

MAY 06 2019

IN THE UTAH COURT OF APPEALS

In The Matter of The Estate of Homer Engle

KATHY ENGLE,
Petitioner / *Appellant*

v.

WENDE M. THRONE, Respondent
JUDY ENGLE, Petitioner
ELDEAN ROY ENGLE, Petitioner
BRITTA LYNN WILCKEN, Petitioner
ALEXA THAYER, Petitioner
AND
BULLOCK LAW FIRM,
Former Counsel to the Estate
Appellees.

PUBLIC

APPEAL Case No. 20170382-CA

REPLY BRIEF OF APPELLANT

**Appeal from the Third Judicial District Court, Salt Lake County, Utah,
from Probate, before the Honorable Judge Keith Kelly, District Court Judge
Case No. 103901948**

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ORAL ARGUMENT REQUESTED

List of All Parties to the District Court Proceedings

1. List of all parties to the proceeding in the Appellate Court and their

counsel:

Kathy Engle, *Appellant / Petitioner / Pro Se*
Judy Engle, *Appellee / Petitioner / Pro Se*
Roy Engle, *Appellee / Petitioner / Pro Se*

Woodall | Carr Law Firm
Deborah L. Bulkeley (13653)
Counsel for Appellee Wende M. Throne, Special Administrator
of The Estate of Homer Engle & the Homer Engle 2010 Trust

Alexa Thayer and Britta Lynn Wilcken, *Appellees / Petitioners*
Anderson | Hinkins Law Firm
Counsels John W. Anderson and Kurt W. Laird

Kipp and Christensen. PC.
Counsels Kirk G. Gibb & Michael F. Skolnick
Representing the Bullock Law Firm and Counsel Karen Bullock, Kreeck
Former Counsel to the Estate of Homer Engle; Special Administrator and
Wende M. Throne.

2. List of all parties to the proceeding in the District Court not part of the

Appellate Court proceedings:

Former Counsel / Creditor: York Howell Guymon (“YHG”), Counsel Stephen Mayfield
Represented the Estate of Homer Engle and the Special Administrator,
Wende Throne, *Respondent*

Former Counsel / Creditor: Fabian Van Cott, Counsel Stephen R. Sloan
Represented the Estate of Homer Engle and the Special Administrator,
Wende Throne, *Respondent*

Continued:

Former Counsel / Creditor: Isaac Paxman Law, LC Isaac Paxman represented himself and former counsel to Roy Engle and Judy Engle - *Petitioners* and Represented Judy Engle's entities - *Petitioners*:
Eagle Landing, LLC (involuntarily dissolved)
Black Diamond LLC (aka Black Diamond Properties)
Crystal Star LLC (involuntarily dissolved)
Farmers Insurance, Judy Engle, agent
Enco Sole Corporation (registered in state of Nevada)
Mennco Corporation (involuntarily dissolved)

Creditor: Hi-Country Estates, Phase II Homer Owners Association – (“HOA”)
Represented by: Morris Sperry – Counsels Lauren DeVoe & Quinn Sperry

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Argument1

 It is respectfully requested, this Court should not consider Wende’s arguments to affirm the District Court’s orders, whereas, Wende has not shown the District Court’s April 7, 2017 Findings of Facts and its April 12, 2017 final Order Closing the Estate should not be remanded for correction.

 I Professional Standard Violations.....2

 II Wende’s Statement of Issues Fails on Technicalities.....8

 III Rule 24(a) Requirements.....10

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Addenda

- A Cases
- B Rules
- C Statues
- D Other

Footnotes

NOTE: Addendums E, F, G, H, included in Appellant’s initial Brief and not in this Reply Brief.

- E 4/12/2017 Order, to Close Out Probate. [R.8420-8423]
- F 4/6/2017 - Finding of Facts & Conclusion of Law to Close Probate dated April 6, served on the relevant parties April 7, 2017. [R.8380-8395]
- G 2/21/2017 Transcript of Hearing to Close Probate [R10924-R.11074]
And Order on Tangibles, signed 2/21/17 Order on Distribution of Tangible Items [R.8093-R.7680] Excerpts: Order R.8093-R8097 Ex. “A” [R.7684-R.7680]
Spread Sheet of Distributions, Summary of Totals – Other Others

Kathy Purchased \$3,075.75 – applied to claim [R.7685]
- H 11/14/2013 Final Approved Settlement Agreement [R.14211-R14237]
which included: the September 3, 2013 Settlement Ex. “A” [R.14215-R.14229]
the Offer email to the parties for Settlement [R.14229-R.14237] and

Exhibit C -Priority 1, 2 and 3 Claims, classified in three groups for payment setting out the order of payment per claimant. [R.14237 and R.799]
- I **January 10, 2019 Appellate Order:** The Court stated the individuals name by *Throne not parties to litigation rather interested parties or creditors of the estate. None of the parties to the appeal were required to provide notice of filings to these parties.*

It was Order: “the Motion to strike Appellant’s brief, or alternatively, to require Appellant to provide notice to other non-parties is Denied.”“Throne’s request

for attorney fees is DENIED”.... “All Other Motions Relating In Any Way To Throne’s motion to strike are DENIED”.

Note: also see the Appellate Court’s Order Requesting supplemental
Memorandum dealing with each individual listed in Wende’s motion.

- J 10/16/18 Hearing Minutes: D.Court denied Kathy’s Motion for 60(b) *without prejudice*, to void Judgment for attorney fees on Kathy’s previous 60(b) Motion for Temporary Remand to Appellate Court regarding Wende’s failure to distribution real properties and quiet title issues on appeal. The D.Court denied this motion and awarded attorney fees to Wende. Kathy appealed, separate Appeal, Case No. 20180647.

Counsel’s stated facts misleading to this Court on the Disposition of Wende’s brief. Buckeley stated: Kathy’s 60(b) was the purpose of this Court’s ruling on February 12, 2018. Counsel supported her statement with Footnote 11 on pg.5 of Wende’s brief. Counsel stated: Kathy’s April 16, 2018 60(b) Motion was to *set aside the final order closing probate* . See docket Case No. 20180647.

Counsel made a false statement of facts and mischaracterized the Court’s ruling on Kathy’s Motion. Kathy *Did Not file* a separate appeal to set aside the final order closing probate, rather to set aside the judgment awarding Buckeley attorney fees on Kathy’s 60(b) Motion seeking a temporary remand from this Court. The D.Court applied the wrong statue and Buckeley failed to serve the finding of facts and D.Court’s Order on Kathy.
See Kathy’s Notice of Appeal for Case. No 20180647, attached in Addendum J.

- K 10/17/16 D.Court Order Denying Judy Engle’s Motion to Remove Wende, SA
The D.Court did not rule on accounting matters and Kathy’s 3/4/16 Motion for Wende to Provide accounting [Add. N] and did not rule on its 4/15/16 Order: Wende to provide a fully substantiated accounting.[Add. O], which was contrary to the D.Court’s Finding “The Special Administrator has provided a complete accounting of the Estate financial transactions from January 2013 to the present.” .[R.8385 ¶25] and [R.8392 ¶8-9] The Estate is settled, approved and the transactions of the SA are confirmed and approved.

However, YHG did not file an accounting as of February 21, 2017 rather the accounting as December 14, 2016 in the Petition to close the estate. [R.5948].

- L 3/4/16 Kathy’s Motion to Produce Accounting Records and Documents for State Street. Wende to produce accounting records and documents for rental income,

expenses and disbursements from September 3, 2013 to date of signed order. [R.2189].

- M 4/15/16 D.Court Order. Wende to Provide Accounting for the State Street Property. It shall include proper disclosure of all items of expense, income, and supporting documentation to the same. [R.2602] [R.2597-2603]
- N 4/26/16 YHG filed Wende's accounting for one month (March 1 to 31, 2016). The papers filed did not comply with the 4/15/16 Court Order. There was no accounting. The filing included 4 pages two without any information and two pages with running meaningless numbers with hash totals. *There was No Balance Sheet, No P & L statements, No details of transactions and No Rental income report or other supporting documentation.* [R.3347-3351] *Wende failed to comply with the Court's order.*
- O 5/3/16 The D.Court ordered: the parties shall submit list of questions for substantiation regarding the accounting provided by Wende on April 26, 2015. See Line 2 on the May 25, 2016 Order.[R.4292 ¶2]

Because there was no accounting submitted, the Court allowed further requests., through questions submitted to YHG to answer. However, the Court should have ordered Wende to comply with it 4/15/16 [Add.M] rather than shifting that responsibility onto the Siblings.

5/25/16 the D.Court Order signed its Scheduling Order for the May 3rd hearing.[R.4292]

- P 5/24/16 YHG filed answers [R.4162] to the Siblings' questions on the financial statement and requested information from Kathy's Motion for accounting [Add.L]and the D.Court's order [Add.M and Add.O]

YHG, for the first time attached financial statements of Wende's accounting and attached copies of Bank Statements, a few copies of checks written and a few receipt (insufficient with Court's Order) and financial statements. There were issues with the accounting. Although the financials stated accrual basis it was not factual. The rental income was not consistent. There was no monthly rental income report because the income was reported on a cash basis using deposit made to checking account.

- Q 6/7/16 Kathy filed an Opposition [R.4424-4491] to Wende's accounting which had nonconforming financial statements and the rental income discrepancies. [Add.P]
- R 6/7/16 Kathy prepared spread sheets [R.4442-4445] of the rental income and the bank deposits. These are the same spread sheets attached to Kathy's 6/7/16 Opposition [Add. Q]

Copies of Wende's financials are attached to support the data used in Kathy's Spread sheets.

The income was reported on for 2015 was \$19,151.57[R.4443] [R.4247] with a deposit totaling \$496 for July [R.4247] and deposits totaling \$7,297 [R.4247] for October. This scenario was the same in other years. There was random, sometime sparingly reports of income when the income was derived from deposits into the Checking account, which was a cash basis reporting method. This leads to fraud waste and abuse of rental funds.

- S 1/30/17 Kathy's Objection to Close the Estate (docketed 2/1/17) [R.7393-8245] D.Court allowed Kathy's Objections to Petition to Close the Estate to be submitted to the Court. The binder of courtesy copies was accepted by the Court on February 21, 2017. The D.Court allowed Kathy to present her Objections to the Court and allowed oral arguments from Kathy during the hearing to close the Estate, which is documented on the 2/21/17 transcript.

Kathy's Objection included (not limited to) to the following
Objections to Wende's accounting. [R.7394-7394 ¶2-4] [
Objections to YHG attorney fees. [R.7394-7397 ¶ 5-19] [R7398 ¶2]
[R.7407-7409]

Kathy's priority 1 claim balance of \$13,759.36 [R.7398 ¶ 3-9] [R.7417 ¶13]
Kathy request for \$13,500 in compensation for management of Hi-Country
Property and tangible inventory and distribution [R.7413-7415, 7417 ¶14]

Wende's priority 1 claim & compensation [R.7398 ¶ 7-9] [R.7400-7401]
Wende's compensation. [R.7404]

Tangible property, coins, Hi-Country HOA documents, in Wende's
possession not distributed as ordered and conflict with YHG
representing Wende during the Coin trial. [R.7402-7404]

Financial Accounting [R.7404-7407]

Other Attorney Fees: Vancott, Paxman and Kreeck [R.7409-7411]

T 2/24/17 YHG Additional request for attorney fees [R.8119-8123] filed after the 2/21/17 hearing to close probate. As ordered by the Court, YHG corrected \$3,381 for a duplicate billing identified in Kathy's Opposition to Close the Estate. [R.7409 61-64].

U 3/6/17 Kathy filed Objection to YHG's Motion and affidavits for attorney fees [R.8187-8242] total fees of \$60,315.25. Objections included:

A reduction in YHG attorney fees of \$24,472, which included [R.8199] Dual Representation \$8,304.50 – Conflict of Interest not redacted [R.8189] Kathy's Priority 1 claim must be paid prior to additional legal fees. [R.819-38194].

Wende received benefits of \$14,991.81, which more than compensated her Priority 1 claim [R.8194-8196]. The \$14,991.81 total is far less than the accounting records show. [See Add. Q and S]

Footnotes

³ **Buckeley's used technicalities** Rule 24(a), new matters regarding creditability issues, parties waived all claims and evidence outside the scope of this Court's preview, in an attempt to Strike Appellant's brief. Buckeley ignored the main issue on appeal: *Did the D.Court have jurisdiction in its rulings to Close out the Probate using statues contrary to his mandate under Ut.Code 75-3-1102(3) for approved Compromises?*

⁴ **Appellant's Docketing Statement** included notice to all four creditors. VanCott, Isaac Paxman, and Hi-Country were removed from electronic filing and this Court's further notices approximately, July 13, 2017. *YHG was fully aware of his attorney fees challenged on appeal when he received a copy of the Docketing Statement but adamantly requested to be excluded from the appeal.* See YHG's email, filed on July 27, 2017 with this Court.

⁵ Counsel stated Appellate Court ruled on February 12, 2018 *appeal is limited solely to the issues and record existing at the time the April 12, 2017 order was entered*

⁶ Counsel Issue #4 referenced legal fees pursuant to "statue". This is Appellant's Issue No. 4 and No. 6 . YHG paid fees under 75-3-805(b) rather than the terms of Settlement,

⁷Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co.151 Fed 2nd 240; Pucket V.Cox, 456 2nd 233

Pro Se pleadings are to be considered without regard to technicalities.

⁸There are two number 3 statement of issues on Wende's brief.

¹¹Final Court approval for the Settlement was November 14, 2013[R.14211] and further approved, after Wende's failed attempt to break the settlement on December 2, 2014 [R.1153-1173].

¹²Appellant's Appeal included the D.Court's April 7, 2019, Finding and April 12, 2017 Final Order closing the Estate, which included any ambiguity in those orders.

¹⁴Coins Value: Correction, the appraised value of the Coins is \$3,348.97, as recorded on the Balance Sheet.[R.6050]

¹⁵February 21, 2017, D.Court signed Tangible Order, required Wende to deliver Coins [R.7685] to Kathy and Hi-Country documents to Kathy and Judy.[R.8093-8097][R.7684, 7687, 7695]

¹⁶ Add G-February 21, 2017 hearing transcript. Correction on Table of Contents, the date was stated as 2016, should be 2017.

Table of Authorities

Cases

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ARGUMENT

Appellee, Judy Engle's brief has been adopted, made a part of Appellant's brief, Under App. Rule 24(c).

Wende's brief was filed in bad faith without merit, was not grounded in fact or warranted by existing law, pursuant to App. Rule 33(b).

Counsel fails to recognize the Appellant's citations to the record and completely ignores those citations which discredits Wende, her client. Appellant requests, this Court should not consider for review *all Appellee's Statement of Issues, which included new issues without a Motion filed before this Court or a Cross Appeal and new issues regarding creditability, barred claims¹ inapplicable statutes and inappropriate request for attorney fees.*

Contrary to Wende, Appellant complied with App. Rule 24(a)(5)(A)(B) and 24(a)(6)(A)(B). The issues raised on appeal were properly identified, adequately preserved and cited to the Record with supporting authority. The Statement of Issues included a general statement where in the record the issues were preserved.

Wende's Brief is defective and fails for the following:

I

PROFESSIONAL STANDARD VIOLATIONS

Contrary to Counsel, this Court cannot affirm the D.Court's ruling, when *Counsel's argument lacks creditability, is unreliable and the evidenced supporting Counsel's argument was submitted with what appears to be an intent of fraud to deceive this Court.* Counsel included matters, knowing this Court did not have jurisdiction. Wende's brief was filed in bad faith and it fails if nothing more than professional conduct issues. Counsel misrepresented the facts and evidence to this Court, to consider for review. *Buckeley has not complied with Rule of Professional Conduct-Chapter 13, under Rule 4.1 to be truthful; Rule 3.1(a) and [11]Meritorious claims; Rule 3.4(a)(b)[2] fairness to Opposing party.* There are at least three Professional Standards serious issues where Counsel has mis-lead this Court, to believe it had jurisdiction over the evidence submitted by Buckeley. Buckeley's actions are without merit. Sanctions are warranted with damages under App. Rule 24(i) and Rule 33(b).

Buckeley is not creditable and has misrepresented the facts to this Court to allow jurisdiction of matter filed after the appeal at least the following:

A. November 9, 2017 Transcript filed after Appeal

Counsel Buckeley, covertly used the November 9, 2017 transcript to support her new issue of creditability[WendeBr.Pg.3,5,17,33][Add. E²] and accounting issue in an attempt to strike Appellant's brief.

It appears to be Fraud upon the Court, regarding an unidentified transcript, without a date, attached in Addendum E, which appears to be a deliberately attempt to deceive

this Court of its lack of jurisdiction

Fraud upon the court is fraud directed to the judicial machinery itself, not between the parties or fraudulent documents. Citing: Bullock v. U.S. 763 F.2d.1115, 1121

Counsel was fully aware this transcript could not be submitted as evidence when Counsel stated: “*this appeal is limited solely to the issues and record existing at the time the April 12, 2017 order was entered.*”[WendeBr.Pg.5]. However, Buckeley’s completely ignored that ruling and her acknowledgment thereof, when Buckeley referenced the unidentified transcript, to support her argument.

Counsel argued the siblings were not creditable (WendeBr.Pg.30-35 heading IV) Pages 30-36) and requested “*the court to affirm the trial court’s order closing the estate*”[WendeBr.Pg.47] regarding its ruling: the accounting was complete without further accounting and the Siblings are not creditable. To support this argument, Counsel Buckeley referenced R.17525.[Wende’s Br.Pg.33] without stating the date to identify the November 9, 2017 hearing.

The problem, R.17525 is actually for the November 9, 2017 transcript for a hearing after the appeal was filed on May 8, 2017, which this Court lacks jurisdiction.

Counsel attached an unidentified partial transcript to her brief, as Addendum E. [R.17518-17528]. The partial transcript did not have a date to identify the hearing, which was misleading as to the timing of the record. Addendum E was not referenced in the argument rather in a footnote under Statement of Facts, regarding siblings’ creditability on page-15.[WendeBr.Pg.14-17]

To slide in the transcript, under the radar of this Court, Counsel did not reference the date of the transcript nor reference Addendum D in the argument. If the date had been transparent, this Court would have been alerted to the fact, the date of the transcript would exclude Counsel's evidence rendering the evidence outside the reach of this Court's jurisdiction. The evidence would *Not* have been allowed.

It is obvious, Counsel's reference was misleading, in an attempt to sway this Court[WendeBr.Pg.47].

To further complicate this matter, Counsel mis-stated the date of the hearing as November 3, 2017, rather than November 9th. It was misleading and incorrect to state the date of the hearing was November 3, 2017 which could not be traced to the November 9, 2017 hearing.

On the Relevant Fact section[Wende's Br.Pg.17] of Wende's brief, Counsel stated Kathy revisited a hearing on November 3, 2017 regarding this transcript. There was no hearing on that date and the date was not for the transcript attached in Addendum E.

Kathy denies revisiting a hearing, it was Counsel who revisited the November 9, 2017 hearing. The April 12, 2017 Nunc pro tunc order was signed during the November 9, 2017 hearing. Counsel omitted that crucial date from her facts.

Counsel stated the transcript was "*reproduced in its entirety in Addendum E.*" [Wende's Br.Pg.17].

Footnote 11: "A transcript of the entire ruling is reproduced in Addendum E. Kathy did not appeal from this ruling. See Record Index.

Contrary to Counsel, the entire ruling was not reproduced in Addendum E. There

were only ten pages attached.(Pages161-171)[R17518-17528].

Kathy was not required to appeal any ruling after the appeal was filed. Therefore, Kathy did not ignore the D.Court’s ruling on November 9, 2017.

Counsel’s new issue regarding Creditability issues³ cited from this transcript are include on Pages 14-17(Facts), 30-36(Argument), are irrelevant to the Appeal issues and outside this Court’s jurisdiction.

B. Re-litigating/re-arguing Prior Appeals Court January 10, 2019 Order

Buckeley “renews argument”⁴ [WendeBr.Pg.38-39] on her Motion to strike Appellant’s brief for Summary Disposition, filed on December 3, 2018. Buckeley claimed Isaac Paxman, Van Cott, YHG and Hi-Country HOA, (creditors) were not notified or included on the Appeal, which the Appellate Court denied the Motion.

December 18, 2018, Appellant and Judy Engle (in support of Appellant) filed their Responses requesting this Court to deny the Summary Disposition. Wende, Judy and Kathy were allowed to Respond to the Court’s order for a Supplement to the Summary Judgment, which were filed on January 7, 2019. Without this Court’s permission, Wende filing a second Response, a Reply on January 9, 2019.

³ **Buckeley’s used technicalities** Rule 24(a), new matters regarding creditability issues, parties waived all claims and evidence outside the scope of this Court’s preview, in an attempt to Strike Appellant’s brief. Buckeley ignored the main issue on appeal: *Did the D.Court have jurisdiction in its rulings to Close out the Probate using statues contrary to his mandate under Ut.Code 75-3-1102(3) for approved Compromises?*

⁴ **Appellant’s Docketing Statement** included notice to all four creditors. VanCott, Isaac Paxman, and Hi-Country were removed from electronic filing and this Court’s further notices approximately, July 13, 2017. *YHG was fully aware of his attorney fees challenged on appeal when he received a copy of the Docketing Statement but adamantly requested to be excluded from the appeal.* See YHG’s email, filed on July 27, 2017 with this Court.

This Court denied Wende’s Summary Disposition on January 10, 2019. The Court ruled, individuals named by Throne were not parties to litigation, rather interested parties or creditors of the estate. None of the parties to the appeal were required to provide notice of filings to these parties. *It was ordered the motion to strike Appellant’s brief, or alternatively, require Appellant to provide notice to other non-parties is DENIED along with Throne’s request for attorney fees.*

It was also Ordered, “all other motions relating in any way to Throne’s motion to strike are Denied.”[Add.I]

It is improper/unlawful to re-litigate a prior Order of this Court and is outside the jurisdiction of this Court to consider for review.

Counsel acknowledged this appeal is limited solely to the issues and record existing at the time the April 12, 2017 order was entered.”[WendeBr.Pg.5] but ignored this Court’s lack of Jurisdiction and re-litigating a prior “Appellate Court Order” and failed to state a date for the renewal. *Buckeley Omitted relevant facts: the date of the “initial matter”* [WendeBr.Pg.38]. Omitting dates is a pattern of deception with Counsel, which should not go unnoticed.

C. Disposition of Court

Buckeley stated Kathy filed a Motion 60(b) to set aside the final order closing probate on April 16, 2018, which the D.Court denied. This Court denied Kathy’s separate Appeal Case No. 20180647.[WendeBr.Pg.5; Footnote 1]

Buckeley’s Footnote 1 is not relative to the D.Court’s Disposition under Buckeley’s Statement of the Case and is misleading. .[WendeBr.Pg.5 -A.Disposition

of Court]

Kathy filed a Rule 60(b) motion to the D.Court, seeking a temporary remand to this Court (regarding Wende's failure to distribute the real properties and the quiet title issue on Appeal). May 4, 2018, D.Court denied Kathy's 60(b) motion and sanctioned Kathy by awarding attorney fees to Wende. Kathy filed an appeal on May 8, 2018, to set aside the judgment of attorney fees. Case No. 20180647[the Notice of Appeal is attached as **Add. I**]

This appeal, could be resurrected within one year. App. Rule 4(g)(2), because Buckeley failed to serve the findings of facts and the Order on Kathy. D.Court allowed Kathy to re-file a Rule 60(b) without prejudice see minutes of 10/16/18 hearing and Kathy's Amended Appeal file 8/20/18.[**Add.J**]

It is improper for Counsel to *misstate the facts surrounding the separate appeal, to mislead this court by stating: the appeal was "to set aside the final order closing probate"*, when in fact, the appeal was to reverse the Judgment of attorneys. The D.Court applied the wrong section on Kathy's Rule 60(b) for Exceptional and Unusual Circumstances, when it ruled 60(b) motion was untimely, under Sections 1,2,& 3 of 60(b). [See Kathy's docketing statement Case No.20180647]

The facts discredits Buckeley's statement of facts on the Disposition section of Wende's brief.[Pages 4-5] Buckeley knowingly⁵ [WendeBr.Pg5] has included matters outside this Court's jurisdiction.

⁵ Counsel stated Appellate Court ruled on February 12, 2018 *appeal is limited solely to the issues and record existing at the time the April 12, 2017 order was entered.*

Counsel's facts are unsupported, nonfactual, lacks merit, and Buckeley lacks creditability whereas, her facts are unreliable. Sanctions are warranted under App. Rule 24(i) and Rule 33(b).

II

WENDE'S STATEMENT OF ISSUES FAILS ON TECHNICALITIES

Counsel has ignored Kathy's rights as a Pro Se Litigant is the most important constitution right and Pro Se pleadings are to be considered without regard to technicalities.

Citing: Elmore V. McCammon (1986) 640 F. Supp. 905
"...the right to file a lawsuit pro se is one of the most important right under the constitution and laws."

Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co.151 Fed 2nd 240; Pucket V.Cox, 456 2nd 233
Pro Se pleadings are to be considered without regard to technicalities; Pro Se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.

Counsel has misstated / mischaracterized the facts in her statement of Issues and failed to cite the record for any of the technicality issues of Wende's brief.
[WendeBr.Pgs2-4].

Wende's *Statement of Issues* included five issues without a motion before this Court or counter claim filed. Both Wende's Issue No. 1 and 4⁶ are requests for attorney fees, which are without merit and inapplicable to Statues: 75-3-719 for which the D.Court did not include in its "Findings" of Facts.

