.com
2 SCOTT J. INGOLD, ESQ. (Bar No. 254126)
ingolds@higgslaw.com
3 HIGGS FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
4 San Diego, CA 92101-7913
TEL: 619.236.1551
5 FAX: 619.696.1410

6 Attorneys for Respondents
CLINTON K. ABRAMS and CRISARA ABRAMS,
7 co-trustees

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **CENTRAL DIVISION**

10 In the Matter of	CASE NO. 37-2019-00030018-PR-TR-CTL
11 THE RESTATEMENT OF THE CLEM 12 ABRAMS TRUST AGREEMENT DATED 1991	PROOF OF SERVICE Dept.: 502 Judge: HONORABLE ROBERT LONGSTRETH

14 I, Melodee Lutjens, declare:
15 I am a resident of the State of California and over the age of eighteen years, and not a
16 party to the within-entitled action; my business address is 401 West "A" Street, Suite 2600, San
17 Diego, California 92101-7913. On November 1, 2019, I served the within documents:

18 **CO-TRUSTEES' OBJECTION TO PETITION: FOR AN ACCOUNTING; TO**
19 **MODIFY THE TRUST PURSUANT TO PROBATE CODE SECTION 15409;**
20 **AND TO INVALIDATE THE PRENUPTIAL AGREEMENT BETWEEN CLEM**
21 **ABRAMS AND LYDIA KENSHALO ABRAMS**

- 22 by transmitting via facsimile the document(s) listed above to the fax number(s)
23 set forth below on this date before 5:00 p.m. A copy of the transmission report
issued by the transmitting facsimile machine is attached hereto.
- 24 by transmitting via e-mail or electronic transmission the document(s) listed
25 above to _____.
- 26 by placing the document(s) listed above in a sealed _____ envelope and
27 affixing a pre-paid air bill, and causing the envelope to be delivered to
a _____ agent for delivery. A true and correct copy of the airbill is
28 attached hereto.

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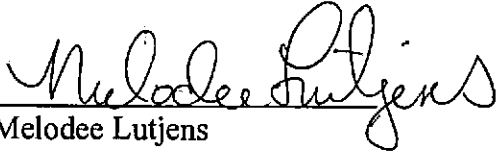
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.

Tara R. Burd, Esq.
Klinedinst PC
501 West Broadway, Suite 600
San Diego, CA 92101
Attorney for Petitioner Lydia Abrams

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on November 1, 2019, at San Diego, California.


Melodee Lutjens