The facts show, Appellant's brief is not frivolous for delay, required grounds

⁶ Counsel Issue #4 referenced legal fees pursuant to "statue". This is Appellant's Issue No. 4 and No. 6 . YHG paid fees under 75-3-805(b) rather than the terms of Settlement,

for attorney fees under App. Rule 24(i) or Rule 33(b), and especially, when Counsel is using technicalities⁷ to strike Appellant's brief.

This Court must deny all Wende's requests for attorney fees whereas, Appellant's brief has merit and was confirmed by Wende when she did not challenge two of Appellant's issues regarding the quiet title, the constitutional rights, and due process. Based on Wende's lack of challenge/argument to these issues on Appeal, confirms Appellant's brief has merit and Wende is not entitled to any of her attorney fees.

The other three issues on Wende's brief are without merit, she raised two new issues not stated on Appellant's brief, creditability and Release of all Claims, which are *Not* irrelevant to the Appeal issues. Wende's claimed Appellant's brief should be stricken under Wende's issue #1 and #2 unpreserved, "technicalities". Wende claimed the following:

Wende's Issue #1: Appellant's brief was unpreserved under App. Rule 24(a). Although, Wende included her two new claims regarding creditability and barred claims, she filed to argue these claims under Issue #1.

Wende's Issue #3: Appellant's brief raised allegations against Wende which were (1) unpreserved; (2) failed to acknowledge D.Court's rulings; (3) lack creditability; (4) Barred by Settlement (release of all claims) and (5) failed to marshal ample evidence to support court rulings[Wende's Br.Pgs.4, 30-36].

Wende's other Issue #3⁸: Appellant's brief regarding other various claims were

⁷ Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co.151 Fed 2nd 240; Pucket V.Cox, 456 2nd 233

Pro Se pleadings are to be considered without regard to technicalities.

⁸ There are two number 3 statement of issues on Wende's brief.

unpreserved, the D.Court lacked jurisdiction to release liens and the award of attorney fees.[Wende's Br.Pgs.4, 41-44].

All four issues fail and is further addressed below:

III Rule 24(a) Requirements

Wende's Issue No. 1: .

Wende alleges Appellant's Brief must be stricken because it is not preserved under Rule 24(a). Wende should receive attorney fees under Rule 24(i) the brief lacks merit.[Wende Br.Pgs,2, 21-25] and Appellant

Wende's argument fails whereas, the argument is for "technicalities" regarding unsupported, facts which are misstated and irrelevant for the following:

Appellant's Brief is supported with multiple citations to the record, were the issues are preserved.[See Appellant's Addenda[Pgs.v-vi] for further referencing to the record. **(1a)** Counsel argues, "all" issues are inadequately briefed. Buckeley's argument fails to identify where in the record "All" issues were inadequately briefed. Wende only cited two areas in the brief, which included: "Br. Alt Pg.4 & 9 and Br.Aplt.7-9".

Appellant's Issue #1 is a constitutional issue, as a result of the D.Court's rulings which are contrary to the governing statute for approved Compromises under 75-3-1101-1102(3) as cited on [Br.Alt.Pg.4, Pg. 9].

Buckeley did not object to Issue #1 stating the issue was not cited to the record. Because Counsel is silent on this issue, Counsel is in full support of Appellant's Issue #1.

Counsel misstated the facts "all" issues were not adequately briefed. The

argument is unsupported and nonfactual. Wende's Issue #1[WendeBr.Pg.2] fails.

(1b) *Appellant's Issue #1* .[Br.Aplt.Pg.3 ¶5; 11-10, Pg.25-26; 35 ¶3][**Add D**]. The standard of review is cited, as inclusive to all issues and is cited after Issue #7. The Standard of Review is cited on [Br.Aplt.Pgs.7-9]. Conclusion of law are reviewed de novo. Constitutional equal rights and due process are relative to all issues, whereas, the D.Court did not enforce the terms of Settlement in its rulings on the Finding of Facts [R.8380] and Order to Close Probate. [R.8420].

Appellant agrees and cites id: Judy Engle's Appellee Brief Pg.1-46, regarding legal authority on the Constitution, due process for jurisdiction and ambiguity issues on the D.Court's April 7, 2017 findings of facts, April 12, 2017 Order, Statement of Issue[Pg.3-4], Statement of Case[Pg.512- disposition of the D.Court[pgs.13-18]

(1c) [WendeBr.Pg. 24 ¶ 1], Appellant stated the following:

"Appellant believes the Appeal will prevail, which is most favorable of the Appellant."[Br.Aplt.Pg.4]

Appellant further identified the harm caused by the D.Court: another reason why she will prevail on the Appeal:

"The ruling harmed Kathy and possibly others and is a matter of public interest."[Br.Aplt.Pg. 25]. "Appellant, gave up more than what she received for Settlement and seeks a favorable resolve with the Appeals Court to cure some of the harm resulting from the D.Court's rulings."[Br.Aplt.Pg. 35-36]

(1d) Counsel's argument did not show where in the record Appellant fails to cite to the Record.[WendeBr.Pg.25]. Buckeley has ignored, Appellant has cited relevant rulings

multiple times throughout her entire Brief including the Table of Contents, Addenda E to

L. See Appellant brief specially at:

Br.Aplt. Pg.10; 13-17; 23-24; 25; 27-31; 33; and citations to **Add.E-G**, the D.Court's rulings. See the brief for other relevant citations.

Appellant agrees with Judy's brief, regarding D.Court's rulings:

*at id: Pg. 6; 13-18; 35-36 and Pg. 35-36; 39-40 (Feb. 21, 2017 transcript), which stated references included the April 7, 2017 Finding of Facts [R.8380-8398][**Add F**]; the April 12, 2017 Order Closing Probate [R.8420-8395][**Add.E**]; February 21, 2017 Transcript closing probate[R.10824-11074] and[R.8388][**Add F**].*

(1e) Transcripts

Counsel stated: "Kathy failed to provide a complete Record. Buckeley references three transcripts".[WendeBr.Pg.32]

These transcripts or part therein are irrelevant to the Issues on Appeal. It is a burden on Appellant to include transcripts which are not required evidence to support the issues on Appeal.

The October 3, 2016 transcript is *irrelevant to Appellant's issues*. The hearing related to Judy Engle's motion to remove the SA[R.5613] **Add. K**. There was no discussion or ruling on Kathy's motion for Wende's accounting[R.2189][**Add.L** or opposition to Wende's accounting .[R.4424-4454]**Add.R**

February 24, 2016 transcript[R.11246-11276], regarding the sale of the Payson property was not relevant to the issues on Appeal. Counsel failed to show relevancy regarding Payson.

February 21, 2017 transcript[R.10924-11074]: Counsel identified a missing Section, regarding an issue of fraud on Wende filed by Judy, denied by the Court. [WendeBr.Pg.25]. There was *no ruling for fraud stated on the D.Court's April 7, 2017[R.8380] and April 12,2017.[R.8420]. The fraud ruling cannot be cited to the record, which rendering the alleged missing part of the transcript irrelevant.*

Should this Court determine this section of the transcript is relevant, Appellant requests leave to amend the transcript.

(1f) Counsel completely ignored Appellant's Table of Authorities, referencing page numbers where legal authority was cited. Ignored other citations for legal authority: Statement of Issues (pg.4); Standard of Review (Pgs.7-8). See Judy's Brief *id.* Pgs.9-10

It is unethical for Counsel to make false statements to support her argument especially when she failed to identify where in the record the relevant legal authority was insufficient in Appellant's brief.

(2) Buckeley has Ignored D.Court findings.[R.8380], final orders [R8420] Appellant has challenged specific rulings on appeal.

Citations need only reference the Court's orders for compliance. The issues on a appeal stem from the two orders which are also referenced in the brief. Counsel has mis interrupted the requirement for Rule 24(a).

(3) Marshalling: Paragraph (a)(8): The 2017 amendments remove the reference to marshaling.

State v. Nielsen, 2014 UT 10, 326 P.3d 645, hold that the failure to marshal is not a technical deficiency resulting in default.

Appellant has fully met her burden of persuasion under Rule 24(a). The brief cannot be stricken under App. Rule 24(i) whereas, the brief has merit and should not be stricken for a *technical* default. **Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co. 151 Fed 2nd 240; Pucket V.Cox, 456 2nd 233.**

Counsel's argument fails it is unsupported.

IV

Estate Accounting and Fiduciary Responsibilities

Wende ignored Appellant's citations to the record regarding the Estate's accounting. Wende claimed Allegations against Wende Not substantiated, Appellant's Issue #7. Appellant's argument included citations to the record: [Br.Alpt.Pg.40-41, R.7393-7519], attached in **Add.S** and.[Br.Alpt.Pg.40: R.8187] attached in **Add.U [R.8194-8196]**. Appellant has expanded the citations, as a result of Counsels new matters and misstatement of facts.

There was approximate \$65,888[R.7405] in improper accounting transactions. [R.7393 R.7419-7421] June 4. 2016, Kathy filed Motion for accounting[R.7406]**Add.S**, [Br.Alpt.Pg.40 -R.7393]. Using the Bank Statement and knowledge of rental contracts, Kathy estimated \$27,372 in unreported income \$28,976 in unsubstantiated expenses/personal expenses, YHG legal fees regarding payment for a conflict of interest \$,8,186[R.7409]**Add.S** and \$9,541 in duplicate YHG billings/conflict of interest-dual representation.[R7409]**Add.S**

Counsel stated Judy and Kathy were allowed to submit questions to Wende

regarding accounting and referenced the following: R.2967-971; R3347-50; R3749; R.6066-173.

Counsel cited R.6066-173, the YHG's Amended Petition Closing Estate, filed December 29, 2016[R.6066]. Counsel's citations are irrelevant and unreliable, when she cited evidence after YHG filed it answers to Judy and Kathy's question on May 24, 2016.[R.4162]**Add.P**

Counsel's citations are irrelevant and immaterial to Kathy's request for accounting records, because YHG failed to produce any type of accounting, on April 26, 2016, **[R.3347][Add.N]**

May 10, 2016, D.Court Ordered **[R.4292][Add.O]** YHC to answer Judy and Kathy's questions for the production of accounting records, receipts and substantiation.

Counsel's citations [R.2967-971, R3347-50, R.3749] referenced the financial Statements. However, YHG attached financials to its Response to Questions Regarding Estate Accounting, filed on May 24, 2016.**[R4162][Add.P]**.

These financial statement, various bank statement were not available until YHG filed answers **[R.4162][Add.P]** to Judy, Kathy's question, their questions regarding financial statement could not be presented to YHG.

Counsel's citations are meaningless and unsupported.

There was no accounting filed in which to answer questions. It is irrelevant to the Court's ruling and improperly cited by Buckeley. The SA's duties requires a full accounting under Ut.Code 75-3-708[Br.Aplt.Pgs.17,40]

YHG did Not adequately answered Judy and Kathy's questions, as Court Ordered on April 15, 2016[R. 2602]Add.M. Their requests were ignored for substantiation of receipts, without satisfaction[R.4162-4176].

Although, YHG attached bank statements, copies of checks[R.4177-4286][Add.P], Financial Statements[R.4240-4287][Add.P], the accounting was Insufficient and in compliance with the Court's Order.

Therefore, June 7, 2016, Kathy filed Opposition to Estate's Accounting [R.4442-4491][R4336-4508]Add.Q.

Kathy prepared spread sheets to document rental income and unreported income. Copies of Wende's financials are attached in Add.Q to support the data used in Kathy's spread sheets [R.4442-4491]Add.R

The income was not consistent, total monthly deposits less than \$500. Over \$7,200 deposited for another month, when monthly income, per rental contracts, was estimated at \$2,000/month.

For Example: The 2015 income stated on Wende's financials was \$19,151.57[R.4247] with a deposit totaling \$496 for July [R.4247] and deposits totaling \$7,297 [R.4247] for October. Kathy's spread sheet confirms this total. [R.4443]. The monthly income was \$1,595 (\$19,151 divided by 12 months)

This scenario was the same in other years.[Add.R] There were random, sometime sparingly reports of income when the income was derived from deposits made to the Checking account.

The accounting included two different methods of accounting. All Deposits, were reported as income. No monthly rental scheduled of rents for an accrual basis accounting.

The financial statements reported accrual basis.[R.4240-4287]. As a result, the expenses do not match the income. Using two methods of accounting is improper.

April 15, 2016, D.Court ordered Wende Throne[R.2602][Add.M], to provide an accounting, which shall include proper disclosure of all items of expenses, income, and supporting documentation to the same. [R.2597-2602] and due April 26, 2016.

Counsel cited R.3747-50, which is the accounting YHG filed on April 26, 2016.[R.3747][Add.N]. The papers filed did not include any type of accounting. Rather it included 2 pages of running list of numbers, no headings. This filing was *Not* an accounting. Therefore, D.Court Ordered YHG to answer Judy and Kathy's questions.

The D.Court's ruling that YHG must answer Judy and Kathy Questions was misleading, not an accurate statement of the facts as it was not an order for a full accounting.[R.8385 §25].

Pursuant to the Findings on Pg. 25: The SA provided a complete accounting of the Estate financial transaction from January 2013 to the present. Kathy was allowed to submit questions and requests to the SA, regarding accounting...The SA timely replied to each question..

The D.Court ignored Kathy's March 4, 2016 Motion for accounting. [R.2189]

Add.L The motion was not docketed for hearing at any time. The Court simply Ordered YHG to answer Judy and Kathy's questions, which did not solve the deficiencies in the accounting and compliance with the Order on May 3, 2016[R.2602, R.2597-2603]**Add.M**

The Court again simply ignored Kathy's Opposition to YHG answers.[R.4424]
Add.Q [R.4442-4445]**Add.R** claiming the siblings were not creditable in its findings.

[R.8385 ¶¶15-25].

Pursuant to the April 7, 2017 Findings [R.8385¶24]:

Kathy's Objection raises old and new allegation of wrongdoing SA...Kathy was a party to Settlement, waived all claim against all parties...The Court finds Kathy's current allegations of wrongdoing lack credibility...against the SA *are not well taken* and are untimely.

The D.Court was not creditable with its ruling whereas, the ruling was bias and prejudicial, it refused to have any type of hearing on the SA's accounting ("alleged wrongdoing"), where the evidence was squashed when it ruled Kathy's Opposition to close the Estate was untimely. Kathy's Opposition challenged Wende's accounting [Add.L Add.Q and Add.R], which was "*not well taken*" by the D.Court.

The D.Court allowed Kathy's to submit courtesy copies of her Opposition to the Court in a binder and allowed oral argument. Kathy's Opposition was preserved in the record during the February 21, 2017 hearing to close out the Estate.

Kathy emailed all relevant parties on January 30, 201, not docketed until February 1, 2017. The D.Court ruled as untimely. The D.Court had the latitude to accept the binder during the hearing and disregarded issues on Wende's accounting, when the Court ruled Kathy's Opposition untimely.

The D.Court ignored the merits of Kathy's Opposition and discredited Kathy by stating Kathy lacked creditability, due to the accounting issues raised in Kathy's opposition.

There was no hearing, where witnesses could be called to testify on the creditability of the Siblings. There was no proof the Siblings lacked creditability, which

is another due process issue.

The D.Court ignored the duties of the SA, stating they were waived or released by the Settlement and failed to hold a hearing on Kathy's Motion[R.2189]Add.L for accounting and Opposition[R4424] to Wende's Accounting.

The parties cannot waive a statutory requirement under Ut.Code 75-3-708 and 75-3-714, which ultimately affects the creditors and the beneficiaries. See argument regarding the Release of Claims below under heading **(B)**.

The D.Court has mis-interrupted⁹ the language in the Settlement, regarding the release of claims, which is another ambiguity in its findings.

It appeared, rather than rule on Wende's accounting, the D.Court's ruled the siblings' lack creditability. The D.Court's ruling (on creditability and the release of all claims) was unfair, prejudicial and a due process issue. The Constitutional rights and Due Process is Kathy's Issues #1 on Appeal[Br.Aplt.Pg.3, 4, 9, 10, 25-27]

The issues of timeliness on Kathy's Opposition to Closing the Estate is a "technicality"¹⁰, which does not default the preservation. The merits are superior to a mere technicality.

Attorney's, have an advantage over Pro Se Litigants with online filing and can file papers, docketed instantaneously. There is a constitutional and due process issue,

⁹Harmful error in Court's ruling is contrary to case law. Absent the error there is a reasonable likelihood of more favorable outcome for Appellant.

¹⁰ See Footnote 9 for legal authority on Technicalities.

when the law is not equal in rights, is unfair and bias. A review of the current law for revision is of public concern to allow Pro Se Litigants online services for equal rights to file papers to prevent untimely filings, especially when Pro Se Litigants reside out of state and a commute is required to timely file court documents.

(A) Creditability - New Issue (WendeBr.Pg.30-36, Pg. 14-17)

Counsel's argument fails regarding the siblings' creditability and fails on the accounting which is Appellant's Issue No.7. It is Counsel who lacks creditability, her argument is misleading and fraudulent as stated above under **Heading I.A.** regarding Buckeley's professional standard issues. All Counsel's argument stated on Pages 30-36, under Wende's brief, heading IV, regarding creditability, the Estate's accounting, and all references to the November 9, 2017 transcript and creditability on Pages 14-17, 32-36 should not be considered for review by this Court. especially when it appears, Counsel's intent was to deceive this Court. The facts on these pages are not factual. Addendum E is without merit and must be stricken. The facts clearly impeach Appellee's brief.

Counsel's actions are not creditable with the intent, what appears to be fraud upon the Court.

Contrary to Counsel, the D.Court's ruling [R.8391-92 ¶¶2,9 R.0385 ¶25] on the Estate's accounting was incomplete, it did not include the accounting period from November 11, 2010 to January 1, 2013[Br.Aplt. 42-43]and all assets and funds were not included in the final accounting.[Br.Aplt.Pg.20, R.12743, R.12805, R.14-16] [Br.Aplt.Pg.39-40, R.7393, R.8187], Pursuant to Ut.Code 75-3-708 and 75-3-714.

Also, see Judy's brief, *id* Pages 11 to 12 a history of events regarding Wende's incomplete accounting, documents, receipts etc. and Wende's contempt of Court.[R.12743] and Court Orders for Wende to produce a with complete accounting beginning on October 3, 2012.[R.1273]

Contrary to Counsel, Appellant support the statements of facts regarding Wende's incomplete accounting and mismanagement of Estate properties in Appellant's brief at

[R.7393, R.8187, R.12743, R.12805, R.14-16] as stated on the brief: [Br.Aplt. at 7, 17-18, 41-43] [Br.Aplt.7, 42-43 Using improper accounting methods] and [Br.Aplt.7, 17-18, 41-43 Not properly protecting estate property-state street]. Also see Judy's brief as reference above.

Wende's Creditability

The D.Court ignored Wende's creditability during the Coin hearing regarding Wende's false testimony, during the October 27, 2016 hearing.[R.5824] Wende clearly lied under oath, submitted false affidavits.[R.5558, R.5616, R.5774] claiming the coins belonged to her.

During the trial the evidence and facts proved otherwise. D. Court ruled, it did not find Wende creditable on the ownership of the coins. See Transcript October 27, 2016 [R.11075-11165].

The D.Court refused to sanction Wende for her false testimony under oath, Wende's lack of creditable and ignored Wende's creditability issue on its finding of facts for the coin hearing.

The D.Court did not sanction Wende with her failed attempt to break the Settlement when Isaac Paxman was required to intervene and defended the Global Settlement. The D.Court Ordered Wende to pay Isaac \$13,156 for his administrative

work and preparing Findings of Facts.[R.5548-5551].

Wende was not creditable when she challenged the very instrument she helped create and also approved. Wende's lack of creditable attempt to break the Settlement burdened the estate with \$13,156.[R.5548-5551

The Court refused to order Wende to pay these funds, which she was ultimately responsible for. Those funds could have paid Kathy's Priority 1 claim balance.

Yet, the D.Court stated the Siblings lack creditability, over the Wende who committed perjury during the Coin trial and cost the Estate at least \$13,156.

(B) Waived all claims – Wende's New Issue (WendeBr.Pg.36, Pg.14, Footnote 8)

Waiving all claims is not relative to the duties of the SA. The siblings nor the D.Court may waive the SA's duties when it affects all creditors and was not part of the contract. The SA's duties include a full account and inventory of all estate assets. Ut.Code 75-3-708.

The SA cannot be released until all matters are resolved in any Court, including this Court. Ut. Code 75-3-1007

Waived all claims is a new matter, raised by Counsel, which has been misstated. Counsel re-stated the release of all claims, as "barred claims and waived claim, which is confusing and misleading.

Counsel claimed the contract language was not ambiguous to waiving all claims, which is irrelevant. Counsel did not define all claims and who the parties are. Counsel completely ignored the Contract's "Whereas As Clauses".[R.14216-14219]

Claims are not classified as "duties" of the SA, rather they are claims of ownership

and/or interest to nine real properties.

Pursuant to Settlement Pg11-12 [R.14226-14227]:

“Full Release”: All parties would release all claims against all parties... ..

The release of all claims are specifically those claims stated in the Whereas “Clauses” of the Contract. The Settlement defined the claims of the parties in the Clauses [R.14216-14219] and pursuant to the Global Settlement.[R.14216 ¶1]. The parties included the Estate, Judy, Roy, Wende and Kathy who had claims of ownership and/or interest to nine real properties[R.14218] (including Judy, Roy and Wende’s attorney fees, Kathy’s pro se costs[R.14218]) and third-party creditor claims[R.14217-14218].

The “Full Release” in the Settlement, is between the parties for their claims as stated in the Clauses. The release of all claims is limited to claims against each other, personal claims, which are not administrative duties to carry out the terms of the Settlement (Contract).

The Clauses do Not provide or state a full release of the SA’s duties. The statute requires a financial accounting of all assets of the Estate and would include the Estate of Homer Engle 2010 “Trust” which was joined and made a part of the Estate.

The “Full Release Clause” does not apply for statutory provisions, which requires the SA to comply with the law in closing out the Estate. Ut.Code 75-3-708. It is the SA’s duty to comply with statutory authority: to provide a fully accounting of the Estate and closing out the estate. Ut.Code 75-3-1007.

The Full Release takes effect only at such time both Payson and Price have sold and final court approval of the Settlement has been given.[R.14227]

Counsel stated she only addressed the D.Court's findings after September 12, 2013 because all claims have been waived against Wende. [WendeBr.Pg.14 Footnote 11].

The D.Court's ruling on the full release is misstated and is the same for Counsel's position.

Pursuant to the D.Court's Findings, Line 17: "as to all parties, through the Settlement Agreement, they have "*released all claims*" against each other arising on or before September 3, 2013. [R.8384]

The D.Court's Findings are inconsistent with the terms of Settlement:

Pursuant to Settlement, Full release: "All parties would "*release all claims against all parties*". This release takes effect *only at such time as both Payson and Price* have sold and final Court approval¹¹ of the Settlement has been given.[R.14226-14227].

Therefore, the *Full Release was effective September 29, 2016*, the date Payson was sold.[R.5455-5460].

Counsel ignored the terms of Settlement and submitted an insufficient brief when she limited the release of all claims to September 3, 2013 rather September 29, 2016.

Counsel ignored the Clauses, whereas they do not include a release of the SA's Fiduciary Responsibilities. The SA is mandated by law to provide an application to be released from her duties, to resolve any pending action in any Court, which includes this Court.

¹¹ Final Court approval for the Settlement was November 14, 2013[R.14211] and further approved, after Wende's failed attempt to break the settlement on December 2, 2014 [R.1153-1173].

Pursuant to UT. Code Ann. §75-3-1007: ..”that no action concerning the estate is *pending in any court* is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate”

The D.Court’s Finding of Facts is ambiguous¹² when it released the SA without resolving the Hi-Country Judgment lien from Case No. 070918272, against the Estate. [R.0392 ¶6]. And, the D.Court erred when it stated: “the estate of Homer Engle is settled, allowed and approved as stated herein[R.3892 ¶7]. The D.Court’s ruling is contrary to 75-3-1007, the Estate is not Settled and cannot be approved until the *Estate is fully administered by the SA. Fully administered includes a full accounting for the administration of this Estate for period of November 21, 2013 through February 21, 2017.*

The D.Court’s ruling that the *transactions of the Special Administrator, during this Administration, are confirmed and approved.*[R.8392 ¶8] is also, contrary to UT. Code §75-3-1007, because there are pending matters in other courts: regarding the Hi-Country two Judgments and delinquent HOA fees; the Appeal in this Court and the Probate Court. Therefore, the Estate is not fully administered.

The SA did not fully administer the Estate when she refused to provide a full accounting of the Estate, which is a statutory requirement, not a personal claim between all parties, estate creditors and attorneys under the Settlement Clauses.

It is improper for the D.Court to impose a statutory requirement on the parties,

¹² Appellant’s Appeal included the D.Court’s April 7, 2019, Finding and April 12, 2017 Final Order closing the Estate, which included any ambiguity in those orders.

calling it a Full Release of their claims, when those claims are *NOT* a release of the SA's duties to fully administer the estate. It is improper for the D.Court to stated Judy, Kathy and Roy have committed a wrong doing against the SA [R.8384 ¶17, R.8385 ¶25] for a requirement, the SA has a statutory duty to comply with.

The SA is not creditable, when she has not fully administered the estate in a timely and efficient manner which includes the distribution of the real properties, the deeds, the coins[R.5917, 6050, 7684-7687, 7695] and the Hi-Country documents.

Counsel's argument fails, without merit..

(C) Wende's Jurisdiction Issues (WendeBr.Pg.370)

Counsel misstated Appellant's citation[Br.Aplt.Pg.4, 17]. Contrary to Wende, there is no jurisdiction issue with Appellant's Quiet Title claim and Counsel failed to support the jurisdiction issue especially on Appellant's conclusion Pgs.41-42.

April 12, 2017 Order[R.8421 ¶2]: "real properties, as identified in Exhibit A, are transferred to*each shall have quiet title to the respective real property as provided in the designating deed*"

This Court has Jurisdiction to review the quiet title issues as cited [Br.Aplt.Pg.4 R.8421 ¶2]: The deeds were attached to the D.Court's Findings, Exhibit A. Quiet title was *Not* stated on the designated deeds[R.8396-8410] as ordered on April 12, 2017[R.8421 ¶2]. Therefore, the real properties were *Not* transferred as ordered by the D.Court on April 12, 2017.

D.Court's April 12, 2017 Order[R.8420¶4]: The D.Court ordered the SA *to prepare executors deeds for the purpose of transferring assets to Kathy Engle, Judy Engle..*

YHG prepared deeds as ordered by the Court. Copies of the proposed deeds are

attached as Exhibit A. [R.8421¶5]. However, Deeds were incomplete, untimely not prepared according to terms of Settlement or the D.Court's instructions. [Br.Aplt.Pg.17]. *Quiet title was not stated on the designated deeds.*[R.8395-8410].

Wende did not transfer the properties as ordered on April 12, 2017. The transcripts of the May 24, 2017 and May 25, 2017 hearings were necessary to show the D.Court was carrying its orders, when the D.Court ordered the SA to execute, sign the Deeds transferring the properties.

Wende has a duty to timely deliver the deeds after the sale of the Payson property and as Ordered by the D.Court on April 12, 2017. To date that has not occurred, as evidence with all the court hearings after April 12, 2017 closing the Estate. See the probate docket file.

Counsel's argument fails.

(2) Hi Country Documents

The D.Court ordered Wende to deliver the Hi-Country documents to Kathy multiple times with last order on February 21, 2017, when the D.Court signed the Order on the tangible property.[R.8093] To date those documents have not been fully delivered to Judy and Kathy.

Although, Kathy cited the Pending Order to Show Cause, filed after the Appeal was filed, it was within the Court's jurisdiction to carry out his judgment, the purpose of the Order to Show cause.

(V) Appellant Issues on Appeal – Conceded By Wende

(A) Wende was silence without argument and conceded to Appellant's issue on appeal regarding Issues: *No.1 Constitutional Rights* and Due Process, fair and equal treatment

and *No.2 Quiet title*. [WendeBr.Pg.38-44].

Wende has affirmed Appellant's appeal, the D.Court did not comply with the terms of the Settlement in granting Quiet Title to the parties. As a result, there are constitutional rights and due process issues for the ambiguities in the D.Court's Orders closing probate.

(B) Appellant's Issue No.4-Priority 1 Claim: Wende conceded with exception to the payment of Kathy's Priority 1 claim. Counsel stated the claim should be paid under statute §75-3-902(2): a new issue without appeal filed after appeal lacks jurisdiction.

Again, Counsel is fully aware, but continues to insert new matters, issues and evidence after the appeal was filed. This Court lacks jurisdiction.[WendeBr.Pg.42]

The D.Court's final orders and the Settlement did not provide payment under Ut.Code 75-3-902(2) for any claim and is inconsistent with the statute governing court approved compromises, 75-3-1102(3).

Wende is not entitled to be paid when she did not file an appeal, for payment.

Wende's \$15,000 Priority 1 claim included, administrative expenses and not payable under any other statute, when she agreed to Settlement. The Settlement was global, meaning all parties are equally and entitled to equal benefits.

For example: Wende paid her personal auto insurance, gas expense, court parker and other personal expenses from the Estate's checking account and took cash withdraws (\$4,215.76) without substantiation.[R.8194]. It is double dipping to take both the \$15,000 and personal costs from the Estate's checking. The siblings did not receive like kind benefits. All parties were equal after settlement.

Wende has received undisclosed benefits from the Estate, \$15,000[R.8194] in

benefits, more than the siblings. The benefits Wende received more than satisfied Wende's priority 1 claim.[R.8194 ¶39-40][R.8243¹³ R.8245-8251]

Br.Aplt.Pg.39.

Counsel's argument fails.

Coins, a tangible allowed to pay creditor claims

The \$3,348.97¹⁴ coin value was cited at [Br.Aplt.Pg.6 and Pg.16].

The Estate's December 14, 2017 Balance Sheet showed Total Current Assets of \$74,232.55[R.4162, R.6050][**Add.P**], which included Other Current assets (coins) of \$3,348.97[R.6050]. The D.Court's Findings only distributed \$70, 883.58 [R.8383 ¶13][R.8383 ¶13] [R.8389 ¶¶46-47].

The \$3,348.97, was not distributed (\$74,232.55 less \$70,883.58) and remains in YHG's possession.[R.8389¶¶46-47].

YHG must return the excess funds, which Kathy had requested in her brief pursuant to UT.Code Ann.§75-3-909. [Br.Aplt.Pg.41 & Pg.45¶3].

This over sight harmed Kathy, \$3,348.97 should have been applied to Kathy's \$11,759.36 claim.[Br.Aplt.Pg.6, Pg.16][R.8382 ¶9a] as stated on the Settlement [R.14237¶] and the Court's Order, signed on the Tangibles, February 21, 2017.[R.08093] ¹⁵. ¶4[R.7684-85, R.7687]

¹⁴ **Coins Value:** Correction, the appraised value of the Coins is \$3,348.97, as recorded on the Balance Sheet.[R.6050]

¹⁵February 21, 2017, D.Court signed Tangible Order, required Wende to deliver Coins [R.7685] to Kathy and Hi-Country documents to Kathy and Judy.[R.8093-8097][R.7684, 7687, 7695]

Appellant requested, remand for, her claim balance \$11,759.36, paid in full, which included the coins.[Br.Aplt.Pg.42¶3].

(C) Wende affirmed Appellant's Issue No. 3(a)

Hi-Country[WendeBr.Pg. 42-44]: Counsel confirms, Hi-Country did not appeal D.Court's ruling: the Estate was not liable to pay its judgment and further stated: the D.Court did not err because Hi-Country did not appeal its ruling, the Estate was not liable to pay its judgment because Kathy agreed to be bound.

Counsel missed the point of the issue on appeal regarding Hi-Country and misstated the issue. Appellant's Issue #3 for Hi-Country and Isaac Paxman only related to possible ambiguity preventing the D.Court from granting quiet title to the properties and to show there were no valid and enforceable land liens attached to the properties. The D.Court erred when it did not timely distribute the properties, which it ordered properties to be in quiet title.[R.8421, R14225¶3].

Appellant requested this Court to review and confirm the D.Court failed to grant quiet title when it erred by not timely distributing real properties as ordered on its April 12, 2017 order [R.8420 ¶2]. Hi-Country and Isaac did not have valid liens preventing the D.Court from granting quiet title. Appellant, requested remand to the D.Court's to comply with its quiet title order on April 12, 2017[R.8421 ¶2] which had defects on the order preventing the transfer of the properties. Deeds not attached to the Order, and quiet title was not stated on deed.

Appellant agrees with Judy Engle's brief. *Id.* Issue #5, Pg. 4; 8-9, 37

Excerpts of the transcript are attached to Judy's brief. **Add. G**¹⁶ regarding the Hi-Country Judgments claims.[R.9315-9337]

(D) Wende affirmed Appellant's Issue No. 3(b) Isaac's Liens

Isaac was paid as a Priority 2 claimant in Settlement. Settlement did not provide creditor liens on any property. The distribution of any property under the terms of Settlement "will be distributed free and clear of *any claims of the Estate* or any other Party.[R.14225] which includes Isaac Paxman, who is a creditor of the Estate.

The Whereas Clause stated, Judy, Roy and *Wende's attorney fees are administrative expense with respect to the Estate.*[R14218 ¶6]. Therefore, Isaac is paid only through Settlement as a Priority 2 claimant and cannot lien any property.

Contrary to Counsel Kathy is not challenging Isaac's lien, only if it affects the Settlement, the rights of Kathy. The Estate cannot be closed until all matters are resolved in all Courts 75-3-1007.

Appellant agrees with Judy's brief on Isaac's lien position.*id* JudyBr.Pg.1-2, 31-34.

E. Appellant's Issue No. 6 – YHG's Attorney Fees [WendeBr.Pg.39-41]

Counsel affirms the D.Court's ruling without any supporting evidence which does *Not* negate, Appellant's argument. The D.Court lacked jurisdiction to pay YHG

¹⁶ **Add G**-February 21, 2017 hearing transcript. Correction on Table of Contents, the date was stated as 2016, should be 2017.

attorney fees under a statute conflicting with the terms of Settlement, which the D.Court is mandated to enforce Settlement under the governing statute Ut.Code 75-3-1102(3).

See Appellant's brief for argument.[Br.Aplt.Pgs.6, 25-27, 31-35, 37-39, 42].

See Judy's brief for argument, which Appellant agrees and references. *id*
JudyBr.Pgs.4, 10-11, 16-17

Settlement would never had been reached if it was stated in Settlement, legal fees could be paid outside of Settlement and not paid as a Priority 2 claim. Altering the terms of Settlement is not fair or proportionate to the Siblings for the benefits received. *The YHG legal fees outweigh the benefits as they discriminate against those to be paid in Priority one and two categories. Specifically, Kathy Priority 1 Claims Balance of \$11,759.* [Br. Alt.Pg.37-39]

YHG legal fees are paid different from what was intended in Settlement. This is a different situation than what was first thought would be, a "*Horse of a Different Color.*" [R.7396-Lines 15-17].

In Response to Counsel. The *Conflict of interest between Wende and YHG totaling \$8,304.50* [R.8189]; There is an estimated *\$12,725 [R8189]*excessive Legal services with Hasting (not employed with YHG); There was an estimated *24,472[R8199]* improper legal fees on the YHG billings.[R8187-8191].

In response to Counsel, YHG had a Dual Representation of Wende individually and Wende, SA [R.7397-7519], Pg.39¶2 [R.819] [R.8187] when YHG represent Wende, individually, during the Coin Trial.

Counsels arguments fails on all accounts whereas, the terms Settlement prevails

and the D.Court is mandated to enforce the Settlement. 75-3-1102(2)

VI

Wende - Attorney fees (WendeBr.Pg.44-47)

Wende has not shown she is entitled to an award of attorney fees or costs under any statute. Wende's Brief was filed in bad faith without merit, is frivolous and contained burdensome, irrelevant, immaterial matters and included statutes which does not entitle Wende attorney fees. Attorney Fees are not warranted under App. Rule 24(i) and Rule 33(b) when Appellant's brief has merit.

Wende requested attorney fees under UT. Code Ann § 75-3-719. The D.Court did not pay attorney fees under this statute. The statute inapplicable, contrary to UT. Code Ann § 75-3-1102(3), whereas there is a court approved binding contract which does not provide for additional attorney fees, especially when the estate is insolvent. The District Court can only enforce the terms of the Settlement.

Appellant's Issue #6 is the same issue on appeal when the D.Court erred when it paid YHG attorney fees under UT. Code Ann. 75-3-805(b), which was also contrary to UT. Code Ann § 75-3-1102(3) [R.8390][Br.Aplt.Pg.33]

Wende's Brief failed to meet the burden of persuasion. The argument is unsupported and fails.

It is respectfully, requested, this Court should deny all Wende's requests for Attorney fees, damages and sanctions, under any statute for all of the above stated grounds.

Conclusion and Relief Sought

For the foregoing reasons, and those reasons set forth in this Reply Brief, this Court should reverse and remand to the District Court to amend its Finding of Facts and the Order to close out the Estate of Homer Engle and directing the District Court to Order the Relief Sought, as stated on the Appellant's Brief. Additionally, Appellant respectfully requests the following Relief Sought:

1. This Court cannot affirm the D.Court's ruling, when *Counsel's argument lacks credibility, is unreliable and the evidenced supporting Counsel's argument was submitted with what appears to be an intent of fraud to deceive this Court.*

2. It is respectfully requested appropriate actions are taken to deal with the serious Professional Standards issues regarding Counsel Buckeley. It appears Buckeley is noncompliance with Professional Standards Rule 2.4; Rule 3.3; Rule 3.4, and issues of Fraud upon the Court.

3. This Court should consider pro se litigations rights in filing documents with the Courts in the State of Utah. Appellant seeks the same and equal rights for instant online filings 24/7, the same rights afforded to attorneys with online 24/7 filings.

4. Appellant respectfully requests costs and expenses, including transcript costs, costs of document preparation, mileage and travel costs from Colorado to Utah and any other relevant costs, under App Rule 24(i) and 33(b). Cost of transcripts are allowed. [R.

Enter any such further order this Court deems necessary including damages and sanctions, double costs, on Appellee, Wende Throne and Counsel Buckeley.

Respectfully submitted this 6th day of May 2019.

/s/Kathy Engle
Appellant, Pro Se

Certificate of Compliance

1. This Brief complies with the type-volume limitation of Utah R. App. P. 24(a)(11) and 24(g) because this brief contains 8,399 words, excluding the parts of the Reply Brief exempted by Utah R. app. P.23(g)(2): table of contents, table of authorities, addendums, and certificate of counsel.

2. This Brief does not contain private records which complies with Utah Rules of Appellate Procedure 21 for the public/private record requirement.

3. Both the Brief and this Reply Brief complies with the typeface requirement of Utah R. App. P. 27(b) because this Brief has been prepared in a proportionally spaced typeface using Google Docs in size 13-point Times New Roman.

I certify to the best of my knowledge that the information contained in this certification is true and accurate.

Dated this 6th day of May 2019.

/s/ Kathy Engle
Kathy Engle, Appellant, Pro Se

Certificate of Service

I hereby certify that on this 6th day of May 2019, I caused to be served a copy of the forgoing **Reply Brief of the Appellant** was served via email to the following and printed copies will be delivered by hand or U.S. within seven days:

Judy Engle, Pro Se
and Eagle Landing, LLC
wildfire99_2@msn.com

Utah Court of Appeals
450 South State Street, 5th Floor
Salt Lake City, Utah 84114
courtofappeals@utcourts.gov

Roy Engle, Pro Se
Royengle2@gmail.com

Woodall | Carr Law Firm
Counsel Deborah L. Bulkeley
Attorney for Appellee, Wende Throne, individually
deborah@carrwoodall.com

Anderson Hinkins Law Firm
John W. Anderson & Kurt W. Laird
Counsels for beneficiaries of the Homer Engle 2010 Trust:
Alexa Thayer and Brita Lynn Wilcken
john@johnandersonesquire.com
kurt@andersonhinkins.com

Counsels Michael, F. Skolnick & Kirk G. Gibbs
mfskolnick@kippchristian.com
kggibbs@kippandchristian.com

Counsels for Bullock Law Firm, Karen Bullock Kreeck
Former Counsel to the Estate of Homer Engle, Special Administrator Wende M.
Throne and Homer Engle 2010 Trust

/s/ Kathy Engle
Kathy Engle, Appellant, Pro Se
Case No. 20170382-CA
District Court No 103901948

ADDENDUM I

However, the issues concerning whether this court has jurisdiction over specific issues or whether Appellant's claims fail due to the inclusion of false allegations in Appellant's brief are denied without prejudice.

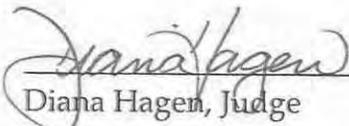
IT IS ALSO HEREBY ORDERED that Throne's request for attorneys fees is denied without prejudice, and will be resolved pending plenary presentation. Any requests for attorney fees shall be made pursuant to Rule 33 of the Utah Rules of Appellate Procedure, and must be included in a party's brief.

IT IS ALSO HEREBY ORDERED that all other motions relating in any way to Throne's motion to strike are denied.

Finally, IT IS ALSO HEREBY ORDERED that Throne shall file her initial brief within thirty (30) days of the date of this order. No further extensions will be granted.

Dated this 10th day of January, 2019.

FOR THE COURT:



Diana Hagen, Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2019, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

Judy Engle
wildfire99_2@msn.com

Roy Engle
royengle2@gmail.com

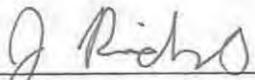
Kathy Engle
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DEBORAH L. BULKELEY
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JOHN W. ANDERSON
KURT W. LAIRD
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kurt@andersonhinkins.com

By 
Jeffrey Ricks
Appellate Court Coordinator

Case No. 20170382
District Court No. 103901948

JAN 10 2019

IN THE UTAH COURT OF APPEALS

---ooOoo---

IN THE MATTER OF THE ESTATE OF HOMER
ENGLE.

ORDER

KATHY ENGLE,
Appellant,

Case No. 20170382-CA

v.

WENDE M. THRONE, JUDY ENGLE, BRITTA
LYNN WILCKEN, EAGLE LANDING
PROPERTIES, ROY ENGLE, AND
BULLOCK LAW FIRM,
Appellees.

This matter is before the court on Wendé Throne’s motion to strike Appellant’s brief, or alternatively to require Appellant to provide notice of the brief and other filings made in this court to other “parties” that may have an interest in the outcome of the appeal. This court required Throne to file a supplemental memorandum concerning the party status of each individual she believed did not receive adequate notice. After reviewing the supplemental memorandum, it appears that the individuals named by Throne were not parties to the litigation, but rather were interested parties or creditors of the estate. Accordingly, none of the parties to the appeal were required to provide notice of filings to these parties. If those parties believed that they had interests in the resolution of the appeal, it was incumbent upon them to seek to intervene in the appeal.

Throne also argues that this court should dismiss the appeal because Appellant has raised several issues over which this court has no jurisdiction and because Appellant’s brief contains false allegations. These arguments should be raised in Throne’s brief.

IT IS HEREBY ORDERED that the motion to strike Appellant’s brief, or alternatively, to require Appellant to provide notice to other non-parties is denied.

IN THE UTAH COURT OF APPEALS

---ooOoo---

IN THE MATTER OF THE ESTATE OF HOMER)
 ENGLE.)
 _____)
 KATHY ENGLE,)
Appellant,)
 v.)
 WENDE M. THRONE, JUDY ENGLE, BRITTA)
 LYNN WILCKEN, EAGLE LANDING)
 PROPERTIES, ROY ENGLE, AND)
 BULLOCK LAW FIRM,)
Appellees.)
 _____)

ORDER

Case No. 20170382-CA

Wende Throne has filed a motion to strike Appellant's brief, or alternatively to require Appellant to provide notice of the brief and other filings made in this court to other "parties" that may have an interest in the outcome of the appeal. Throne has failed to make clear whether the individuals she lists in her motion as persons who should receive notice of proceedings are actual parties to the underlying litigation or are, instead, interested parties that may have an interest in the outcome of the appeal but who were never formally added to the litigation (such as an attorney who may have been granted attorney fees during the course of the litigation).

IT IS HEREBY ORDERED that on or before January 5, 2019, Throne shall file a supplemental memorandum detailing the party status of each individual listed in her motion. Further, if such an individual is an actual party to the litigation, a record cite must be included. Any other party may file their own memorandum in response to this order; however, such responses are not required.

Dated this 19 day of December, 2018.

FOR THE COURT:


 Jill M. Pohlman, Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

JUDY ENGLE
wildfire99_2@msn.com

ROY ENGLE
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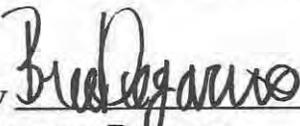
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By 
Breeanna Degarmo
Judicial Assistant

Case No. 20170382
District Court No. 103901948

ADDENDUM J

From Estate

10-15-18 Filed: Request/Notice to Submit Motion for Attorney Fees From Estate

10-15-18 Filed: Return of Electronic Notification

10-16-18 Minute Entry - ORAL ARGUMENTS ON OUTSTANDING MOTIONS *

Judge: KEITH KELLY

Clerk: denicer

PRESENT

Petitioner's Attorney: DEBORAH L BULKELEY

Petitioner(s): WENDE M THRONE

Other Parties: JUDY ENGLE

KATHY ENGLE CLAYTON

ROY & ELLEN ENGLE

RENEE L BLOCHER

ISAAC D PAXMAN

WILLIAM D SKUSTER

Audio

Tape Number: S35 Tape Count: 2:30-5:15

2:30 This is the time set aside to handle outstanding motions. Appearances are taken and the Court identifies five motions with requests to submit to be addressed in today's hearing:

- (1) the 10/15/18 Request to Submit on Motion for Attorney fees from estate,
- (2) the 10/9/18 Request to Submit on Motion for Rule 60(d) regarding independent action to set aside orders,
- (3) 9/14/18 Request to Submit on Motion for Kathy Engle's Motion for Rule 60(b) (4) to void/vacate judgment,
- (4) Request to Submit for ex-parte motion to stay execution of judgment filed 9/5/18 with Amended Request filed on 9/14/18
- (5) 7/18/18 Request to Submit on petition for approval of final disposition.

A partially briefed Motion to Declare Kathy Engle a Vexatious litigant that is not ready to be heard.

2:35 Mr. Paxton appears. The court will deal with items 2, 3, and

4 first, discussion ensues.

2:55 The Court notes all parties agree the 8/20 Amended Notice of Appeal is not before the district court. The Court denies the Rules 60(b)(4) & 60(d) motions based on the Notice of Appeal filings. Judy Engle objected.

3:01 The Court reiterates the ruling is that the issues involved in the Rule 60(b)(4) motion filed 9/4/18 by Kathy Engle and the Rule 60(d) motion filed by Kathy Engle 12/16, is that those are the issues stated in the Amended Notice of appeal filed 8/20/18 and therefore the Court's Conclusion are those issues are before the Court of Appeals and decline to rule without prejudice on those issues. *

3:03 Request to Submit on Exparte motion to stay judgement and will hear argument on this issue. Kathy Engle addresses the Court.

3:06 Ms. Bulkeley responds; Kathy Engle replies.

3:09 The Court concludes that Kathy Engle, and the Court of Appeals supports, failed to explain why she should not pay the supersedeas bond. Absent the supersedeas bond, the Court will not stay the judgment. The Court is not persuaded Kathy Engle provided basis for stay of execution of judgment without supersedes bond. Ms. Bulkeley is to prepare the order of the court regarding Rule 60(b) and (d) motions and supersedes bond.

3:13 The Court addresses the Motion for attorney fees for estate and approval of final distribution. Discussion ensues including deed insufficiencies.

3:44 Judy Engle is sworn in and answers questions of the Court.

3:48 The Court orders Ms. Bulkeley to draft a new version of the deed but not to deliver it to Judy Engle until she surrenders the first deed.

3:51 Mr. Paxton objects that the deed has not been recorded.

Discussion ensues regarding the deed held by Ms. Judy Engle.

4:11 The Court reviews new verbiage for the deeds. Discussion ensues.

4:14 The Court orders the Special Administrator to edit the deeds as discussed, to amend the Special Warranty Deed to Wende Thorne.

4:18 The Court orders the language to be changed in the Deeds, which were attached as exhibits to the Petition to Approve Final Distribution Pursuant to the Amended Estate Closing Order Dated as of April 12, 2017 Nunc Pro Tunc filed 05/03/18. Language was ordered amended individually for each deed as reviewed on the record.

4:25 The Court orders counsel for Special Administrator to make changes to amended deed to clarify issues raised by County Recorders.

4:50 The Court orders the Special Administrator to prepare a form of order regarding filing amended deeds. Orders name to be Golden Terra Enterprises for Judy Engle.

4:51 The Court orders, to clarify:

(1) counsel for the Special Administrator to make the changes for the Amended Deeds.

(2) email to everyone,

(3) meet and confer via email, objections if changes are not as ordered regarding form of deed only,

(4) counsel for the Special Administrator will make necessary correction to comply with order and re-email them out.

(5) file the proposed amended warranty deeds

(6) at the next hearing (November), all parties are directed to appear,

(7) all parties are to have all forms of deeds at the hearing,

(8) Ms. Bulkeley will call the clerk to ensure a notary is at the hearing in November,

(9) the proposed deeds will be scanned into the record, unsigned,

Kathy Engle
P O Box 2225
Arvada, CO 80001
801 898-2444

FILED
UTAH APPELLATE COURTS

AUG 20 2018

FILED DISTRICT COURT
Third Judicial District
AUG 20 2018
SALT LAKE COUNTY

By _____ Deputy Clerk

Pro Se, Respondent

**IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH, PROBATE DIVISION
450 South State Street, Salt Lake City, UT 84111**

In the Matter of the Estate of Homer Engle

Homer Engle,

Deceased

**AMENDED
NOTICE OF APPEAL**

Probate No. 103901948

Judge: Keith A. Kelly

Notice is hereby given that Kathy Engle, Pro Se, Respondent hereby appeals to the Utah Court of Appeals, the final orders and judgment of the Honorable Keith Kelly, filed on June 11, 2018 regarding: (1) Judgment; (2) Notice of Entry of Order regarding Attorney Fees; (3) Order of Attorney Fees; (4) Order Denying Rule 60(b) Motion and awarding Attorney Fees and Order on Other Matters; (5) Findings of Facts and Conclusions of Law in Support of Order Denying Kathy Engle's Rule 60(b) Motion (under the jurisdiction of the Amended Order 12, 2017, Nunc pro tunc, to close out the estate (filed on November 9, 2017, while the Original April 12th Order is pending review in the Appellant Court).

The Appeal is taken from the judgment and orders, as a result of the denial of Kathy Engle's Motion for Reconsideration Pursuant to U.R.C.P. Rule 60(B for Relief RE: Hearing to Release the Special Administrator, Quiet Title Orders and Due Process . Under Rule 60(B) Kathy was seeking a temporary remand, from the Appellate Court, Case No. 20170382-CA (filed

on May 8, 2017). which the District Court denied as being untimely under Rule 60(B) section 1, 2, and 3 rather than the new Rule 60(B), which does not have a time limit for an early remand.

The Notice of Appeal is being Amended to correct the date on the Notice of Entry of Order, which was filed on June 11, 2018 rather than July 11, 2018. The signed Judgment was also filed on June 11, 2018. There is confusion on the timing.

Kathy Engle lacked actual notice of the signed Judgment. Additionally, Kathy lacked actual notice of the signed Order denying the Motion for Temporary Remand for Rule 60(B) and the signed Order for the Findings of Facts and Conclusions of Law, both signed and filed on June 19, 2018. There was no hearing held where the signed orders or signed judgment could be served. There was no proof of Certificate of Service filed or served upon Kathy Engle for the Judgment (RE: attorney fees) or for the two orders Denying Kathy's Rule 60(B), as stated above.

I have not included any non-public information in this document.

Respectfully submitted this 20th day of August, 2018

/s/Kathy Engle
Pro Se, Respondent

CERTIFICATE OF SERVICE

I hereby certify that I personally emailed a true and correct copy of the foregoing Amended Notice of Appeal, was emailed on August 20, 2018 to the following:

Woodall | Carr Law Firm
Deborah Bulkeley
Deborah@carrwoodall.com
Counsel to: Estate of Homer Engle and Wende M. Throne

Roy Engle
Royengle2@gmail.com

William Skuster
William@seblegal.com
Counsel for Judy Engle
cc: to Judy Engle

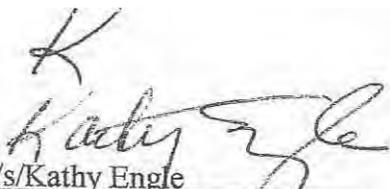
Isaac Paxman
ipaxman@paxmanattorney.com

John Anderson & Kurt W. Laird
John@andersonhinkins.com
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Kirk G. Gibbs & Michael F. Skolnick
kggibbs@kipbandchristian.co
mfskolnick@kipbandchristian.com
Counsels for Karen Kreeck

THIRD DISTRICT, SALT LAKE
ATTN: JULIE RIGBY AND CHERYL AIONO
cheryla@utcourts.gov
julier@utcourts.gov

Case No. 20180647-CA


/s/Kathy Engle
Pro Se, Respondent

ADDENDUM K

The Order of the Court is stated below:

Dated: October 17, 2016
12:23:37 PM

/s/ KEITH KELLY
District Court Judge



Stephen J. Mayfield (10323)
YORK HOWELL & GUYMON
6405 South 300 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040
Facsimile: (801) 527-1000
steve@yorkhowell.com
Attorney for Special Administrator, Wende Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF
HOMER ENGLE,

Deceased.

ORDER DENYING JUDY ENGLE'S
MOTION TO REMOVE SPECIAL
ADMINISTRATOR WENDE THRONE

Case No. 103901948
Judge Keith Kelly

On October 3, 2016, this matter came before the Court on Judy Engle's Emergency Petition for Removal of The Special Administrator. Attorney Stephen J. Mayfield appeared on behalf of the Special Administrator, Wende Throne. Judy Engle, Kathy Engle, and Roy Engle all appeared *pro se*. Attorney Isaac Paxman appeared initially in the hearing on behalf of various entities but departed the hearing by leave of Court before the matter of Judy Engle's petition was heard before the Court.

Upon proof duly made to the satisfaction of the Court, the Court HEREBY ORDERS:

1. Judy Engle's Motion is denied.
2. Judy Engle failed to meet her statutory burden necessary to show cause for removal of Wende Throne as the Special Administrator of the estate of Homer Engle.

05613

3. An issue of fact exists regarding certain coins, which were alleged by Judy Engle to be part of the estate of Homer Engle.

4. Wende Throne shall file an affidavit regarding her ownership and pictures of the coins alleged to be part of the estate of Homer Engle with Court by October 12, 2016.

This Order is signed when electronically stamped and dated by the Court at the top of page one.

CERTIFICATE OF SERVICE

I state that I caused the preceding document to be served to the following persons by the indicated method on October 5, 2016.

Eldean Roy Engle
royengle2@gmail.com

E-Filing
 US Mail
 E-Mail

Kathy Engle
kat22eng@ymail.com

E-Filing
 US Mail
 E-Mail

Judy Engle
wildfire99_2@msn.com

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Isaac Paxman
ipaxman@paxmanattorney.com

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John W. Anderson
john@andersonhinkins.com

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 US Mail
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/s/ DP
Dallin Perry, Paralegal
YORK HOWELL & GUYMON

ADDENDUM L

Name: Kathy Engle, Pro Se
Petitioner
Address: P.O. Box 2225
Arvada, CO 80001
Telephone No: 801 898-2444

DISTRICT COURT
16 MAR -4 PM 9:29

Pro Se

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH, PROBATE DIVISION

In the matter of the Estate of

HOMER ENGLE,

Deceased

**MEMORANDUM IN SUPPORT OF
MOTION TO PRODUCE ACCOUNTING
RECORDS AND DOCUMENT FOR THE
STATE STREET PROPERTY**

Probate No. 103901948

Judge Keith Kelly

Petitioner, Kathy Engle, a party to the September 3, 2013 "Settlement" Agreement, moves the Court to Order the Special Administrator, Wende Throne to Produce Accounting Records and Documents for the State Street Property Rental Income, Expenses and Disbursement from September 3, 2013 to the date of date of the signed Order. Ms. Throne to account for all loan proceeds received from both of the Payson Loans.

Wende Throne has managed the State Street Property for the Estate since November 20, 2010. The accounting period Petitioner is requesting begins September 3, 2013 (date of Settlement) through the date of the Court signs the Order.

Ms. Throne has not provided or produce any accounting records, documents or rental income or produce any accounting documents, receipts for the expenses or disbursement on the State Street Property for the above state period. There has not been any documents for legal fees paid from the rental funds or other funds for the two Payson Loans.

18 APR - 4 PM 2:30

Ms. Throne has not paid any property taxes on the State Street Property, from the rental income, after Settlement.

It is estimated Ms. Throne has collected at least \$46,000.00 from the State Street Property rental income.

It is respectfully requested Ms. Throne produces an accounting of the funds she has received from the State Street Property. The request is not for a certified accounting of the funds but a simple itemized list of all rental income and expenses substantiated with receipts, travel logs, with dates and the purpose of the disbursement of expenses for the type of repairs required or other expenses. This should also include any photographs of the repairs, time records for services performed, 1099's, W-2, payroll reports, work exchanged for rent etc.

It is respectfully requested the Court Orders Ms. Throne to list all legal fees paid from the rental funds of the State Street Property for the above state period.

It is respectfully requested the Court Orders Ms. Throne to provide the Accounting within a date set by the Court.

DATED: March 4, 2016

Kathy Engle

/s/ ke/
Kathy Engle, Pro
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2016, I caused a true and correct copy of the foregoing document: **Memorandum In Support of Motion to Produce Accounting Records for the State Street Property**, which was served on March 4, 2016, by email on the following persons:

Isaac Paxman
ipaxman@paxmanattorney.com

Judy Engle, Pro Se
wildfire99_2@msn.com

Roy Engle, Pro Se
royengle2@gmail.com

Stephen Mayfield
steve@yorkhowell.com

John Anderson
john@andersonhinkins.com

Kathy Engle, Pro Se
Petitioner



ADDENDUM M

The Order of the Court is stated below:

Dated: April 15, 2016
06:29:18 PM

/s/ KEITH KELLY
District Court Judge



Stephen J. Mayfield (10323)
YORK HOWELL & GUYMON
6405 South 300 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040
Facsimile: (801) 527-1000
steve@yorkhowell.com
Attorney for Special Administrator, Wende Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF HOMER ENGLE, Deceased.	ORDER REGARDING STATUS HEARING OF MARCH 31, 2016 Case No. 103901948 Judge Keith Kelly
---------------------------------------------------------------------	----------------------------------------------------------------------------------------------------

On March 31, 2016, this matter came on regularly for hearing on Motion for Approval of Attorneys' Fees and for status of estate administration. Attorney Stephen J. Mayfield appeared on behalf of the Special Administrator, Wende Throne, and for the law firm of York Howell & Guymon. Judy Engle, Kathy Engle, and Roy Engle all appeared *pro se*. Attorney Isaac Paxman appeared on behalf of Black Diamond, LLC (aka Black Diamond Properties, LLC); Crystal Star, LLC; Ellen Engle; Enco Sole Corporation; Eagle Landing Properties, LLC; Engle Insurance Agency, LLC; Mennco Corporation; and Paxman Law, LC (assignee of Stepan Lewis Paxman & Barnes, LC, formerly known as Stepan Lewis & Paxman, LC).

Upon proof duly made to the satisfaction of the Court, the Court finds as follows:

Payson Property

1. At the prior hearing on this matter, the Court ordered for the real estate agent for the

Special Administrator regarding the sale of the Payson Property to provide a report to the Court regarding his best recommendation for selling the Payson Property.

2. Ross McClintock, real estate agent for the Special Administrator, provided a report to the Court, which was presented as a protected document not to be disseminated to the general public, and which outlined a recommended plan for selling the Payson Property.

3. The Court hearing no objections to the recommendation presented by Ross McClintock, other than an objection voiced by Judy Engle, that the property could potentially have a better use and thereby garner a better sale price, the Court finds the proposed plan and recommendation from Ross McClintock to be reasonable and appropriate.

Wood Cross Property

4. Pursuant to the Settlement Agreement, Judy Engle was granted the authority to manage and administer the Woods Cross Property on behalf of the Estate.

5. No accounting for the Woods Cross Property has been provided by Judy Engle since the time she took over management and administration of the Woods Cross Property.

6. An accounting of the Woods Cross Property is necessary to assess the status of the Woods Cross Property and the administration thereof.

Hi-Country II

7. The Court confirmed that Kathy Engle was given management authority over the Hi-Country Property.

8. That Kathy Engle has had difficulty getting Home Owners Association for the Hi-Country Property to communicate with her.

9. The Court directed Wende Throne to provide to Kathy Engle and the parties copies of the

communications, billings and account statements she received from Hi-Country Home Owners Association which she received.

State Street Property

10. Pursuant to prior order of the Court, Wende Throne as Special Administrator has authority of management over units 2, 3, 4, and 5 of the State Street Property.

11. Judy Engle has authority of management over units 1 and 6 of the State Street Property.

12. Unit 6 is currently unoccupied and unit 1 is occupied with a renter.

13. The Court finds that Wende Throne and Judy Engle have the same incentives and concerns regarding the State Street Property and to confirm the status and condition of the State Street Property.

14. The Court finds it is reasonable and necessary for Wende Throne to inspect units 1 and 6.

THEREFORE, IT IS HEREBY ORDERED:

1. That Wende Throne, as Special Administrator, is to adopt the recommendation proposed by Ross McClintock, that the Payson Property be sold by a *call for offers*.

2. The Court renews its prior order that the Payson Property be sold or at least under contract by August 31, 2016.

3. Sale of the Payson Property pursuant to the call for offers shall be subject to prior Court Approval.

4. The contents of the hearing on March 31, 2016 shall remain private and not available to the general public in order to maintain privacy regarding the proposed plan from Ross McClintock in order to obtain the best purchase price without any potential buyer learning of the plan and gaining an unfair or commercially unreasonable advantage in purchasing the

Payson Property.

5. Judy Engle, as manager and administrator of the Woods Cross Property on behalf of the Estate is ordered to provide an accounting of the Woods Cross Property by 5pm April 26, 2016, consistent with the Court's prior order appointing her as manager and administrator of the Woods Cross Property on behalf of the Estate. The content of the accounting shall be inclusive of expenses and income from September, 2013 through the present.

6. The Accounting to be provided by Judy Engle regarding the Woods Cross Property shall include proper disclosure of all items of expense, income, and supporting documentation to the same.

7. Judy Engle shall also provide proof of the status of payment of the real property taxes on the Woods Cross Property.

8. Wende Throne shall provide to Kathy Engle and the parties copies of the communications she received from Hi-Country Home Owners Association which she received by regular mail currently in her possession.

9. Wende Throne shall convert the letters and communications from Hi-Country Home Owners Association in her possession to PDF document form and send by email to Kathy Engle and the other parties.

10. Kathy Engle shall obtain and submit to the Court and the parties sufficient documentation and deeds available from the county records in order to show the chain of title regarding the Hi-Country Property as it existed at the time of death of Homer Engle.

11. Kathy Engle is directed to file with the Court by April 26, 2016 a copy of the chain of title of the Hi-Country Property from the time of Home Engle's death to the present.

12. Kathy Engle is directed to provide a report on the assessments on the Hi-Country Property.

13. Kathy Engle shall provide to the Court (1) regarding the current litigation involving the Hi-Country Homeowner Association, including the case number, and the name of the current judge, (2) a status report regarding the claim by Hi-Country Homeowner Association against the Estate of Homer Engle which was reduced to judgment as a default judgment.

14. Judy Engle shall provide a key to unit 6 of the State Street Property to Wendé Throne within seven days to enable the Special Administrator to inspect unit 6 of the State Street Property.

15. Judy Engle and Wendé Throne are ordered to coordinate for reasonable inspection of unit 1 of the State Street Property by Wendé Throne. Within one week Judy Engle shall contact the tenant of unit 1 of the State Street Property to determine a convenient time for inspection of unit of the State Street Property 1 by the Special Administrator.

16. The Court orders for Judy Engle and Wendé Throne to coordinate the inspection by email and for there to be a clear email record documenting the efforts made by Judy Engle and Wendé Throne to coordinate the inspection of unit 1 of the State Street Property.

17. Judy Engle, upon coordination with the tenant of unit 1 shall provide Wendé Throne with three separate dates when Wendé Throne can inspect the premises of unit 1 of the State Street Property, and coordinate with Wendé Throne and the tenant of unit 1 of the State Street Property to set a date and time that is reasonable for Wendé Throne to inspect unit 1 of the State Street Property.

18. Judy Engle shall provide Wendé Throne with a key to unit 1 of the State Street

Property.

19. Judy Engle and Wende Throne shall provide an accounting respectively for the units of the State Street Property under their respective control and management, which accountings shall include proper disclosure of all items of expense, income, and supporting documentation to the same. The accountings shall be for the period of September, 2013 to the present.

20. All accountings shall be filed with the Court no later than April 26, 2016 at 5pm.

21. Kathy Engle shall provide a comprehensive status report regarding the tangible personal property placed in her charge applicable from September, 2013 to the present.

22. The sale of the Price Property previously transacted between the Estate of Homer Engle, as seller, and Judy Engle, Kathy Engle and Roy Engle, collectively as purchasers, resolved all prior issues of management related to the Price Property which occurred or remained outstanding between the parties prior to the date of sale of the Price Property.

23. This Order to be circulated among the parties by Monday, April 4, 2014. The parties shall have three days to respond to the proposed order.

This Order is signed when electronically stamped and dated by the Court at the top of page one.

CERTIFICATE OF SERVICE

I state that I caused the preceding document to be served to the following persons by the indicated method on April 11, 2016.

Eldean Roy Engle
royengle2@gmail.com
 E-Filing
 US Mail
 E-Mail

Kathy Engle
kat22eng@ymail.com
 E-Filing
 US Mail
 E-Mail

Judy Engle
wildfire99_2@msn.com
 E-Filing
 US Mail
 E-Mail

Isaac Paxman
ipaxman@paxmanattorney.com
 E-Filing
 US Mail
 E-Mail

John W. Anderson
john@andersonhinkins.com
 E-Filing
 US Mail
 E-Mail

/s/ DP

Dallin Perry, Paralegal
YORK HOWELL & GUYMON

ADDENDUM N

Accounting - Estate of Homer Engle

Balance Sheet

March 1, 2016 to March 31, 2016

Assets		Amount
Current Assets		
Checking/Savings		
Cypress CU - Savings		\$
Cypress CU - Checking		\$
Zions Bank - Checking		\$
		\$
Total Checking/Savings		\$
Total Current Assets		\$
Fixed Assets		
Payson Property		\$
State Street Property		\$
		\$
Total Fixed Assets		\$
		\$
Total Assets		\$
	Sub-Total	\$

Liabilities & Equity		Amount
Liabilities		
Long Term		
NP - Gary Beuhner Trust		\$
		\$
Total Liabilities		\$
Equity		
Opening Balance Equity		\$
Retained Earnings		\$
Net Income		\$
Total Equity		\$
		\$
Total Liabilities and Equity		\$

Profit & Loss

Ordinary Income/Expense		
Income		
Interest Income		\$
Receipts - All sources		\$
Total Income		\$

03347

Expense

Repairs and Maintenance

\$

Parking

\$

Jordan Valley Water CO

\$

Mortgage Payment - Payson

March

\$

Total Expense

\$

Net Income

\$

Updated April 26, 2016

Unit/Value

20.01
2,625.26
210.77

2,856.04
2,856.04

400,000
200,000

600,000

602,856.04

Unit/Value

172,000

172,000

432,451.10
0.00
-1,595.06

430,856.04

602,856.04

0.69
0

0.69

03349

128.45
4
36.30
1,427
1595.75
-1,595.06

Return of Electronic Notification

Recipients

SARAH E HALL - Notification received on 2016-04-26 15:27:38.513.

**ANDREW L
HOWELL** - Notification received on 2016-04-26 15:27:37.047.

DANIEL C DANSIE - Notification received on 2016-04-26 15:27:37.047.

**RICHARD D
BRADFORD** - Notification received on 2016-04-26 15:27:35.843.

ISAAC D PAXMAN - Notification received on 2016-04-26 15:27:36.64.

**STEPHEN J
MAYFIELD** - Notification received on 2016-04-26 15:27:36.593.

JOHN W ANDERSON - Notification received on 2016-04-26 15:27:36.047.

KURT W LAIRD - Notification received on 2016-04-26 15:27:35.657.

ADDENDUM O

The Order of the Court is stated below:

Dated: May 25, 2016
11:42:46 AM

/s/ KEITH KELLY
District Court Judge



Stephen J. Mayfield (10323)
YORK HOWELL & GUYMON
6405 South 300 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040
Facsimile: (801) 527-1000
steve@yorkhowell.com
Attorney for Special Administrator, Wende Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF
HOMER ENGLE,
Deceased.

**SCHEDULING ORDER AND
NOTICE OF HEARING**

Case No. 103901948
Judge Keith Kelly

On May 3, 2016, this matter came on regularly for hearing on Motion for Approval of Attorneys' Fees and for status of estate administration. Attorneys Stephen J. Mayfield and Brett W. Hastings appeared on behalf of the Special Administrator, Wende Throne, and for the law firm of York Howell & Guymon. Judy Engle, Kathy Engle, and Roy Engle all appeared *pro se*. Attorney Isaac Paxman appeared on behalf of Black Diamond, LLC (aka Black Diamond Properties, LLC); Crystal Star, LLC; Ellen Engle; Enco Sole Corporation; Eagle Landing Properties, LLC; Engle Insurance Agency, LLC; Mennco Corporation; and Paxman Law, LC (assignee of Stepan Lewis Paxman & Barnes, LC, formerly known as Stepan Lewis & Paxman, LC).

Judge Kelly heard statements and argument from the parties regarding various motions and concerns. Based upon the arguments of the parties, and for good cause arising therefrom,

THIS COURT ENTERS THE FOLLOWING ORDER:

1. Within twenty-four hours of the May 3, 2016, hearing the parties shall send to Attorney Mayfield by email all prior emails sent to Attorney Mayfield or the Special Administrator wherein questions or requests for substantiation were sent regarding the accounting for the estate.
2. No later than May 10, 2016, the parties shall each submit to Attorney Mayfield a list of any questions and requests for substantiation they may have regarding the accounting provided by Special Administrator Wende Throne on April 26, 2016 pursuant to prior Court Order. Questions not submitted by the deadline will not be considered during the June 27, 2016 hearing.
3. No later than May 24, 2016, any objections to the motion for payment of attorney's fees filed by Attorney Mayfield on behalf of the law firm of York Howell & Guymon shall be filed with the Court, supported by affidavit or declaration as instructed by Judge Kelly.
4. No later than May 17, 2016, Special Administrator Wende Throne shall deliver to Judy Engle relevant information regarding the Hi-Country II real property.
5. No later than May 24, 2016, Attorney Mayfield shall respond to any questions and requests for substantiation from the parties regarding the accounting provided by Special Administrator Wende Throne and shall provide a copy of said responses and responsive documents to the parties.
6. No later than May 24, 2016 Judy Engle shall file with this Court, and serve upon the other parties, an accounting summary of the income and expenses related to

the real property assets over which she has been given fiduciary responsibility.

7. No later than May 31, 2016, Attorney Mayfield shall file a response to any objections filed with the court on or before May 24, 2016 regarding his motion for payment of attorney's fees, as contemplated in paragraph 3 above. Attorney Mayfield shall file the response with the court and shall serve a copy of the response on the parties.
8. No later than June 21, 2016, Attorney Paxman may file a brief regarding the court's authority to consider motions that have been filed regarding the trust-deed agreement and the order on the Crystal Avenue property.
9. A hearing in this matter is scheduled for June 27, 2016, commencing at 2:00 p.m. at the Matheson Courthouse located at 450 S. State Street, Salt Lake City, Utah 84114, before Judge Kelly.

This Order is signed when electronically stamped and dated by the Court at the top of page one.

CERTIFICATE OF SERVICE

I state that I caused the preceding document to be served to the following persons by the indicated method on May 13, 2016.

Eldean Roy Engle
royengle2@gmail.com

E-Filing
 US Mail
 E-Mail

Kathy Engle
kat22eng@ymail.com

E-Filing
 US Mail
 E-Mail

Judy Engle
wildfire99_2@msn.com

E-Filing
 US Mail
 E-Mail

Isaac Paxman
ipaxman@paxmanattorney.com

E-Filing
 US Mail
 E-Mail

John W. Anderson
john@andersonhinkins.com

E-Filing
 US Mail
 E-Mail

/s/ DP

Dallin Perry, Paralegal
YORK HOWELL & GUYMON

ADDENDUM P

Stephen J. Mayfield (10323)
YORK HOWELL & GUYMON
6405 South 300 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040
Facsimile: (801) 527-1000
steve@yorkhowell.com
Attorney for Special Administrator, Wendie Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF
HOMER ENGLE,
Deceased.

**RESPONSE TO QUESTIONS AND
REQUESTS REGARDING ESTATE
ACCOUNTING**

Case No. 103901948
Judge Keith Kelly

Pursuant to the Scheduling Order and Notice of Hearing issued by this court on or about May 17, 2016, Special Administrator Wendie Throne, through her legal counsel, provides the following responses to questions and requests of Judy Engle and Kathy Engle regarding the estate accounting:

Responses to Questions and Requests from Judy Engle

Request No. 1: It is requested by Judy Engle that the Court Order be modified to include the time period that is missing and fill in the gap from 10/3/12 to 9/3/13 in this Order before the court.

Response: Request No. 1 is a request for action by the court. Therefore, no response is provided.

Request No. 2: It is requested by Judy Engle that Wendie Throne complies with previous

Orders and supply the accurate and fully supported, accounting from the time period of Dec 7, 2010- October 3, 2012.

Response: An accounting for the time period requested is irrelevant as it predates the Settlement Agreement. The accounting provided covers the dates of January 1, 2013 through May 19 2016 (the “**Accounting Period**”).

Request No. 3: Judy Engle further requests; all accounting on John Limb’s labor supported by receipts of payment in cash, check and/or free rent. But not limited to. To include a detailed description of what property and description of work was performed to accompany expense receipts that match with his labor.

Response: During the Accounting Period, the financial records of the estate reflect no payments of estate funds to John Limb for labor. A search of the records will be conducted and responsive information provided prior to the hearing on June 27, 2016.

Request No. 4: Breakdown on all other people paid from the funds of the estate or Trust including any money taken by the Special Administrator. To include the same requests as the above requests as John Limb.

Response: For the Accounting Period, all payees, amounts, and purposes of all expenditures of estate funds are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 5: All accounting of the money withdrawn from the Trust Account re: case #090921857 to include the individual breakdown on what property or person the money was allocated to for each one and for how much.

Response: The accounting in question is limited to the estate of Homer Engle and does

not include transactions in the Trust Account related to case # 090921857.

Request No. 6: An individual breakdown on each rental property. How much was collected, where the money was deposited. Supporting leases to show actual amounts received, vacancy loss, repairs, supporting pictures.

Response: Request No. 6 seeks information that is beyond the scope available by reference to the bank statements, check carbons, and other available financial information. Upon information and belief all income recorded on the Income Statement is comprised of rents from various properties owned by the estate.

Request No. 7: ATM withdrawals. Supporting documents where the cash was spent, distributed to, and why. With supporting documents on all cash disbursements.

Response: For the Accounting Period, all disbursements of estate funds, including ATM withdrawals, are included in the attached Income Statement. For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 8: Debit card account number to correlate with purchases and include receipts of purchase to correlate with debit card purchases etc.

Response: The number of the debit card associated with the Cypress Credit Union bank account is the same as the Cypress Credit Union bank account. All debit card transactions appear on the bank statement and have been accounted for.

Request No. 9: Checking account canceled checks to match with receipts or supporting contracts, bills, or expenses etc.

Response: Available check carbons for checks issued from estate bank accounts are

attached. The accounting provided is a summary of financial transactions in the estate bank accounts during the Accounting Period as reflected in the bank statements and does not include an audit or other examination of receipts, contracts, bills or other supporting documents.

Request No. 10: Full disclosure of any other checking, savings, or personal checking accounts Special Administrator has used to transfer money, deposit, save, or withdraw funds from.

Response: During the Accounting Period, no estate funds have been deposited or expended from any bank account other than those reflected on the attached Balance Sheet.

Request No. 11: Clean legible copies of checks, deposits and bank statements for "every" month.

Response: Bank statements and available check carbons are attached.

Request No. 12: Account for each deposit and where funds originated from.

Response: For the Accounting Period, each deposit into estate bank accounts is separately accounted for. All income recorded on the Income Statement is believed to be rental income from various properties owned by the Estate.

Request No. 13: Identify any loan commissions, referral commissions or extra money Wende Throne received personally from any resources from the probate of Homer Engle, while administrating the estate and/or it's associated properties and encumbrances to include anything transferred into the trust of Homer Engle etc.

Response: The sole payment of money from estate bank accounts directly to Wende Throne was check #130, issued February 27, 2014 in the amount of \$2,795.16 for reimbursement of various estate related expenses paid by Wende Throne.

Request No. 14: Account for any cash, tangible property, building materials, labor, assets Wende Throne received individually from the estate or its assets, the trust assets, or any other person or property relating to this probate directly or indirectly.

Response: Other than issuance of check # 130 to Wende Throne, as detailed above, the bank records reflect no distributions of estate money to Wende Throne.

Request No. 15: Account for any cash, tangible property, labor, gifts, or any other that Wende Throne Special Administrator, distributed to the beneficiaries, or third parties.

Response: For the Accounting Period, the bank records reflect no distribution of estate money to beneficiaries. For the Accounting Period, all third party payees, amounts, and purposes of expenditures of estate funds are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 16: Account for all items recovered from all safe deposit boxes. itemize each box.

Response: The accounting provided is limited to cash and real property of the estate under the direction of Special Administrator Wende Throne and does not account for other personal property. The items contained in any safety deposit box are subject to the terms of the Settlement Agreement. Responsive information will be provided prior to the June 27, 2016 hearing.

Request No. 17: Account for all tangibles still in the possession of Wende Throne or disposed of to include the location thereof. Include a value for each item with supporting documentation.

Response: The accounting provided is limited to cash and real property of the estate

under the direction of Special Administrator Wende Throne and does not account for other personal property.

Request No. 18: Produce any Homer Engle trust documentation such as banking, cash, property or tangibles that have been taken or used from the probate of Homer Engle or its properties or any other third party or derivative of the estate of Homer Engle and produce a paper trail to these items.

Response: The accounting provided details all cash receipts and disbursements recorded in the estate banks statements listed on the Balance Sheet. To the extent Request No. 18 seeks information outside the accounting, no response is provided.

Request No. 19: Accounting of any improvements made to the properties with supporting documents.

Response: For the Accounting Period, the financial records of the estate reflect no capital improvements to estate owned properties.

Request No. 20: Account for any other discrepancy not mentioned but are the duty of the fiduciary Wende Throne Special Administrator.

Response: None.

Responses to Questions and Requests from Kathy Engle

Request No. 21: Clear Copies of Bank Statements, (which were not received April 26, 2016 or as of to date).

Response: All bank statements for the Cypress Credit Union bank account during the Accounting Period are attached.

Request No. 22: Source Documents (receipts with names/vendors, dates, amounts and purpose) for all expenses from January 2013 to February 2016.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 23: Provide all source documents for all Insurance Payments, identifying who was paid, the purpose of the insurance, with the date and amount paid for each payment (i.e. Auto insurance, liability insurance, health insurance etc). Provide copies of all insurance policies.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for insurance are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 24: Provide dates, amounts and identify the source of all legal services paid or incurred with substantiated bills, including Van Cott Bagley, Charles Bennet and York Howell Law Firm.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for legal fees are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements. York Howell and Guymon has previously submitted to the court for approval detailed invoices for legal services rendered. Neither Van Cott Bagley, Charles Bennet, nor Karen Kreeck have submitted to the court formal request for payment of legal fees.

Request No. 25: Provide names of individuals where meals were provided, with dates and amounts of all transactions.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for meals are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 26: Substantiate all amounts in the Miscellaneous account, with name, dates, purpose.

Response: The single transaction in the Miscellaneous account was check #130, issued to Wende Throne on February 27, 2014 in the amount of \$2,795.16 for reimbursement of various estate related expenses paid by Wende Throne.

Request No. 27: Provide copies of checks, debts or other source documents to substantiate the amount paid for all mortgage payments on the Cherokee property.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for mortgage payments are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 27: Provide name of individual or suppliers paid, date of receipt, amount paid and description of repairs and identify the rental unit number where repairs were performed.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for repairs are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 28: Identify all telephone expense, receipts, dates, logs, purpose, and how it was paid or incurred.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for telephone expenses are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 29: Describe all Source Documents (receipts) from January 1, 2013 to April 2016.

Response: Source documents used to produce the accounting include bank statements, check carbons, loan documents, and the recollections and representations of Wende Throne. All source documents are attached.

Request No. 30: Schedule of monthly rents for all rental units including other income from January 1, 2013 to April 30, 2016.

Response: A schedule of all cash deposits during the Accounting Period is attached. Upon information and belief, all cash deposits are constituted of rent paid to the estate.

Request No. 31: Schedule of monthly payments, date received from all units from January 1, 2013 to April 30, 2016.

Response: Request No. 31 seeks information that is beyond the scope available by reference to the bank statements, check carbons, and other available financial information. All cash deposits during the Accounting Period have been accounted for and are believed to be rental income from various properties owned by the Estate.

Request No. 32: Provide copies of all lease agreements for monthly rental amounts per lease, per each rental unit.

Response: Request No. 32 seeks information beyond the scope of the accounting. A search of the records will be conducted and responsive leases will be provided prior to the

hearing on June 27, 2016.

Request No. 33: List and identify by date, amount and source of all deposits to include the source of monies received, dates, amounts, unit number, which include the amount listed on the transaction Detail (identified as "bank Deposit"). These bank deposits total \$71,983.28 for the period January 1, 2013 February 2016.

Response: All cash deposits during the Accounting Period have been accounted for and are believed to be rental income from various properties owned by the Estate. To the extent Request No. 33 seeks additional information related to deposits, such requests are beyond the scope of the accounting.

Request No. 34: List and identify by date, amount and source of all deposits, not included on the \$71,983.28 list of deposit, from January 1, 2013 to April 30, 2016.

Response: None.

Request No. 35: Explain why there were several one sided entries for an accrual basis accounting. For Example, (a) Rental Income was not identified. There were unidentified deposits for large amounts at a time for one month and no amount in other months (i.e.: April 2016 for \$7,719.86 deposit (eligible) which is at least 5 times the scheduled monthly rents).

Response: There are no one sided entries. The accounting is a summary accounting supported by bank records. All monthly transactions during the Accounting Period are entered as a single balanced General Journal entry for each month. Each General Journal Entry balances and all bank accounts have been reconciled for each month during the Accounting Period.

Request No. 36: Explain why there was several one sided entries for an accrual basis accounting For Example, legal fees totaled \$63,296.78 and was expensed as an unsubstantiated

cash expense to the Profit and Loss Statement. The legal fees included approximately \$56,828 for the York Howell Law Firm, which at least \$17,178.50 was not paid and a request for court approval for payment was pending.

Response: There are no one sided entries. The accounting is a summary accounting supported by bank records. All monthly transactions during the Accounting Period are entered as a single balanced General Journal entry for each month. Each General Journal Entry balances and all bank accounts have been reconciled for each month during the Accounting Period.

Request No. 37: Explain why the Court ordered \$17,211 of legal fees regarding the objection to Settlement was included in the \$56,828 legal fees from York Howell Law Firm.

Response: Request No. 37 is not a question related to the accounting and seeks a conclusion of law. Therefore, no response is provided.

Request No. 38: Provide an Appraisal of the Payson and the State Street Property at the date of Decedent's time of death: November 21, 2010. This is required by law and as of to date, there has not been a proper certified appraisal of the properties. The balance sheet does not accurately state the Value of the Assets as of the date of Decedent's death.

Response: The asset value reflected on the Balance Sheet is an estimate of current value only. The remainder of information requested through Request No. 38 is not a question related to the accounting.

Request No. 39: Provide annual Schedules of Accounts Payable listed by Name, date and amount owed for the time period of January 1, 2013 to April 30, 2016. Explain why the Accounts Payable was not included with the documents submitted to Court on or about April 26, 2016.

Response: The only significant accounts payable are for legal fees, which have been included on the balance sheet.

Request No. 40: Provide annual Schedules of Accounts Receivable (i.e.: rental income) listed by Name including the date and amount of the receivable for the time period of January 1, 2013 to April 30, 2016.

Response: Because no significant accounts receivable exist, the summary accounting provided accounts for income on a cash basis.

Request No. 41: Explain why the Accounts Receivable was not included with the documents submitted to Court on or about April 26, 2016.

Response: There are no accounts receivable because the summary accounting provided accounts for income on a cash basis.

Request No. 42: Provide all receipts, dates, rental unit numbers, for all amounts listed on the Transaction Detail for all utility companies including Jordan Valley Utilities total of \$5,526.40.

Response: For the Accounting Period, all payees, amounts, and purposes of expenditures of estate funds for utility expenses are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 43: Provide all receipts, with complete substantiation (purpose) for check copies, submitted with the financial accounting and included on the Profit and Loss statement submitted on or about April 26, 2016.

Response: For the Accounting Period, all payees, amounts, and purposes of all expenditures of estate funds are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements.

Request No. 44: Provide all debit or credit card receipts and statements from January 1, 2013 to April 30, 2016.

Response: All debit card transactions are detailed on the attached bank statements.

Request No. 45: Provide an accounting of the \$100,000 proceeds received from the Capital Assets loan – listing all transactions, listing dates, amount and name of individual(s) who received the funds.

Response: The Capital Assets loan was acquired prior to the commencement of the Accounting Period and, therefore, Request No. 45 seeks information beyond the scope of the accounting provided.

Request No. 46: Provide an accounting of the Capital Assets Interest amount of \$8,149.64 and explain how it was calculated listing all penalties and interest regarding the default on the loan resulting in \$8,149.64 or there about.

Response: The Capital Assets loan was paid off on May 22, 2015. For the Accounting Period, all payees and amounts of expenditures of estate funds for interest expense are detailed by reference in the attached Transaction Detail by Account reports and/or the attached bank statements. Interest calculations are pursuant to the related loan agreements.

Request No. 47: Provide separate annual Balance Sheet, Profit and Loss statement for each of the years 2013, 2014, 2015 and for 2016 (January 1, 2016 to April 30, 2016) with

substantiated amounts for income and expenditures, matching revenue and expenses to the period. This is a timing issue, especially for filing annual tax returns for years 2013 to 2016.

Response: Yearly balance sheets and income statements are attached.

Request No. 48: Provide all Travel logs with dates, purpose of trip for travel expenses for the period of January 1, 2013 to April 30, 2016.

Response: Request No. 48 seeks information outside of the accounting. Therefore, no response is provided.

Request No. 49: Provide all Time Records for services performed, 1099's, W-2, payroll reports, work exchanged for rent, including John Limb's rental arrangements and rental agreement for the period of January 1, 2013 to April 30, 2016.

Response: Request No. 49 seeks information outside of the accounting. Therefore, no response is provided.

Request No. 50: Explain why John Limb's rental unit was not included in the Rental income and explain why Mr. Limb's has not or the rent is not included for the period January 1, 2013 to April 30, 2016. Provide documents which can substantiate any rental payments received from John Limb.

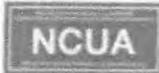
Response: Request No. 50 seeks information outside of the accounting. Therefore, no response is provided.

Respectfully submitted this 24th day of May, 2016.

/s/ Stephen J. Mayfield
Stephen J. Mayfield (10323)
YORK HOWELL & GUYMON
Attorney for Special Administrator, Wende Throne

ATTACHMENTS

Supporting Documents



PO BOX 9002 West Jordan, UT 84084
 (801) 260-7600 (800) 929-7787
 www.cypruscu.com

Member Account Statement

Statement Date:
 From 11/01/2014 to 11/30/2014
 Page 1 of 2
 Member Number: XXXXX071



10 1 3194 1 AV 0.375 09798011 p01 798819 1.1

HOMER ENGLE TRUST
 ESTATE OF HOMER ENGLE
 14014 S 2200 W
 BLUFFDALE UT 84065-5325

Cyprus Credit Union is proud to sponsor the Angel Tree. Starting November 24th adopt an Angel at any Cyprus branch, or make a cash donation by calling 801-260-7600 opt 0.

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 November 15 ~ December 15 | in November and December

ACCOUNT SUMMARY

S1 REGULAR SHARES \$ 20.01 S5 SHAREDRAFT CHECKING \$ 4,524.58

Post Date	Eff Date	Transaction Description	Withdrawal	Deposit	Balance
11/01		Previous Balance			\$25.01
11/28		STATEMENT COPY	5.00		20.01
11/30		Ending Balance			\$20.01
S5 SHAREDRAFT CHECKING					
11/01		Previous Balance			\$1,806.64
11/07		SHARE DRAFT 137			1,767.75
11/12		DEPOSIT TR#2386	38.89		11,931.24
11/17		DEBIT PURCHASE SQ *YORK HOWELL LLC Holladay	5,000.00	10,163.49	6,931.24
11/18		DEBIT PURCHASE SQ *YORK HOWELL LLC Cottonwood He	5,000.00		1,931.24
11/25		DEPOSIT TR#1456		2,747.00	4,678.24
11/28		RET DEPOSIT CHECK			4,534.24
11/28		CHARGE FEE	144.00		4,524.24
11/30		DIVIDEND CREDIT APYE: 0.10% For the 30 day period.	10.00		4,524.24
11/30		Ending Balance		0.34	\$4,524.58
		Number of Share Draft(s): 1 for the amount of	\$38.89		
		Number of Withdrawal(s): 4 for the amount of	\$10,154.00		
		Number of Credit(s): 3 for the amount of	\$12,910.83		

ACCTG042017
 4217

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX. 130

Track your expenses... TAX DEDUCTIBLE ITEM

Clothing Food Transportation
 Credit Card Utilities Mortgage
 Entertainment Insurance Other

2-27-14

Wende Shione
Two Thousand four hundred Ninety Five

BALANCE FORWARD	
THIS ITEM	2,795 ⁷⁶
BALANCE	
DEPOSIT	2,795 ⁷⁶
OTHER	
BALANCE FORWARD	

Estate Exp Reimbursement

For added security, your name and account number do not appear on this copy. NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX. 131

Track your expenses... TAX DEDUCTIBLE ITEM

Clothing Food Transportation
 Credit Card Utilities Mortgage
 Entertainment Insurance Other

3-10-14

VACOTT
five hundred \$ 00/100

BALANCE FORWARD	
THIS ITEM	500 ⁰⁰
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

Griff

For added security, your name and account number do not appear on this copy. NOT NEGOTIABLE

STORE YOUR DUPLICATE CHECKS IN YOUR CHECK BOX. 132

Track your expenses... TAX DEDUCTIBLE ITEM

Clothing Food Transportation
 Credit Card Utilities Mortgage
 Entertainment Insurance Other

4-29-14

John Limb
Thirty two \$ 90/100

BALANCE FORWARD	
THIS ITEM	32 90
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	

State...

For added security, your name and account number do not appear on this copy. NOT NEGOTIABLE

ADDENDUM Q

Name: Kathy Engle, Pro Se
Petitioner
Address: P.O. Box 2225
Arvada, CO 80001
Telephone No: 801 898-2444

FILED DISTRICT COURT
Third Judicial District

JUN 07 2016

By: _____
Salt Lake County
Deputy Clerk

Pro Se

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH, PROBATE DIVISION

In the matter of the Estate of

HOMER ENGLE,

Deceased

**OPPOSITION AND MEMORANDUM AND
AFFIDAVIT IN SUPPORT OF THEREOF**

**TO SPECIAL ADMINISTRATOR'S
ACCOUNTING**

RE: STATE STREET PROPERTY

Probate No. 103901948

Judge Keith Kelly

Petitioner, Kathy Engle, a party to the September 3, 2013 "Settlement" Agreement, HEREBY SUBMITS her Opposition and Memorandum and Affidavit in Support Thereof, To the Special Administrator's Accounting, RE: State Street Property. Kathy Engle moves the Court to Order the Special Administrator, Wende Throne to comply with the Court's March 31, 2016 Order to Produce Accounting Records and Documents for the State Street Property including rental income and expenses, loan proceeds and disbursement from September 3, 2013 to the current date and / or to sanction the Special Administrator for noncompliance of a Court Order: including \$49,457.89 of Ms. Throne's improper accounting transactions for the financial accounting for the Estate of Homer Engle with at least \$19,252.33 of Capital Asset funds and unreported Estate rental income; \$9,186.56 of personal use of Estate funds and \$21,019.00 of improper legal fees.

1. The estimated amount of \$49,457.89 of Estate funds, Ms. Throne may have used

for her personal benefit included at least \$9,252.33 of unreported rental income; \$10,000.00 of Loan proceeds not deposited into the Estate checking account; approximately \$21,019.00¹ of legal fees regarding the disallowed objection to settlement legal fees and at least \$9186.56 of improper expenses, which were not substantiation with source documents, with many expenses paid by Estate funds which were not Estate expenses.

Ms. Throne has not used proper accounting methods to report the income or expenses.

2. This affidavit is made in support of Kathy Engle's Opposition to the Special Administrator's accounting RE: the State Street Property.

3. I, Kathy Engle take exception the financial accounting, for the Estate of Homer Engle, submitted to the Court on April 26, 2016 and again on May 24, 2016 filed by Counsel Steve Mayfield on behalf of the Wendie Throne, Special Administrator, for the Estate of Homer Engle, for the period of January 1, 2013 to May 19, 2016.

4. I hereby render my personal opinion based on the documents filed with the court and my personal knowledge of the facts and my beliefs. I am over the age of eighteen. I have two degrees, one in accounting and one in finance. I was employed with the Federal Government, as an auditor, for the Office of the Inspector General's Office and believe I am qualified to testify in regards to the following.

5. March 31, 2016, the Court Ordered Wendie Throne to provide an accounting for the State Street Property, (rental units - numbers 2, 3, 4, and 5) under her management. The accounting shall include proper disclosure of all items of expense, income and supporting documentation to the same. See Exhibit T²

¹ Exhibit K (page 6), legal fees - York Howell Law Firm charged \$51,178.50 in legal fees to the Estate of Homer Engle - Objection to Settlement Fees disallowed have been charged to the Estate. The disallowed objection to Settlement included \$21,019.00 (\$17,211.00 and \$3,808.00).

There are at least \$27,818.50 improper legal fees charged to the Estate, which are identified on the Objection to Legal fees filed by Kathy Engle 5/24/16.

The balance sheet as of May 19, 2016 included \$17,178.50 in accounts payable owed to the York Howell Law Firm. The accounts payable amount of \$17,178.50 is incorrect - Mayfield has been over paid at least \$10,640.00 and continues to request payment for the disallow objection to settlement legal fees (included in his legal fees of \$51,178.50 charged to the Estate with the financial reporting as of May 19, 2016).

² Exhibit T - Court Order 3/31/16 - Wendie Throne to Provide substantiated financial accounting

6. Wende Throne did not fully comply with the Court Order and did not provide an accounting to include proper disclosure of all items of expense, income and supporting documentation.

7. The financial accounting is unreliable and was not fully disclosed with all expenses, income, source documents, or properly substantiated. The Balance Sheet and Profit and Loss Statements included, legal expenses previously disallowed by Court order. The legal fees regarding the "Objection to Settlement" legal fees are included in the \$51,178.50 charged to the Estate by the York Howell Law firm. See **Exhibit K (page 6)**³

There are improper legal fee over \$17,178.50 included in the accounts payable to the York Howell Law Firm. See **Exhibit C**⁴ and **Exhibit D**

8. The objection to settlement legal fees separated out on Mr. Mayfield's March 9, 2014 affidavit was \$17,211.00. Mr. Mayfield was Court order to remove any legal fees regarding the Objection to Settlement charges February 24, 2016. He did not include at least \$3,808.00 additional legal fees regarding the Objection to Settlement. The Objection to Settlement legal fees charged to the Estate is \$21,019.00.

9. The estimated remaining balance of legal fees expensed to the Estate is \$33,967.50 (\$51,178.50 less \$17,211.00). The Estate paid the York Howell Law Firm \$34,000.00. This leaves a negative balance of (\$32.50). The Balance Sheet is in correctly stated. The accounts payable of \$17,178.50 as stated on the Balance Sheet as of May 19, 2016 should be redacted and corrected. See **Exhibit D**⁵

10. Additionally, there are at least \$10,600.00 of improper legal fees stated on Mr. Mayfield's March 9, 2016 affidavit, regarding the incorrect billing rate he charged; the \$3,808.00 additional legal fees relating to the Objection to Settlement charges and other disputed charges.

11. The balance sheet did not have a detailed General Ledger (GL) Detail Account of the transactions. The expenses or income amount could not be verified with the individual transaction or the source of the transaction. The Balance Sheet did not have any GL Detail of Transactions. Many of the

³ Exhibit K (page 6) – Legal fee Expenses

⁴ Exhibit C – Spread Sheet of Profit & Loss Statement documenting legal fees, \$80,014.33 rental income

⁵ Exhibit D – Balance Sheet as of May 19, 2016 (including years 2013, 2014, 2015 and 2016) – Accounts Payable \$17,178.50 owed to York Howell is incorrectly stated. The Estate does not owe legal fees to York Howell.

amounts on the Balance Sheet could not be verified and are unreliable (i.e. Detail of Transactions regarding the Cyprus Checking Account, Fixed Asset Values and Equity accounts, retained earnings, net income).

12. The accounting was incomplete, inconsistent, it lacked materiality, not recording transactions from source documents into the general ledgers, there were no supplier invoices, utility invoices, no receipts from Home Depot, Lowes and for other purchasers or suppliers.

13. The profit and loss reporting included transactions unrelated to the account specified; the expenses and liabilities were not recognized as soon as possible (not conservative), the income was not reported when collected and was not properly accounted for the 41 month period stated on the Balance Sheet and Profit and Loss statements. The reporting dates on the Balance Sheet, the Profit and Loss Statement, Details of Transactions were not consistent and were all stated with different ending dates.

14. The reported income included "only deposits" for the period of January 1, 2013 to January 31, 2016, which the reporting period ended on May 24, 2016 on the Profit and Loss statement. The Balance Sheet was not consistent with the Profit and Loss statement, which reflected a different date. The Balance Sheet had an ending balance of May 19, 2016. Although, the accounting period included May 2016, there was no bank statement or documents submitted for the May 2016 period stated on the financial accounting.

15. There is a serious inconsistency with the reporting dates, which supports the fact source documents were not used to substantiate the accounting. Especially, when \$8,319.00 of income for April 2016 was not included as rental income, whereas, \$1,427.00 of interest expense was included on the Profit and Loss statement for the same month, April 2016. See Exhibit ⁶C⁷, Exhibit K (page 4) and Exhibit P⁸

16. Although, it was stated on the documents, an accrual basis of accounting was used. The transactions did not support an accrual basis of accounting. Further, Counsel, Mayfield stated the income was "all receipts" from the bank statement: a cash basis for income.

⁶ Exhibit K (page 4) – Interest Expense

⁷ Exhibit C – Spread Sheet – to document the changes between the two inconsistent reporting periods ending on February 28, 2016 (filed 4/26/16) and May 19, 2016 (filed 5/2/16) and to identify the incorrect rental income (which should be \$80,014.28); the incorrect \$17,178.50 accounts payable to York Howell Law Firm and to summarize and correct the incorrect York Howell legal fee expense of \$51,1785.0

⁸ Exhibit P – Summary of Bank Transactions from April 1, 2016 to April 27, 2016

17. This unorthodox, unacceptable accounting practices did not included "all receipts" nor was all receipts relevant to rental income, nor was Mr. Mayfield's accounting methods accepted as generally accepted accounting practices (GAAP). Mr. Mayfield's accounting is not in compliance with GAAP.

18. As a result, the Rental income was grossly understated. Expenses were not properly substantiated, expenses were not matched with related income and was not reported with full disclosure, whereas, the financial accounting is unreliable.

19. The bank statements for years 2013, 2014, 2015 and 2016 included deposits of \$80,014.29 which may not have been rental income. The financial accounting listed \$70,761.95 for rental income as of January 24, 2016, which is a difference of \$9,252.33 of unreported income. Also, the financial accounting did not include a deposit for \$10,000.00 proceeds from the Capital Asset Loan. Therefore, there is at least \$19,252.33 of money received by the Special Administrator which was not reported on the financial Statements. See **Exhibit A**⁹

20. The supporting bank summary¹⁰ ending April 27, 2016 listed a deposit on April 14, 2016 in the amount of \$7,719.00 and a deposit on April 27, 2016 in the amount of \$600.00. Both deposits totaled \$8,319.00 and were not reported as income on the 2016 profit and loss statement. See **Exhibit P**

21. The April 2016 bank summary of transaction also listed a check, in the amount of \$1,427.00 for interest expense, which was expensed on the May 24, 2016 Profit and Loss Statement.

22. The May 19, 2016 *Balance Sheet* has an incorrect balance stated on the *Cyprus Checking Account* of \$1,198.26. The March 31, 2016 bank statement is \$2,625.26 not \$1,198.26. See **Exhibit D** and **Exhibit O**¹¹

23. The April 2016 bank summary of transaction reflected a balance of \$9,486.86 and was not stated on the Balance Sheet nor was the income stated on the Profit and Loss Statements for 2016. See **Exhibit P**¹² and **Exhibit D**

⁹ Exhibit A – Spread Sheet – to document unreported income to identify the \$875.00 rent deposit refund and nonrelated expenses.

¹⁰ There was no April 2016 or May 2016 bank statements, only a summary of transactions for April 2016.

¹¹ Exhibit O – Bank Statement ending March 31, 2016 balance \$2,625.26 was incorrectly stated on the Balance Sheet as \$1,198.26

¹² Exhibit P – Bank summary of Transactions listed the ending bank balance was \$9,486.86, which was not reported on the Balance Sheet as of May 19, 2016.

24. The 2016 April bank summary information was sent to Kathy Engle. However, the cutoff date for financial reporting was May 24, 2016. The financial accounting did not include the April 2016 bank statement or the May 2016 bank summary information. There was no documentation regarding the May 2016 bank information to support the cutoff period on May 24, 2016.

16. A spread sheet was prepared by Kathy Engle to document the unrecorded rental income and the improper accounting for the rental income and deposits made for returned purchases. See **Exhibit A**

17. Mr. Mayfield claimed the income was a cash basis and is evidenced by the deposits in the Estate's checking account. The deposits were summarized on the Transaction Detail By Account (January 1, 2013 through January 31, 2016). The list of Deposit total was \$71,983.28. See **Exhibit J**¹³

18. *The Profit and Loss Statement from January 1, 2013 through May 24, 2016 included \$70,761.95 of Income and listed the income as "Receipts – All Sources".* See **Exhibit D**¹⁴

19. It is clear, the deposits are not "all receipts" as stated on the Profit and Loss Statements whereas, "all receipts" could not be used for all deposits as stated on the bank statements. See **Exhibit A**

25. It is estimated Ms. Throne has collected at least \$80,014.33 from the State Street Property for three rental units (numbers 2, 3, and 5) from January 1, 2013 to May 24, 2016 including \$3,600.00 2013 rental income from the Cherokee Property. See **Exhibit A** and **Exhibit C**

26. It is estimated at least \$9,252.33 was not reported as income (\$80,014.33 less \$70,761.95) See **Exhibit A**

27. The May 24, 2016 profit and loss statement did not include \$8,319.00 (\$7,719.00 plus \$600.00) of rental income or deposits on the April 2016 bank summary of transactions. See **Exhibit A** and **Exhibit P**¹⁵

28. The Transaction Detail for Bank Deposits did not agree with the income stated on the Profit and Loss Statements. There was a \$1,221.33 difference (\$71,983.28 less \$70,761.95). The \$1,221.33 was not

¹³ Exhibit J – Transaction Detail by Account – Bank Deposits January 1, 2013 to January 31, 2016, \$71,983.28

¹⁴ Exhibit D – Income reported as "all receipts", bank deposits \$70,761.95

¹⁵ Exhibit P – April Bank Summary of Transactions – listed \$8,319.00 in deposits not reported as income – "all receipts" were not reported.

disclosed, rather hidden within the rental income for years 2013, 2014 and 2015 without any supporting documentation for these transactions. See **Exhibit A** and **Exhibit C**

29. Although a revised accounting had been resubmitted to the Court, the accounting did not include a new schedule for bank deposits, whereas the income remained the same as stated on the Profit and Loss Statements ending May 24, 2016. The only income for 2016 was one deposit on January 11, 2016 for \$1,792.00 for one month's rental income for the entire five months of account to May 24, 2016. See **Exhibit O**¹⁶

30. Despite repeated requests for a schedule of monthly rental income, the requests were ignored and not made available. See **Exhibit U**

31. A schedule for rental income was not provided to substantiate the change or to update the time period from January 31, 2016 to May 24, 2016 to match the reporting period and to match the income with the expenses. Cash basis is not the proper accounting method, especially when there are accrual basis accounting transactions comingled with cash basis accounting, for income only recognition.

32. Mr. Mayfield stated the rental income is the deposits from the bank statement listed as "*all receipts*".

33. This method of accounting was not full disclosure and was confusing. The change in rental income could be sought through adding up the stated income amounts, per each year, on the four individual profit and loss statement statements for 2013, 2014, 2015 and 2016 (to May 24, 2016). See **Exhibit A, Exhibits C, D, E, F (profit & loss statements)**

34. It was determined there was \$1,221.33 in undisclosed reduction of rental income related in part to a refund for the \$875.00 rental deposit issued on Check No. 121, February 28, 2013. See **Exhibit A** and **Exhibit Q**¹⁷

35. Rental deposits were not identified on the balance sheet. The rental deposit is a contract and cannot be used for rental income unless the deposit is not refunded for various legitimate reasons as stated in

¹⁶ Exhibit O – Bank Statement ending January 31, 2016 – one deposit \$1,792.00 reported as income for the entire five months of income.

¹⁷ Exhibit Q – Check Copies No. 121 to 148

the rental contract. The \$875.00 refund for the rent deposit did not include proper accounting. The refund was expensed out on the 2013 income statement as a reduction in rental income.

36. The \$875.00, included in the 2013 rental income, is an improper accounting method whereas, the rental deposit refund should not be reported as an expense to reduce the rental income. The transaction has hidden deep within the rental income "all receipts" without full disclosure. There is not one accounting transaction relating to the \$875.00 refund, except for the check it was written on and, the fact, the check cleared the bank on February 28, 2013.

37. The reduction in income was not disclosed.

38. It appears, Ms. Throne has comingled the rental deposits with Estate funds to pay for obligations or expenses of the Estate. The Balance Sheet does not disclose any rental deposits. There are three rent units with an estimated rental deposits of \$1,500.00 not stated on the Balance Sheet.

39. There is another improper accounting issue which relates to a trade for rent.

40. The transaction has not been disclosed. Request for documentation has been denied.

41. The estimated value is \$500.00/month or \$6,000.00/year to manage three rental units which show no vacancies. The estimated annual rental income (\$1,792/month) received from the three units is \$21,504.00. John Limb's rental value of \$6,000.00 is 28% of the annual rental income from all three units. Twenty-Eight percent of rental income is excessive management costs with zero vacancy reported.

42. There was no supporting documentation (lease agreements or stated monthly rental amount per each unit) for the monthly rental income to verify the amount deposited into the checking account. There was no statement of vacancies. The only vacancy may have been for unit #3 on State Street. The other two units have been rented during the reporting period from years 2013 to 2016.

43. The Cherokee property rental income was combined with the State Street rental income without a footnote to disclose the income included the Cherokee Property rental income of \$3,600.00 and related utility expenses.

44. This type of accounting does not comply with the internal revenue rules and regulations,

especially required on Schedule E, supplemental income and especially for two separate rental properties with different addresses. The IRS requires a break down per rental property and substantiated with "source documents" not just the bank statements with deposits stated as "all receipts" for rental income.

45. Rent for trade must be disclosed and reported to the IRS on a 1099 or W-2.

46. Wende Throne claimed an estimated \$9,185.56 for personal expenses and unsubstantiated expenses, which included: meals, travel and auto expenses and excessive repairs and maintenance expenses. These expenses were not substantiated with receipts. The amounts were listed on the bank statement without any source documents to support the purpose of the expenditure.

47. The IRS requires a substantiation of all travel, automobile and meal expenses which is documented with mileage logs and receipts. Ms. Throne did not provide source document for all travel and meal expenses nor did she produce travel logs for mileage. See **Exhibit B** and **Exhibit K**¹⁸

48. There is a serious inconsistency in reporting accounting transactions without full disclosure for the intended purpose. The GL Detail of Transactions included many expenses in accounts not related to the expense. For example: *The \$500.00 debit, on the bank statement April 30, 2015, to Vancott Bagley was reported as an expense for repairs and maintenance not as an expense for attorney fees.* See **Exhibit K** (page 13)

49. Auto expenses were charged as repair and maintenance or purchases at the local nursery¹⁹ were reported as auto expenses.

50. A spread sheet was prepared to identify the unsubstantiated and questionable expenses, which totaled \$9,186.56. See **Exhibit B**

51. The following includes \$3,109.29 of expenses included in accounts not related to the expenses and questionable transactions (see **Exhibit K**):

Expenses reported as Automobile Expenses (Page 1)

\$245.00	for purchases at Robinson Tree Farm (local plant nursery)
\$100.00	ATM withdrawals

¹⁸ Exhibit K – GL Detail of Transaction (for expenses only)

¹⁹ The State Street and Cherokee Properties did not have large purchases for landscaping. The purchase was charged off as auto expenses.

Expenses reported as Insurance Expenses (Page 4)

\$2,046.28 Auto Insurance (no insurance documents)

Meal Expenses – Wendé Throne (no receipts)

\$68.74 Meals (no purpose stated or who meals were provided)

Reported as Repairs and Maintenance (Page 13)

\$204.80 Auto repairs & AAA Membership (no receipts)
Expenses Reported as Travel Expenses (17)

\$201.97 Automobile Gas Purchased (no travel log or receipts)

\$197.50 Matheson Court Parking (not authorized)
Parking at the Matheson Court is not an administrative expense
Other parties to Settlement are not allowed the same privilege.

\$45.00 John Limb check 133 (no receipt or purposed)

\$6,077.27 - Other unsubstantiated expenses (see Exhibit B and Exhibit K):

Expenses Reported as Advertising (Page 1)

\$12.00 Google svc - SAPPS - (no receipts or purpose stated)
Wendé's personal Cell App?

Expenses Reported as Miscellaneous (page 8)

\$2,795.76 2/28/14 Check No. 130 payable to Wendé Throne (no receipts)
Cash With Drawn from Estate Funds

Expenses reported as Office Supplies (Page 11)

\$45.75 Matheson Court Parking - (not an Estate Expense – need equal treatment for all)
Expensed in two accounts as office supplies and travel Expenses (above)

\$62.75 debit to Smiths Grocery Store Farmington- (no receipts)
Wendé has been staying in the Farmington Bountiful area with a friend

\$25.60 FedEx (express mailing) - Bountiful

Expenses reported as Postage (Page 12)

\$200.73 FedEx and USPS express mailing (no receipts or where mail was delivered)
The FedEx charges were reported as both Postage and Office Supply Expenses

Telephone Expense (Page 16)

\$70.00 T-Mobile - (receipts) the phone charge appears to be for Wende's cell Phone there is no billing for Estate phone charges.

Repairs and Maintenance Expenses (Page 13)

\$645.89 Repairs and Maintenance Balance of Expenses (unsubstantiated, no receipts)
There is no statement of work performed (as requested in Kathy request for Wende's accounting). The charges are excessive with no vacancies: for example: Wasatch Steel \$134.21; Diamond Rental \$228.87; Kwall Paint \$236.48; ShopKo \$20.23,
Lowe's in Bountiful

\$976.74 other Lowe's, Home Depot and purchases.

Small Tools (Page 14)

\$129.45 John Limb - (no receipt)

Utility Expenses (Page 18)

\$6.00 Transit ? - (no receipt)

\$1,028.27 Quester Gas (no account name to show usage especially when no vacancies)

The Quester Gas total is an usually high amount of gas for the State Street property, when all tenants pay their own utilities. For Example: May 9 2014, the bill was debited to the bank statement in the amount of \$612.49. Cherokee was under the management of Judy Engle as of September 3, 2013.

Rental Income (Expenses deducted from income)

\$32.90 John Limb check 132 (see Exhibit A)

\$25.43 Industrial Debt on bank statement (see Exhibit A)

52. Ms. Throne has not provided or produce any source documents, receipts for purchases relating to the amounts stated on the bank statements she filed with the Court on April 26, 2016 and again on May 19, 2016. Further, the financial accounting is a compilation of numbers without a completed General Ledger Detail of Transactions for the Balance Statement ending May 19, 2016 and the rental income for the 41 month period from January 1, 2013 to May 24, 2016 (as stated on the Profit and Loss Statement). See Exhibit U²⁰

²⁰ Exhibit U - Kathy's Request for accounting information per Court instructions - filed May 10, 2016

53. There has not been a proper accounting for the Capital Asset Loan. The Capital Asset loan was paid in full with the new Payson Loan, May 22, 2014. The payoff included interest and other fees regarding the default / foreclosure issue, whereas \$8,149.64 was required to cure the default and pay the delinquent interest. See **Exhibit R**²¹

54. Counsel Mayfield was completely involved with the negotiation process to get the loan paid and cured the loan from default and or foreclosure. Mr. Mayfield had the documents supporting the \$8,149.64 in interest, penalties and other related charges.

55. Mr. Mayfield has refused to provide the Capital Asset payoff documents and has not properly accounted for the \$8,149.64 in interest. The interest was not reported on the Profit and Loss Statement ending December 31, 2015. See **Exhibit U**

56. As a result, the interest expenses, penalties and other related charges are understated on the Estate's income statement for 2015.

57. The Capital Asset Loan has been incorrectly stated on the December 31, 2013 and 2014 Balance Sheet. The loan was secured in 2014 not 2013. The amount of the loan stated on the balance sheet was \$108,149.64, which included the \$8,149.64 charges incurred in 2015 and was not for years 2013 or 2014 for the default interest and penalties. See **Exhibit E, Exhibit F, and Exhibit G**

CONCLUSION

1. There are serious problems with consistency, with substantiation and in reporting the liabilities and expenses for the related periods. The financial statement lacked full disclosure when reporting all transactions and the failure to use or provide source documents (receipts) and to account for the rental income on a monthly basis is improper accounting methods. Using bank deposits as "all receipts" for rental income was not a method used according to GAAP. The income must be matched with the expenses.

Without the proper source document, the accounting is unreliable.

²¹ Exhibit R – \$172,000.00 Payson Loan closing statement (Capital Asset Loan Payoff \$108,149.64)

2. As a result, at least \$49,457.89 of the Estate funds has been mismanaged and used for the benefit of the Wende Throne. At least \$9,252.33 is unreported rental income with \$10,000.00 from the Capital Asset Loan, funds unaccounted for. Ms. Throne has used at least \$19,252.33 of Estate Funds and may have expensed over \$9,186.56 for her personal use without substantiation.

3. The serious issue of including Objection to Settlement legal fees violates a Court order, especially when the Court has made it very clear on three separate court hearings, these legal fees are disallowed and are not to be charged to the Estate. The Objection to Settlement was a conflict of interest whereas, it was not in the best interest of the Estate or in the best interest of the Settlement.

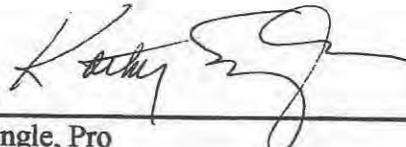
4. Mr. Mayfield has included the total legal fees of \$51,178.50 whereas, this total has been expensed on the financial accounting without reducing the Objection to Settlement legal fees, to at least \$33,967.00 (the amount Mr. Mayfield claimed on his March 9, 2016 affidavit). The Estate has already paid the York Howell Law firm \$34,000.00.

Defiantly, Mr. Mayfield continues to seek payment for the Objection to Settlement and included an entry on the balance sheet for \$17, 178.50 in accounts payable to the York Howell Law Firm, which included the Objection to Settlement legal fees. The Estate does not owe the York Howell Law Firm any attorney fees as there is a negative balance of \$32.50. Further, at least \$10,600.00 for additional improper legal fees has not been resolved.

5. Wende Throne, the Special Administrator must be held accountable for her lack of cooperation, noncompliance of Court Orders and misuse of Estate Funds.

I, Kathy Engle, make all statements based on information and my belief and my knowledge of the facts and source documents provided herein.

DATED: June 4, 2016



/s /ke/
Kathy Engle, Pro
Petitioner

WITNESS, the hand of Kathy Engle, this 4th day of June 2016


Kathy Engle

State of Colorado)
County of Jefferson) ss

On this 4 day of June, 2016 personally appeared before me Kathy Engle, Individually, the signer of the within instrument who acknowledged to me that he/she they executed the same.


NOTARY PUBLIC

SEAN MATTHEW MURPHY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154037796
MY COMMISSION EXPIRES SEPTEMBER 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2016, I caused a true and correct copy of the foregoing document: **Opposition and Memorandum and Affidavit in Support Thereof To Special Administrator's Accounting RE: State Street Property**, which was served on June 4, 2016, by email on the following persons:

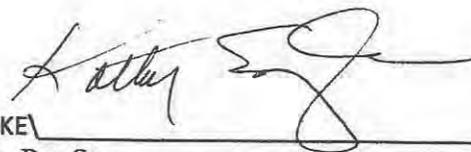
Isaac Paxman
ipaxman@paxmanattorney.com

Judy Engle, Pro Se
wildfire99_2@msn.com

Roy Engle, Pro Se
rovengle2@gmail.com

Stephen Mayfield
steve@yorkhowell.com

John Anderson
john@andersonhinkins.com



Kathy Engle, Pro Se
Petitioner

ADDENDUM R

		EXHIBIT A							
		ESTATE OF HOMER ENGLE							
		ESTATE OF Case No. 103901948							
		ANALYSIS OF RENTAL INCOME JANUARY 1, 2013 TO MAY 24, 2016							
		RE: SPECIAL ADMINISTRATOR'S ACCOUNTING							
		Prepared by Kathy Engle June 1, 2016							
REF NO.	DATE	DESCRIPTION	DEPOSIT AMOUNT	TOTAL BANK STMT.	5/24/2016 Receipts	Improper Transactions	Returns Credits		
2013 BANK STATEMENTS (Exhibit L)									
	1/15/2013		\$ 2,123.00						
	2/15/2013		\$ 1,462.79						
	3/6/2013		\$ 2,723.00						
	3/22/2013		\$ 3,600.00						
	4/29/2013		\$ 1,523.00						
	5/16/2013		\$ 1,384.00						
	6/14/2013		\$ 1,750.00						
	7/18/2013		\$ 2,222.00						
	8/22/2013		\$ 1,648.00						
	9/13/2013		\$ 904.00						
	10/15/2013		\$ 1,104.00						
	11/6/2013		\$ 600.00						
	11/14/2013		\$ 1,050.00						
L	2/28/2013	Rent Deposit Refund check 121				\$ 875.00			
	12/31/2013	Total 2013 Deposits		\$ 22,093.79	\$ 21,218.79	\$ (875.00)			
Exhibit J & Footnote									
2014 BANK STATEMENTS (Exhibit M)									
	1/28/2014		\$ 1,008.00						
	2/27/2014		\$ 2,300.00						
	4/18/2014		\$ 4,209.00						
	4/30/2014	Sear Return							
	5/6/2014	Diamond Rental - So Jordan Return							
	7/3/2014		\$ 3,502.00						
	9/8/2014		\$ 3,390.00						
	9/29/2014		\$ 1,601.00						
	11/12/2014		\$ 10,163.49						
	11/25/2014		\$ 2,747.00						

		EXHIBIT A					
		ESTATE OF HOMER ENGLE					
		ESTATE OF Case No. 103901948					
		ANALYSIS OF RENTAL INCOME JANUARY 1, 2013 TO MAY 24, 2016					
		RE: SPECIAL ADMINISTRATOR'S ACCOUNTING					
		Prepared by Kathy Engle June 1, 2016					
REF NO.	DATE	DESCRIPTION	DEPOSIT AMOUNT	TOTAL BANK STMT.	5/24/2016 Receipts	Improper Transactions	Returns Credits
Footnote 9	4/29/2014	John Limb Check #132				\$ (32.90)	
M	9/19/2014	Redeposit				\$ (144.00)	
M	11/18/2015	Redeposit				\$ (144.00)	
	12/31/2014	Total 2014 Deposits		\$ 28,920.49	\$ 28,599.59	\$ (320.90)	
Footnote					(2)	(4)	
		2015 BANK STATEMENTS (Exhibit N)					
	1/9/2015		\$ 4,112.00				
	2/24/2015		\$ 2,377.00				
	3/24/2015		\$ 1,649.00				
	5/26/2015		\$ 3,246.00				
no Bank Stmt	7/8/2015	Bank summary	\$ 496.00				
no Bank Stmt	10/10/2015	Bank summary	\$ 7,297.00				
N	5/5/2015	Industrial (debit)				\$ 25.43	
	12/31/2015	Total 2015 Deposits		\$ 19,177.00	\$ 19,151.57	\$ (25.43)	
Footnote					(3)	(9)	
		Sub Total Income reduction				\$ (1,221.33)	
Footnote						(4)	
		2016 BANK STATEMENTS (Exhibit O and Exhibit P)					
	1/13/2016	2016 Income per P & L	\$ 1,792.00		\$ 1,792.00		
	4/14/2016	Deposit not included	\$ 7,719.00				
	4/27/2016	Deposit not included	\$ 600.00				
	5/24/2016	Total 2016 Deposits		\$ 10,111.00	\$ 1,792.00	\$ (8,319.00)	
Footnote					(5)	(7)	
	2013 to 5/24/16	Total Deposits	\$ 80,302.28	\$ 80,302.28			
		Re-Deposits	\$ (288.00)	\$ (288.00)		\$ 288.00	

		EXHIBIT A					
		ESTATE OF HOMER ENGLE					
		ESTATE OF Case No. 103901948					
		ANALYSIS OF RENTAL INCOME JANUARY 1, 2013 TO MAY 24, 2016					
		RE: SPECIAL ADMINISTRATOR'S ACCOUNTING					
Prepared by Kathy Engle June 1, 2016							
REF NO.	DATE	DESCRIPTION	DEPOSIT AMOUNT	TOTAL BANK STMT.	5/24/2016 Receipts	Improper Transactions	Returns Credits
		Adjusted Amount	\$ 80,014.28	\$ 80,014.28			
	5/24/2016	Total P & L Receipts 2013 to 5/24/16			\$ 70,761.95		\$ (164.26)
					(6)		
	5/24/2016	Income / Receipts under stated			\$ 9,252.33	\$ (9,252.33)	
	5/24/2016	Income Adjusted for Receipts not on P & Loss Statement		\$ 80,014.28			
		Capital Asset Proceeds - Payson Loan				\$ (10,000.00)	
		Improper Accounting (Funds received - No accounting)				(8)	
						\$ (19,252.33)	
CONCLUSION: The Bank Statement and documents received from Counsel Mayfield on behalf of the Special Administration, Wende Throne did not include a Deposit for the Capital Asset Loan Proceeds of \$10,000.00. The Rental Income could not be verified with the Bank Statement, as the Rental Income for the period of January 1, 2013 to May 24, 2016 was not available. The total deposits \$80,014.28 (\$80,302.28 less \$288)							
There was \$9,252.33 received from A27 January 1, 2013 to April 2016 but the funds were not included on the Profit and Loss Statement as of May 24, 2016 and on the Balance Sheet as of May 19, 2016 (There was no accounting for May 2016)							
As a result the Special Administrator, Wende Throne has not deposited or accounted for at least \$19,252.33 of the Estate funds (rental income and loan proceeds).							

11:32 AM
05/24/16
Accrual Basis

Estate of Homer Engle
Profit & Loss
January 1, 2013 through May 24, 2016

	<u>Jan 1, '13 - May 24, 16</u>
Ordinary Income/Expense	
Income	
Interest Income	14.40
Receipts-All Sources	70,761.95
Total Income	70,776.35
Expense	
Advertising and Promotion	112.00
Automobile Expense	345.00
Bank Service Charges	25.00
Insurance Expense	2,745.28
Interest Expense	16,698.20
Legal Fees	61,197.25
Meals	69.74
Misc. Closing Fees	330.00
Miscellaneous	2,795.76
Mortgage Payment-Cherokee Lane	7,683.96
Office Supplies	242.04
Postage and Freight	200.73
Repairs and Maintenance	2,347.43
Small Tools and Equipment	128.45
Taxes - Property	35,172.38
Telephone Expense	70.00
Travel Expense	444.47
Utilities	5,059.08
Total Expense	135,666.77
Net Ordinary Income	-64,890.42
Net Income	<u>-64,890.42</u>

11:38 AM
05/24/16
Accrual Basis

Estate of Homer Engle
Profit & Loss
January through December 2013

	<u>Jan - Dec 13</u>
Ordinary Income/Expense	
Income	
Interest Income	4.29
Receipts-All Sources	21,218.79
Total Income	21,223.08
Expense	
Advertising and Promotion	100.00
Automobile Expense	345.00
Insurance Expense	1,170.32
Interest Expense	1,000.00
Legal Fees	6,968.75
Meals	40.08
Mortgage Payment-Cherokee Lane	7,683.96
Office Supplies	90.32
Postage and Freight	148.09
Repairs and Maintenance	908.29
Taxes - Property	2,129.05
Telephone Expense	70.00
Travel Expense	221.32
Utilities	1,782.97
Total Expense	22,658.15
Net Ordinary Income	-1,435.07
Net Income	<u>-1,435.07</u>

11:39 AM
05/24/16
Accrual Basis

Estate of Homer Engle
Profit & Loss
January through December 2014

	<u>Jan - Dec 14</u>
Ordinary Income/Expense	
Income	
Interest Income	3.46
Receipts-All Sources	<u>28,599.59</u>
Total Income	28,603.05
Expense	
Advertising and Promotion	12.00
Bank Service Charges	25.00
Insurance Expense	875.96
Legal Fees	19,550.00
Meals	29.66
Miscellaneous	2,795.76
Office Supplies	130.36
Postage and Freight	52.64
Repairs and Maintenance	1,371.82
Travel Expense	211.15
Utilities	<u>2,300.53</u>
Total Expense	27,354.88
Net Ordinary Income	<u>1,248.17</u>
Net Income	<u><u>1,248.17</u></u>

11:41 AM
05/24/16
Accrual Basis

Estate of Homer Engle
Profit & Loss
January through December 2015

	<u>Jan - Dec 15</u>
Ordinary Income/Expense	
Income	
Interest Income	5.48
Receipts-All Sources	<u>19,151.57</u>
Total Income	19,157.05
Expense	
Insurance Expense	699.00
Interest Expense	9,990.20
Legal Fees	24,678.50
Misc. Closing Fees	330.00
Office Supplies	21.36
Repairs and Maintenance	67.32
Taxes - Property	33,043.33
Travel Expense	8.00
Utilities	<u>866.68</u>
Total Expense	69,704.39
Net Ordinary Income	<u>-50,547.34</u>
Net Income	<u><u>-50,547.34</u></u>

11:43 AM

05/24/16

Accrual Basis

Estate of Homer Engle
Profit & Loss
January 1 through May 19, 2016

	<u>Jan 1 - May 19, 16</u>
Ordinary Income/Expense	
Income	
Interest Income	1.17
Receipts-All Sources	<u>1,792.00</u>
Total Income	1,793.17
Expense	
Interest Expense	5,708.00
Legal Fees	10,000.00
Small Tools and Equipment	128.45
Travel Expense	4.00
Utilities	<u>108.90</u>
Total Expense	<u>15,949.35</u>
Net Ordinary Income	<u>-14,156.18</u>
Net Income	<u><u>-14,156.18</u></u>

*

ADDENDUM S

Name: Kathy Engle, Pro Se
Petitioner
Address: P.O. Box 2225
Arvada, CO 80001
Telephone No: 801 898-2444

FILED
DISTRICT COURT
17 FEB -1 AM 7:37
KW

Pro Se

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH, PROBATE DIVISION

In the matter of the Estate of

HOMER ENGLE,
Deceased

OBJECTION AND MEMORANDUM

**TO PETITION FOR SETTLEMENT OF
ESTATE, DECREE OF DISTRIBUTION &
DISCHARGE OF PERSONAL
REPRESENTATIVE, AND FOR
APPROVAL OF ATTORNEY FEES**

Probate No. 103901948

Judge Keith Kelly

Petitioner, Kathy Engle, a party to the September 3, 2013 "Settlement" Agreement, HEREBY SUBMITS her Objections and Memorandum to Petition for Settlement of Estate, Decree of Distribution & Discharge of Personal Representative, and for Approval of Attorney fees. Kathy Engle moves the Court to deny the Petition and Proposed Order to close out the estate of the Estate of Home Engle as filed for the following grounds:

1. All the acts and transactions of the Special Administrator during the administration cannot be confirmed and approved whereas, Wende Throne, the Special Administrator has not performed her acts, transactions and responsibilities within the scope of her duties.
2. The closing out of the Estate must be denied until the Settlement terms have been fully complied with and the discharge of the Personal Representative / Special Administrator does not include unresolved issues relating to the scope of her duties and responsibilities, whereas, Ms. Throne has NOT fully complied

with all Orders including; 1) a complete accounting for all rental income with source documents / receipts has not been fully substantiated for all expense; 2). an accounting for all Estate funds has not been performed whereas, Estate funds were used for the Benefit of the Special Administrator. The Special Administrator, Wende Throne must be held accountable for her lack of cooperation, noncompliance of Court Orders and approximately \$65,888.34 of potential misuse of Estate Funds, improper accounting and excessive legal fees, which are further address below

3. The Special Administrator must return any estate funds used for her benefit in the appropriate manner required by law.

4. Ms. Throne cannot be discharged of her duties until she has properly disclosed and released the Decedent's personal tangible property which has not been determined to be distributed to her: including all undisclosed tangibles and fire arms in her possession. Ms. Throne must comply with the January 12, Settlement Agreement between her and the siblings and deliver all disputed tangles (regarding the January 12, 2017 Settlement and listed disputed tangibles) in her possession to the personal representative for the tangible distribution, which is Kathy Engle.

5. All YHG's legal fees are Objected to whereas, Kathy Engle, as an interested person, hereby requests the Court to determine if the legal fees were for the benefit of the Estate, the legal fees are reason and fair compensation to the YGH law firm with full substantiation in compliance with URCP Rule 73 and:

Pursuant to Utah Code Title 75-3-718(1) – When an interested person objects to the attorney's compensation, the Court shall determine reasonable compensation for the attorney.

6. All York Howell Law "YHG" Firm's legal fees must be denied until the YHG law firm has complied with Rule 73 and has not included legal fees for the benefit of Wende Throne personally, including the tangibles and coins hearings: a conflict of interest.

7. Kathy Engle requests the Court to determine (1) if there is a conflict of law between the Settlement terms and Utah Code title 75-3-718 regarding the compensation of the Special Administrator and her Attorney and (2) if the payment for compensation for the Special Administrator and her attorney, YHG's legal fees both comply with the terms of the settlement, pursuant to:

Pursuant to 75-3-1101 – “a formal proceeding in the court... is binding on all parties thereto.

Pursuant to 75-3-1102(3) “All further disposition of the estate is in accordance with the terms of the agreement.

Pursuant to the Settlement Agreement Page 5 - Priority 1 includes Wende \$15,000 paid as administrative fee after secured creditors in the pecking order listed¹.

Pursuant to Settlement on Schedule C. Wende is listed last to be paid as a Priority 1 claim².

Pursuant to Settlement, Page 6 - Legal Fees paid pro rata as a Priority 2 claim after Priority 1 claims are paid in full³.

8. Although Mr. Mayfield is not listed on Priority 2 claims, he is an administrative attorney and his administrative legal fee expense should be paid pro rate with the other attorneys. If the parties do not agree with how Mr. Mayfield is paid the Court may fill in the gap.

Pursuant to Settlement, Page 12 – the parties are legally obligated to work together in good faith to resolve those details in a manner most consistent with what we have agreed to. If the parties are unable to do this, then they agree the court will fill in those gaps based on what it believes is fair and reasonable and most consistent with the terms we agreed to.⁴

9. To be consistent with the terms of Settlement in how attorneys are paid, it is most consistent with the Settlement to include Mr. Mayfield and YHG’s legal fees as a Priority 2 Claims to be paid after all Priority 1 Claims have been paid and paid pro rata, the same for all attorneys as stated in the Settlement on Page 6.

10. The Settlement was necessary and agreed to by the parties, as a result of excess legal fees, in an attempt to stop the legal fees from spinning out of control. The legal fees from the YHG has spun out of control preventing the terms of Settlement from being complied with. Whereas, the parties are harmed with the payment of excessive legal fees to the YHG Law Firm.

11. It harms the siblings, parties to Settlement, who sacrificed their claims of property ownership for the settlement and property distribution therein. Terms of Settlement must be complied with, including

¹ Exhibit A - Settlement, Page 5

² Exhibit A - Settlement, Exhibit C

³ Exhibit A - Settlement, page 6

⁴ Exhibit A - Settlement, 12

payment of YHG and all legal fees, to be paid as a priority two claim consistent with the terms of Settlement.

12. Priority 1 claims may not be paid in full, and compensation to the Parties' for expenses and labor to manage the properties and the tangible distribution labor claims are compromised by the excessive legal fees claimed outside of Settlement by the YHG law firm. Payment of the YHG legal fees are indeed outside of Settlement and are not consistent with the Settlement terms: *within the spirit of intended Agreement between all the parties thereto.*

13. Payment of YHG legal fees outside of Settlement, pursuant to Utah Code Title 75-3-718 is a conflict of law with the Settlement provisions, Priority two classification for administrative expenses regarding payment of all attorney fees, which includes Mr. Paxman and Mr. Mayfield (YHG).

14. The payment of legal fees to YHG, overrides the purposed of Settlement between all parties when the siblings agreed to release their claims of ownership to the disputed properties in exchange for Settlement with the understanding the terms of Settlement would govern and is binding on all parties and creditors.

15. Settlement would never had be reached if it had been stated in Settlement, legal fees would be paid outside of Settlement and preempts the terms of Settlement in how legal fees are paid as Priority 2 Claims, if all Priority one claims have been paid. Altering the terms of Settlement is not fair or proportionate to the Siblings for the benefits they have received. The YHG Legal fees outweigh the benefits as it discriminates against those to be paid in Priority one and two categories.

16. Mr. Mayfield's legal fees are a "Horse of a Difference Color". The YHG's legal fees are not the same from what was agreed between the parties, The legal fees are paid different from what was intended in Settlement, a difference situation than what was first thought it would be⁵. A Horse of a Difference Color.

17. All YHG legal fees must be denied, whereas the legal fee stated in Mr. Mayfield's December 2016 Affidavit have not been substantiated⁶ pursuant to URCP Rule 73; (1) \$4,381.00 of legal fees (for the

⁵ The Wikipedia definition or meaning of a Horse of a Different Color "Unrelated, or only incidentally related matter with distinctly different significance. It is a situation or a subject that is different from what you had first thought it was.

⁶ Exhibit M & N: YHG" Petition's Exhibit G, Line 11 -The request payment of \$29,695. The amount is not supported by all invoices and itemized list of legal fees and related costs. One statement of legal fees was submitted in the amount of \$20,536.50

Estate Accounting⁷) has been previously paid by the Special Administrator on September 7, 2016⁸;

(2) only \$20,536.50⁹ has been itemized for the payment request of \$29,695.00; (2) Approximately, \$4,927.50¹⁰ is dual representation for Wende Throne. See Exhibits M

18. The Petition and the Affidavit for legal fees does not comply with Utah Rules of Civil Procedure Rule 73. The Petition includes an Affidavit¹¹ which has not been notarized. The Affidavit in the Petition is not stated in the Caption rather a Declaration is listed without the proper form submitted in the Petition. It cannot be determined if the Petition for legal fees is a Declaration or an Affidavit. The Petition does not comply with rule 73

19. There is a conflict of interest with the Special Administrator and with Wende Throne, individually. The Estate should not pay any legal fees in regards to a dual representation. All legal fees regarding this conflict of interest / dual representation must be denied and redacted from all YHG's invoices and requested payment amount. This same situation occurred when the Special Administrator attempted to break the Settlement. September 7, 2016, the court disallowed the related legal fees in the amount of \$17,211¹² and further ordered these legal fees to be removed off the Estate accounting, which included any billing line item mentioning or related to the objections.

I

Objection to Line 8

SETTLEMENT FINAL CONTINGENCY – HI-COUNTRY ESTATE LIENS/JUDGMENT

1. The terms of Settlement Agreement has not been fulfilled. The Hi-Country Condition precedent

⁷ Exhibit L - YHG Invoice dated December 13, 2016 \$4,613.50

⁸ Exhibit K - Court Ordered \$21,139 legal fees paid YHG. The Special Administrator paid these legal fees on September 7, 2016, which included the accounting fees of \$4,381. These same legal fees are included in Mr. Mayfield's Affidavit as a request for payment in the Invoice dated December 13, 2016 in the amount of \$4,613.50, Exhibit L.

⁹ Exhibit M - YHG December 13, 2016 Statement \$20,536.50 (itemized list of legal fees)

¹⁰ Exhibit M - Last page, \$4,927.50 estimated legal fees for conflict of interest with Wende Throne, RE: Coins & tangibles

¹¹ Exhibit N - Mayfield Affidavit - dated December 15, 2016.

¹² Exhibit J - Court Order, September 6, 2016 (YHG legal fees), Page 5, non Estate Billing \$17,211,

Page 2 - "remove the \$17,211 of attorney fees from the amount charged to the Estate billings 100% of any billing line item mentioning or related to the objections".

a Settlement contingency has not been satisfied, which includes the Hi-Country Liens, the Judgements and HOA fees. This contingency must be resolved prior to closing out of the Estate, Pursuant to the Settlement:

Page 6 – For Hi-Country HOA, Kathy to approve, would be that any and all liens relating to the lawsuit (i.e., the \$45K of assessments plus attorney fees totaling \$87K) must be released/discharged as a result of the deal. In other words, the *HOA must agree they can't come back and collect anything from Kathy that was covered by the lawsuit.*

Page 10 Title – For clarity, any property distributed to a Party under the terms of this Agreement will be distributed free and clear of any claims of the Estate or any other Party.

Page 11 Contingencies: ... we will then approach the creditors to negotiate away any objections they might have. Then we will return to court either to seek approval of those workouts, or if we are not able to settle with a creditor, then to have the court overrule that creditor's objections. This will include Hi-Country ...

II

Objection to Line 9

CONFLICT OF LAW WITH SETTLEMENT RE: COMPENSATION

2. Mr. Mayfield statement: "Net of payments for reasonable compensation pursuant to UCA 75-3-718 For all Priority one and two claims was not stated in the terms of Settlement.

The Settlement Agreement agreed by all the parties and is governed by UCA 75-3-1102(3) not UCA 75-3-718. In other words, the terms of Settlement must be complied with and overrides UCA 75-3-718.

Pursuant to UCA 75-3-1101 ... A formal proceeding in the court for that purpose, is binding on all the parties thereto...

Pursuant to UCA 75-3-1102 (3): Upon making of the Order and the execution of the agreement, all further disposition of the estate is accordance with the terms of the agreement.

3. The terms of Settlement does not state reasonable compensation or to the extent of remaining or available proceeds from the sale of the Payson Property or compensation pursuant to UCA 75-3-718. Nor does the Settlement state Kathy Engle's Priority 1 claim was for compensation, it was Pro Se Expenses and did not include compensation. Kathy's Priority 1 claim of \$20,000 is expenses only and does not include compensation. Pro Se individuals cannot receive compensation for legal representation.

Pursuant to Settlement Page 5 – In terms of paying creditors, the pecking order is as follows: First pay all of the "secured" creditors (Priority 1-items)..., then all administrative expenses..

4. The Priority 1 Claims relating to Kathy Engle's Administrative claim is \$20,000, which \$3,204.64 was paid with the Price purchase and \$5,000 was paid to Isaac Paxman for settlement of legal fees, with a remaining balance owing to Kathy Engle in the amount of \$11,750.36¹³ to be paid from any source of Estate funds: the Payson sale proceeds, tangibles or any other sources of funds available. Payment is "NOT" limited to the Payson proceeds.

Pursuant to Settlement Terms Page 5 Credit Claims and cash distribution: In terms of paying creditors; the pecking order is as follows, first pay all of the "secured" creditors (Priority 1 terms then administrative expenses, (Priority 2). ...

The Estate has previously reached agreements*Nothing in this paragraph prevents Secured Claims from being paid from other available funds.*

Priority 1 includes... McKinley, State St. Taxes, Payson Taxes, Watson, Fannin 12K. It also includes ...*Kathy*

The parties orally modified this paragraph to provide *Kathy will be \$20,000 instead of \$15,000 (These payments remain as Priority 1 items).*

Pursuant to Settlement terms Exhibit C – Claims in each class are paid out of probate assets, meaning Payson, Price and Tangibles. Priority 1: *Each claim paid in full, in the order listed, until all are paid in full.*

5. According to the pecking order of Exhibit C – *Kathy Engle's Administrative claims is next in line to be paid from the Proceeds of the Payson sale, the Tangibles or any available funds.* Priority one claims are paid prior to legal fees and as stated in Priority 2 claims.

6. The Coins (tangibles) will be used to pay down Kathy Engle's \$11,759.36 with the remaining balance owing to be paid from other available funds: including the Payson proceeds or the Court Escrow account of \$22,000 (approximately).

The Meet & Confer allows Kathy to purchase the coin to pay down her Priority 1 Claim. Payment request for the coin purchase was made December 28, 2016, within the 30 day period.

7. Objection to Line 9 (b) - Priority 1 Claim of Wende Throne in the Amount of \$15,000 is an administrative for compensation to Wende. Pursuant to the terms of Settlement, Ms. Throne is not allowed

¹³ See Exhibit R, the Price Purchase Agreement to document the \$16,750.36 remaining balance on Kathy's priority 1 Claim

any additional compensation under UCA 75-3-718 whereas the terms of Settlement restricts her administrative fees /compensation to \$15,000.00, the same as it did for Kathy at \$20,000 for her pro se expenses.

8. Further, the terms of Settlement does allow Wende Throne to be paid until all Priority 1 Claims have been paid, in the pecking order, stated on the Settlement¹⁴ attached Exhibit C.

9. Pursuant to that Pecking Order, Kathy Engle's Priority 1 claim is paid in full prior to Wende Throne's Priority 1 claim.

III

Objection to Line 9(c)

ESCROW FUNDS – STATE STREET PROPERTY RENTAL INCOME

10. Escrow Funds Judge Parker's Court: The Petition conflicts with the terms of Settlement whereas, all rends held in escrow with Judge Parker are not distributed to Wende Throne, Trustee of the Home Engle Trust. The Terms of Settlement does not specify the escrow rental funds will be distributed to the Home Engle Trust. The Settlement resolved all claims of the parties, which includes the escrow funds. The funds must be distributed to the three siblings and the Special Administrator for labor compensation in the management of the properties, and the distribution of the Tangibles as stated in the terms of settlement. The Escrow funds could also pay Priority one claims if funds are not available from other sources.

Compensation to the parties is necessary to close out the Settlement, without harm to the parties. The siblings became indentured servants, when ordered by the Court to manage properties and distribute the tangibles. Therefore, they must be properly compensated: Pursuant to US Constitution, Article 13.

11. Wende Throne, Trustee of the Homer Engle Trust does not receive the State Street Property.

Pursuant to the Settlement Page 1 – among the following parties: Wende Throne, in her capacity as special administrator of the Estate of Homer Engle, as trustee of the Homer Engle 2010 Trust, and individually (“Wende”)

12. Wende Throne, Special Administrator of the Estate of Homer receives the State Street Property as an administrative Settlement property. The beneficiaries of the Homer Engle Trust or the Trust and Wende

¹⁴ Exhibit A – Settlement Agreement – Exhibit C, last page

Throne will only receive the residual amount of the State Street Property after all claims of the Estate are satisfied, which include any breach of fiduciary duties and Priority one and two claims.

13. The Court has stated several times in various court hearings, the State Street Property is an administrative property.

14. The "Escrow" funds for the eviction of Judy Engle off the State Street Property is released as a global settlement. Judy Engle and the Estate both relinquished their claims for the eviction.

Pursuant to the Settlement Page 11 – Full release: This is intended to be *a global resolution of all issues*. All parties would release all claims against all parties.

15. All parties released any interest in all the properties held in any entity, including a trust, Homer Engle 2010 Trust.

16. Mr. Mayfield stated: All rents held in escrow whether with this Court, currently with the Special Administrator or with the Court for Judge Paul B. Parker, Case No 090921857. Should be distributed to the Special Administrator for administration according to this Petition is not in compliance with the Settlement Agreement.

17. Judge Parker's ruling included an order for Judy Engle to deposit monthly \$800 payments to the Court Escrow account for the rental of Unit 1, on the State Street Property, until the ownership of the State Street Property was determined.

Pursuant to Judge Parker's rule Page 2: Because the issue of ownership is the subject of the probate proceeding in another court, it seems prudent to await the outcome of that case in order to avoid inconsistent rulings. See **Exhibit O**¹⁵

18. The rightful owner of the State Street Property has not been determined or litigated whereas, *Honorable Judge Parker's ruling is to be consistent with the probate rulings, which is the terms of Settlement.*

19. A Settlement was reached before the rightful ownership of the State Street Property was determined. Therefore, the Escrow funds do not inherently attach to the State Street property, or to the Homer Engle 2010 Trust, especially when the Settlement does not directly grant title to the State Street property to the Trust.

20. Settlement granted title to "Wende" who has been acting in behalf of the Estate, as the role of the

¹⁵ Exhibit O – Page 2, Judge Parker's rule

Special Administrator as stated on Page 1 of the Settlement Agreement. The State Street Property could be an administrative property but questions arise. Both parties, Judy Engle and the Estate gave up their legal rights for settlement. The remaining balance of \$26,000 in Escrow funds should therefore go to the four parties to compensate them for labor to manage the properties and distribution of tangibles. To be split four ways.

IV

Objection to Line 10(a)

DISTRIBUTION OF THE CRYSTAL PROPERTY

21. The distribution of the Crystal Property was not stated on the Petition and should be a part of the closing out of the Estate. The Crystal Property was granted to Kathy Engle by Quiet Title, November 26, 2013 per the terms of Settlement. The early distribution was necessary to avoid foreclosure on the property whereas, Kathy Engle paid off the McKinley contract. See **Exhibit Q¹⁶**

V

Objection of Line 11

DECENENT'S TANGIBLE PERSONAL PROPERTY

22. The allocation and distribution of any outstanding tangible personal property was not resolved at the Court Hearing on January 9, 2017. Another Court Hearing for tangible property is scheduled on February 6, 2017 at 1pm.

23. The tangible property and related issues are not resolved at this point. The Court Order, stipulated meet and confer at Counsel's Mayfield's office did resolve some of the disputed tangibles between Wende Throne, Kathy Engle between Judy Engle and Roy Engle. However, Mr. Throne refused to deliver all the tangibles, she agreed in Settlement to Judy and Roy.

24. There are unresolved disputed tangibles between Wende Throne and Kathy Engle. Ms. Throne did not comply with the stipulated Court Order, to Meet at Mr. Mayfield's office and she failed to negotiate a final

¹⁶ Exhibit Q – Quiet Title granted to Kathy Engle for the Crystal Property – November 26, 2013

settlement with Kathy for disputed tangibles.

25. Mr. Throne has refused to communicate with Kathy Engle after the September 12, 2016 meeting, to negotiate any further disputed items.

26. Ms. Throne continues to possess the Coins, listed for sale, whereas the siblings have requested to purchase the coins. Ms. Throne must comply with the meet and confer order, which allows the siblings to purchase the coins, as first rights of refusal, prior to selling the coins to a third party.

27. Ms. Throne has not complied with a court order to provide all the Hi-County documents, maps, development plans and related documents (including the original documents) to Kathy Engle. Ms. Throne must comply with the order.

28. Counsel for the Special Administrator has a conflict of interest with Wende Throne personally and as the Special Administrator, therefore, Mr. Mayfield could not represent Wende Throne in regards to the Tangibles.

29. . Wende Throne continues to keep tangibles not disclosed to the Siblings.

For Example: Ms. Throne stated she has the German Stein Mug, Kathy Engle purchased for the Decedent, but refused to distribute it. Ms. Throne has it in a box of stuff, which she stated Kathy Engle must rummage through to find it. Ms. Throne has refused to deliver the remaining boxes including the box with the Stein.

30. Kathy Engle provided the Court with an accounting of the Tangibles along with the expenses paid from the sale of the tangibles. The report will be updated to include final expenses and compensation, when a final resolve is determined with the disputed tangibles held by Wende Throne.

31. Kathy requests leave to claim additional expenses after the prior tangible report was prepared and filed with the Court, for the distribution of the tangibles. Compensation Claim for the tangible distribution is approximately \$5,000.00 (200 hours at \$25/hr.). Additional expenses forth coming.

IV

Objection to Line 13

SPECIAL ADMINISTRATOR'S COMPENSATION

32. Compensation to the Special Administrator is set out in the terms of Settlement, as Priority One Claim in the amount of \$15,000, if no breach of duties. The Settlement does NOT provide any or additional compensation to the Special Administrator pursuant to UCA 75-3-718, whereas, the Settlement resolved all issues, and specifically defined how and when the Special Administrator will be paid.

Pursuant to UCA 75-3-1102 (3): Upon making of the Order and the execution of the agreement, all further disposition of the estate is accordance with the terms of the agreement.

33. The Settlement terms conflict with UCA 75-3-718. There is a conflict of law between UCA 75-3-718 and the Settlement terms. Whereas, the compensation of the Special Administrator must be governed by the terms of Settlement agreed by all parties.

34. There is no provision to pay compensation to the Special Administrator other than her Priority one Claim of \$15,000. See above Number II, Line 1

VII

Objection to Line 21, Exhibit H

FINAL ACCOUNTING

IMPROPER TRANSACTIONS

I Kathy Engle, have two degrees, one in accounting and one finance and was employed by the Federal Government as an auditor for the Office of the Inspector General, in prior years. I hereby render my personal opinion¹⁷ based on the documents filed with the court and my personal knowledge of the facts and my beliefs.

I am qualified to testify in regards to the Estate Accounting and to the following:

35. Line 8 - *The accounting provided by the Special Administrator must be denied and not approved as*

¹⁷ Kathy Engle filed an affidavit on June 4, 2016 included with her objection to the Special Administrator's Accounting.

to form and content.

36. Ms. Throne, as the Special Administrator, must be held responsible for approximately \$65,888.34¹⁸ for misuse, mismanagement, improper accounting transactions¹⁹ and misappropriation of estate funds for the rental properties she managed and controlled. For Example: Ms. Throne has used Estate funds for her personal benefit, to include insurance for her personal vehicle. Questionable, unsubstantiated, misused of funds include (but not limited) to the following:

Unreported Rental Income ²⁰	\$27,372.21	
Unsubstantiated Expenses Dec 2016 ²¹	\$3,819.82	(\$1,300 ATM Cash W/D)
Unsubstantiated Expenses May 2016 ²²	\$9,186.56	(\$5,492.06 Cash/personal Expenses)
State Street Property taxes after Settlement	\$15,000.00	(estimated)
Improper Financial Accounting ²³	\$4,613.50	(legal fees, Bret Hasting)
YHG Legal Fees – Conflict of Interest ²⁴	\$4,927.50	(Tangible fees, coins etc.)
Vancott Bagley legal fees – Mediation ²⁵	<u>\$ 968.75</u>	(all parties paid their own costs)
Estimated Total	<u>\$65,888.34</u>	

37. Ms. Throne and Ms. Throne, as the Special Administrator, must be denied any claim for reimbursement of expenses and claim for compensation, as her priority one Claim for \$15,000 and in her petition to close out the Estate pursuant to Utah Code 75-3-718, compensation to the Special Administrator.

38. Wendie Throne has a duty to file accurate and complete accounting records which complies with the Court's Order and her responsibilities as the manager of the State Street property, which she was allowed to manage, after the parties agreed to the September 3, 2013 Settlement Agreement.

39. Ms. Throne has misled the Court with her accounting discrepancies and improper transactions.

40. March 31, 2016, the Court Ordered Wendie Throne to provide an accounting for the State Street

¹⁹ Exhibit D – GL Details of Transactions – Source documents were not provided

²⁰ Exhibit F – unreported rental income \$27,372.21

²¹ Exhibit G – \$3,818.82 Unsubstantiated Expenses

²² Exhibit H – \$9,186.56 Unsubstantiated Expenses

²³ Exhibit L – Improper Financial Accounting – Legal fees

²⁴ Exhibit M – Legal Fees, Conflict of Interest, Dual Representation for Wendie Throne, Tangibles & Coin hearing

²⁵ Exhibit O – Mediation fees Wendie charged the Estate - All parties paid their own costs

Property (units #2, #3, #4, & unit #6) and the Cherokee Properties, while under her management from 2013 to the current date, which was May 2016. The accounting shall include proper disclosure of all items of expense, income and supporting documentation to the same.

41. May 24, 2016, Counsel Mayfield filed the Special Administrator's accounting for the period of January 1, 2013 to May 2016²⁶. See **Exhibit C**

42. Wende Throne did not fully comply with the March 2016 Court Order and she did not provided an accounting to include proper disclosure of all items of expense, income with supporting documentation. for the accounting for the period of January 1, 2013 to May, 2016²⁷. See **Exhibit B**

43. OBJECTION TO WENDE'S ACCOUNTING, was filed with the Court on June 4, 2016, by Kathy Engle for the period January 1, 2013 to May 15, 2016. The Special Administrator's financial accounting was incomplete, unreliable with inappropriate transactions whereas, Wende Throne used estate funds for per personal benefit and failed to report all rental income with at least \$8,186.56²⁸ of improper expenses, resulting in unjustified reimbursements to the Special Administrator.

44. Further, \$10,163.50²⁹ from the Capital Asset Loan was reported as rental income to justify the unreported income short fall. See **Exhibit E**

45. December 15, 2016, Wende Throne, Special Administrator filed a final accounting for the Estate with reported rental income of \$80,934.79³⁰, which was not a full accounting of all rental funds collected during the period of January 2013 to December 15, 2016.

46. A schedule for rental income was not provided to account for the rental income and vacancies. Instead the rental deposits from the Cyprus CU were used to report rental income. The deposits were insufficient from the rental lease agreements. There is approximately \$27,372.21³¹ of unreported income. The rental income cash method of accounting is unreliable and is open for misuse of funds. See **Exhibit F**

²⁶ Exhibit C – Balance Sheet – P & L statement 1-1-13 to May 24, 2016

²⁷ Exhibit B – Balance Sheet – P & L Statement 1-1-13 to December 14, 2016

²⁸ Exhibit H - \$9,186.56 unsubstantiated, unauthorized cash w/d

²⁹ Exhibit E - \$10,163.50 Capital Asset Escrow refund included as rental income.

³⁰ Exhibit B – P & L Rental Income \$80,954.79

³¹ Exhibit F - \$27,372.21 unreported income

47. The final accounting continued to include improper expenses, without source documents or substantiate of all amounts. The final accounting used the same improper accounting methods as with the May 2016 accounting. The rental income was derived by a cash basis accounting when an accrual basis was stated on the accounting documents..

48. As a result, the Rental income was grossly understated by \$27,372, from 2013 to 2016.

49. The IRS requires a substantiation of all travel, automobile and meal expenses which is documented with mileage logs and receipts. Mileage logs or travel logs were not provided to substantiate all travel, meal expenses and automobile expenses (insurance). There was \$2,453.05 expensed to the Estate for the Special Administrator's personal automobile insurance and repairs. See **Exhibit H**

50. There is a serious inconsistency in reporting accounting transactions without full disclosure for the intended purpose. The General Ledger Detail of Transactions included many expenses without a stated purpose of the expense with large amounts of money to Wendie Throne. There was no documentation of the expense or the required source document to support the expense or money Ms. Throne received from the Estate check accounting.

For example: Ms. Throne issued check #130 in the amount of \$2,495.00 to herself, without any supporting documentation for the expense. The check was addressed with Steve Mayfield, her counsel, but \$2,495.00 remains unaccounted for. See **Exhibit H** (Detail of Transactions, Page 9).

VIII

Objection to Line 16, Exhibit F

Attorney fees

51. The YHG Petition included Exhibit F, amounts owed for legal fees. There is only one statement of itemized legal fees in the amount of \$20,546.50 for general services with amounts listed as owed without any substantiation and do not agree with the requested amount of payment in the petition in the amount of \$29,695.00.

52. The balance owing on the \$20,546.50 statement includes an unsubstantiated amount of \$46,906.00.

The following is a recap of the legal fees stated on the Invoice dated December 13, 2016:

Date	Invoice	Period	Amount
12/13/2016	Current charges	9/1/2016 to 11/30/2016	\$20,536.50 ³²
12/13/2016	#31086	???	\$2,170.00 Missing
12/13/2016	Past due	6/1/2016 to 10/31/2016?	<u>\$24,199.50</u> Missing
12/13/2016	Total Legal Fees to YHG		<u>\$46,906.00</u>
12/15/2016	Mr. Mayfield's Affidavit – Legal fees owed (Petition's Exhibit G, Line 11)		\$29,695.00 ³³
9/7/2016	Court Order – Disallow Legal Fees		<u>\$17,211.00</u>
TOTAL LEGAL FEES			<u>\$46,906.00</u>

53. The YHG law firm has continued to charge the non Estate Billing \$17,211 of legal fees to the Estate.

54. The September 7, 2016 Court Order disallowed \$17,211.00³⁴, which YHG was Court Ordered to Segregate and not charge to the Estate. See **Exhibit J**

Pursuant to the Order Page 2 – With respect to amounts charged related to objections to the Settlement Agreement, Court ruled such did not benefit the Estate and *should be segregated and not charged to the Estate.*

55. The Legal fees expensed on the Profit & Loss Statement are over stated by \$17,211.00. The total \$124,947.24³⁵ of legal fees and Costs must be reduced by the \$17,211.00 to comply with the Court Order for the redaction of disallowed legal fees costs. See **Exhibit O**

IX

Objection to Line 11, Exhibit G

AFFIDAVIT – DENY LEGAL FEE REQUEST, \$34,308.50

³² Exhibit M - \$20,536.50 YHG Legal fees – Statement dated December 13, 2016, current balance of \$46,906.00

³³ Exhibit N – Mayfield Affidavit, Line 11 – request for payment \$34,308.50 (\$29,695 + \$4,613.50)

³⁴ Exhibit J – Court Order disallowed, non Estate Billing for \$17,211.00

³⁵ Exhibit O – Legal fee Expense \$12,947.24 stated on the P & L Statement, dated December 14, 2016 is overstated.

56. The \$34,308.50 payment request, in Mr. Mayfield's Affidavit, Line 11 must be denied for the following grounds:

57. The requested \$34,308.50 payment (\$29,695 + \$4,613.50) is not reasonable or valid, whereas, the legal fees are not fully substantiate (as stated above), includes duplicate services, includes improper fees for a conflict of interest regarding a dual representation and the Affidavit does not comply with Rule 73.

58. The Affidavit does not a notarized stamp. Pursuant to Utah Code Title 46-1-16(7). See **Exhibit N**
CONFLICT OF INTEREST – LEGAL FEES DENIED

59. The \$29,695.00 included approximately \$4,927.50 of legal fees for the Special Administrator and Wende Throne personally, which is a conflict of interest. See **Exhibit M** (last page)

60. The Tangibles distributed to Wende Throne is for her personal benefit and conflicts with the YHG representation for the Estate. This is a dual representation. Any legal fees regarding the coin hearing, the tangible distribution and Settlement between Wende Throne, personally and the Siblings must be redacted of the legal fees stated in the \$29,695.00 requested payment.

DUPLICATE PAYMENT - \$4,381.00 DENIED

61. The requested \$4,613.50 payment for accounting / legal fees included a duplicate payment of \$4,381.00 and must be denied. See **Exhibits K & L**

62. The \$4,381.00 had been paid in the \$21,139.00 Payment, the Court authorized on September 7, 2016. See **Exhibit J**, Page 5, Line 5 and Line 9 and **Exhibit K**

63. The requested \$4,613.50 payment included \$4,381.00 for the Estate accounting for the period January 1, 2013 to May 2016. See **Exhibit N**

64. The YHG \$72,350.00 billing statement included the same \$4,381.00 for the Estate Accounting for the same period of January 1, 2013 to May 2016. The \$4,381 of Legal fees are the same services rendered and billed to the Estate on the Invoice dated December 13, 2016 in the amount of \$4,613.50. See **Exhibit L**

OTHER OBJECTIONS

Legal Fees - Vancott Bagley and Karen Kreeck

65. Vancott Bagley and former counsel Karen Kreeck; s legal fees are paid per the Settlement Agreement. Whereas, any and all liens on any of the properties, including the State Street Property must be removed per the terms of Settlement. Vancott and Kreeck are both creditors who have an interest in the Estate and did not objected to the Settlement and how they would be paid. Their attorney liens on the properties are not consistent with the Settlement provisions and must be removed.

Pursuant to Settlement, Page 10³⁶ – Title: for clarity, any property distributed to a Party under the terms of this Agreement will be distributed free and clear of any claims of the Estate or any other Party.

Pursuant to Case Farrell V O'Brien – the constitution of a succession to a deceased person's estate partakes, in some degree, of the nature of a proceeding in rem, in which all persons in the world who have any interest are deemed parties, and are concluded as upon res judicata by the decision of the court having jurisdiction.

66. The attorney liens must be released and any further collection of their debts is prohibited.

Pursuant to Settlement Page 6 – If funds are not sufficient to pay Priority 2 in full, then each attorney is paid pro rata. Van Cott and Paxman are subject to a floor of \$95K, meaning that *Van Cott and Paxman must be paid at least \$95K each before anything can be paid to Kreeck.*

67. If there is insufficient funds available to pay the attorneys in full, they cannot lien the properties to collect the balance owing of their fees. All liens must be removed. Res judicata.

68. Karen Kreeck and her legal firm failed to act in the best interest of the Estate, when Ms. Kreeck or her firm allowed the Hi-Country Estate's Home Owners Association to obtain default Judgments against the Estate. Ms. Kreeck, did not respond to the HOA's motion for judgement or the request for decision. Ms. Kreeck simply ignored the situation, she was silent, which resulted in the HOA judgments against the Estate.

Ms. Kreeck should not receive any legal fees or compensated from any Estate funds or assets for her or her firm and should be held responsible for the entire judgement amounts as a result of her failure to protect the interest of the Estate.

69. Vancott Bagley is a creditor and should not be paid before an administrative attorney of the Estate,

³⁶ Exhibit A – Settlement, page 10 -Title

including Isaac Paxman.

70. Mr. Paxman, his firm and Mr. Mayfield (YHG) are paid as an administrative expense and as a Priority 2 claim, whereas, they can only be paid after all Priority 1 claims are paid, including Kathy Engle's Priority claim balance of \$11,759 (less any purchase of coins).

STATE STREET PROPERTY TO BE SOLD

71. The State Street Property is an administrative property, per the terms of Settlement. Ms. Throne accepted the property in her capacity as the Special Administrator of the Homer Engle Estate. Before any residual asset, the State Street Property, can be distributed to Home Engle 2010 Trust, the Beneficiaries or Wende Throne personally, all claims of the Estate, including labor claims, must be paid.

72. There is a lack of funds to pay all creditors, compensation to the parties and attorney fees, therefore the State Street property is requested to be sold to satisfy the outstanding claims.

OBJECTION TO JUDY ENGLE & ROY ENGLE'S LABOR AND EXPENSE CLAIMS

73. Roy Engle performed work on the Cherokee Property under the management of Judy Engle, who was responsible to pay expenses and labor from the rents collected. Most of Roy's labor resulted from major improvements to the property, a benefited Judy Engle, and Roy Engle who will receive the property.

74. Roof repairs and necessary repairs should be itemized separately from the remodeling such as new carpet, lighting, bath remodeling, painting etc. There has not been an itemized list of projects or tasks performed with a cost to perform the tasks.

75. It appears Roy's labor cost are excessive and includes Roy's travel time from Salt Lake City to Prove, there is at least a 1 1/2 hours, round trip per day charge. Travel time should and must be excluded.

76. Wende and her handy man Jon Limb completely painted the home and rented it for \$1,200.00. To repaint and change the color of the cabinets, which were in excellent condition is over kill and unnecessary to rent at \$1,200.00.

77. Judy Engle is currently collecting \$1,400.00 /month. The amount of Roy's labor of over \$20,000.00 does not justify a \$200/monthly rent increase. The Estate should not bear the cost of over \$20,000.00 for Roy Engle's labor and Judy's labor and expense claim she recently submitted.

78. It would take over 200 months to recover just the \$20,000.00 for Roy's labor claim. It is a diminishing return of equity and does not justify the outrageous costs of a few minor repairs.

79. Judy's management did not include a major remodeling cost to be charged to the Estate for reimbursement for her benefit. Settlement allowed Judy to keep the Cherokee rents to do with what every she chose to do with. It did not state she could remodel the property and charged the remodeling costs to the Estate. Payment for excess unnecessary expenses harms other claimant as the result of limited Estate resources.

80. However, if there are available fund from the sale of State Street property or properties from Rental Plus, there could be available funds to pay Roy & Judy Cherokee Property expenses and labor claims, providing the claims are justified for the task preformed, the cost are not excessive and are fully substantiated.

OBJECTION TO JUDY'S MANAGEMENT AND COSTS

81. Judy Engle managed the Woods Cross, Unit 1 on the State Street Property and the Price Property for the Estate, per the terms of Settlement.

82. Judy filed a report for her expenses these three properties, which was excessive and included at least \$17,000.00 to attach a single wide mobile to the existing mobile home on the Woods Cross Property.

Woods Cross Mobile Addition – Unjust Enrichment, Betterment to Judy

83. Improvement and remodeling of the Woods Cross Property is not a part of her management duties. The improvements are a direct benefit to Judy and is unjust enrichment, whereas the other parties do not receive the same or equal treatment.

84. Kathy did not receive any funds to clean up the debris, removal of the dilapidated mobile Home (\$5,000) or razing of the old buildings (\$15,000) both serious zoning issues. It is not fair for Judy to receive reimbursement for her costs when the same consideration was not available to Kathy for the Crystal Property. Also, Judy receives at least \$800/month rents off the Woods Cross Property and Kathy does not receive any rents only liability issues.

Judy's Truck Rent \$50/day – Excessive not Authorized, no mileage log

85. The \$50/day expense for the use of her truck is over \$6,500.00, which is excessive, especially for the age of the truck. The truck could be replaced at least three times over. Judy failed to substantiate her travel expense and the use of her truck with mileage logs and the purpose of the trip as required by the IRS.

The truck expense should be denied as it is excessive, not approved by the estate or the parties and substantiation of use was not provided.

86. If there is a lease agreement on the truck, title to the truck must be provided to verify when and if there is a legitimate lease and the lease was a long arms transaction.

Judy's Spider Bit – Questionable & Excessive Expense

87. Judy stated she was bit by a spider. The hospital bill is over \$4,5000 resulting from legal fees, Judy incurred when she filed a malpractice claim against the U of U medical center. The hospital treatment was not for a spider bid. This claim should not be paid as it is excessive and not related to a spider bit, on the Woods Cross Property.

BRYAN BOOTH - \$1,500 Not a Woods Cross Expense

88. Judy stated the Woods Cross property rents was used to pay \$1,500 to Bryan Booth, an estate creditor.

89. Pursuant to the REPC contract Addendum 4³⁷, regarding the purchase of the Price property, the Siblings agreed to pay the estate debt of \$1,500.00 to Bryan Booth. Addendum 4 to the Price Property REPC contract states: *Settled Rinehart Fetzor claim for \$1,500.00. See Exhibit S*

90. The Bryan Booth claim is not a Wood Cross property expense and must be denied as an expense Judy is claiming reimbursement for.

KATHY ENGLE'S COMPENSATION & MANAGEMENT EXPENSES

91. Per the terms of Settlement, Kathy Engle was Court Order to manage the Crystal Property, the Hi-Country Property. A substantiate of all labor and costs will be available, if there are funds available pay the compensation and management expenses for the Crystal and Hi-Country properties. Kathy Engle should be

³⁷ Exhibit S – REPC Price Sale – Addendum 4 – Siblings to pay Bryan Booth \$1,500.00 – Judy claim as a Woods Cross Expense

compensated for her management of the two properties. Pursuant to the terms of Settlement and to U.S. Constitution, Article 13.

92. Estimated compensation and expenses for management of two properties and the tangible distribution is \$12,000.00, which could be more or less. However, the following is just and reasonable labor and expenses for the following:

Tangible Distribution	\$5,000.00
Hi-Country Property	\$4,500.00
Crystal Avenue	<u>\$3,000.00</u>
Total Estimated Labor & Expenses	<u>\$13,500.00</u>

93. Compensation for the management of Hi-Country is estimated at \$4,500.00 (Labor 100 hours @ \$25/hour) plus delinquent property taxes and costs for Court ordered reports (paper, ink, mileage etc). Management of the Hi-Country issues, reports, and problems was labor intensive.

94. Hi-Country - Kathy's labor included negotiation with the Hi-Country HOA board: delinquent HOA Fees. Kathy was Court ordered to prepare five reports, which was labor intensive requiring online research and archive file recovery. Estimated expense, for just the five report /binders is \$200/each or \$1,000.00.

95. Kathy was required to prepare a Deed Report on the chain of title to the Hi-Country Lots; to prepare two Litigation Reports regarding the Litigation outside of Probate; to prepare a report on the Judgments filed against the Estate and a report on the delinquent HOA fees.

Labor also included negotiating with the HOA Board of Director for the outstanding Judgements against the Estate; communications with the Hi-Country board of Directors, meetings with Libby Wilson, communications with current management company, ACS; attending HOA annual meetings, working with Steve Mayfield regarding Hi-Country issue; letter to the HOA board for voting rights; researching Salt Lake County records, archives files for the Judgements; payment of property taxes and other issues.

96. Crystal Property Management – Kathy Engle management and costs for the Crystal Property is estimated at \$3,000.00 (80 hours @ \$25/hour plus expenses)

97. There were inherited problems resulting from the Special Administrator's management, which

included weed clean up; zoning violations; eviction of Denise Haddenham; eviction fees; locks to secure the property; constant yard maintenance, weed control; constant property inspections for vandals; inside clean up to access the interior of the property; communication with the country, neighbors, police and many other issues. Police reports were filed. County records were research for zoning issues.

CONCLUSION

1. The accounting provided by the Special Administrator must be denied as to form and content.
2. The fund held in trust with Judge Parker is not funds available to be distributed to the Homer Engle Trust. It is respectfully requested the Escrow funds should be distributed and split four way to the four parties for compensation and expenses for management of the properties and for Kathy's compensation and expenses for the distribution of the Tangibles.
3. Settlement does not provide the Escrow fund should be paid to the trust or to the Estate. Judy Engle and the Estate release all claims to the Escrow account when they agreed to Settlement.
4. The Special Administrator's compensation is stated in the terms of Settlement as a Priority 1 claim. It is a conflict of law to pay her additional compensation pursuant to UCA 75-3-718
5. The Estate of Homer Engle cannot be settled, allowed an approved as filed whereas all the terms of Settlement must complete prior to closing out the Estate. The final contingency regarding the Hi-Country HOA fees and Judgment is not resolved to prevent harm to Kathy and Judy Engle.
6. All the acts and transactions of the Special Administrator during this administration can not be confirmed and approved as there are serious issues regarding her improper financial accounting, conflict of interest with her counsel, misuse of Estate funds, unreported rental income, noncompliance with all court orders and approximately \$65,888.34 of unsubstantiated expenses from January 1, 2013 to December 15, 2016 (including unaccounted cash w/d amount to herself).
7. The administration of the estate of Homer Engle can not be closed without further accounting to determine the misappropriation of funds and unsubstantiated expenses.
- 8 c. The State Street Property is an administrative property and should be sold to pay creditors claims,

compensation to the parties, priority 1 claims, legal fees and to resolve the Hi-Country contingency.

8. The Homer Engle 2010 Trust does not have the legal right to an administrative property when there are remaining creditors to be paid. Wende Throne does not receive the property individual, especially when she has claimed she never had an ownership interest in any of the properties and did not file any claim of ownership. The terms of Settlement defines Wende as the Special Administrator, individual and trustee of the Homer Engle Trust. Therefore, the property must first go to the Estate.

9. The Special Administrator cannot be discharged of her duties and any further obligations in connection with the Estate of Homer Engle when she has not accounted for all rental income and substantiated all expenses.

Ms. Throne cannot be discharged of her duties until she has properly disclosed and released the Decedent's personal tangible property which has not been determined to be distributed to her: including all undisclosed tangibles and fire arms in her possession.

10 All YHG legal fees must be denied, whereas the legal fee stated in Mr. Mayfield's December 2016 Affidavit have not been substantiated³⁸ pursuant to URCP Rule 73; (1) \$4,381.00 of legal fees has been paid, adjustment for \$4,927.50 of improper legal fee regarding the conflict of interest with Wende Throne, individually.

10. It is requested the Court determine fair and reasonable attorney pursuant to UTC 75-3-718.

11. Karen Kreeck and her legal firm failed to act in the best interest of the Estate, when Ms. Kreeck or her firm allowed the Hi-Country Estate's Home Owners Association to obtain default Judgments against the Estate. Any payment of legal fees to Ms. Kreeck and her firm must be denies and she and her should be responsible for the Hi-Country Judgements to be paid in full, if they are not resolved through the terms of Settlement.

98. Judy's management did not include a major remodeling costs and labor to be charged to the Estate for reimbursement for her benefit for the Woods Cross and Cherokee Property, which also includes a large

³⁸ Exhibit M & N: YHG" Petition's Exhibit G, Line 11 -The request payment of \$29,695. The amount is not supported by all invoices and itemized list of legal fees and related costs. One statement of legal fees was submitted in the amount of \$20,536.50

portion of Roy Engle's \$20,000.00 labor claim on the Cherokee Property for excessive improvement not justified for a \$200 rent increase.

12. Judy Engle has claimed approximately \$29,500.00 in excessive expenses and unrelated expenses which include: the use of her truck (approximately \$6,500.0), for \$4,500.00 medial claim for an spider bit, \$1,500.00 for Bryan Booth (contracted to be paid from Price Property sale) and approximately \$17,000.00 for improvements to the Woods Cross Property. All these claim should be denied.

Judy has already benefited from Roy Engle's labor claim of \$15,000 paid by tangible and the sale of the Price Property for improvement and repairs to the Woods Cross Property.

13. Kathy Engle's should be compensated for labor and costs to manage the Crystal Avenue and Hi-Country Properties and for the distribution of the tangible personal property in an estimated amount of \$13,500.00, which would be consistent with the terms of Settlement and pursuant to U.S. Constitution, Article 13. Kathy was court order to provide labor to manage the properties and to prepare four reports for the Hi-Country properties, which have been extremely labor intensive.

14. Kathy Engle's priority 1 claim \$11,750.36 balance owing is next in line to be paid from any available funds, pursuant to the Settlement terms. This claim is not compensation for pro se labor whereas, she has not been compensation for labor and expenses for the management of properties and tangible distributions.

DATED: January 30, 2017

Kathy Engle
/s/ ke/
Kathy Engle, Pro Se
Petitioner

ADDENDUM T

2/24/17
ADDITIONAL
ATTORNEY FEES

Stephen J. Mayfield (10323)
YORK HOWELL & GUYMON
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Tel: (801) 527-1040
Fax: (801) 527-1000
steve@yorkhowell.com
Attorney for Special Administrator, Wendie Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF
HOMER ENGLE,
Deceased.

SUPPLEMENT TO AMENDED
SUPPLEMENTAL DECLARATION OF
COUNSEL RE REQUEST FOR
APPROVAL OF ATTORNEYS FEES

Case No. 103901948
Judge Keith Kelly

AFFIDAVIT OF STEPHEN J. MAYFIELD IN SUPPORT OF ATTORNEYS FEES

STATE OF UTAH)
 §
COUNTY OF SALT LAKE)

Stephen J. Mayfield, being first duly sworn, states as follows:

1. I am over eighteen years old, and am competent to testify regarding the facts stated in this affidavit. I am an attorney with the law firm of York Howell & Guymon, counsel for Wendie Throne, Special Administrator of the Estate of Homer Engle.

2. This supplement to amended affidavit is made in support of that Petition for Settlement of Estate, Decree of Distribution, Discharge of Personal Representative, and for Approval of Attorneys Fees, dated December 15, 2016.

3. The request for payment of attorneys fees is based on services rendered to the estate of Homer Engle and to Wende Throne, Special Administrator of the estate.
4. I submit this affidavit according to URCP Rule 73.
5. The amount of legal fees which remain unpaid for services rendered to the estate of Homer Engle and to Wende Throne, Special Administrator of the estate, from June 1, 2016 through December 31, 2016, is \$38,078.00.
6. The amount of legal fees which remain unpaid for services rendered to the estate of Homer Engle and to Wende Throne, Special Administrator of the estate, from January 1, 2017 through February 22, 2017, is \$22,237.25.
7. The Court should authorize and order payment to York Howell & Guymon in the amount of \$60,315.25 as just and reasonable compensation for services rendered on behalf of the estate of Homer Engle and to Wende Throne, Special Administrator of the estate, from June 1, 2016 through February 22, 2017.
8. According to U.C.A. § 75-3-718 attorneys for an estate are entitled to reasonable compensation for services provided on behalf of a personal representative and on behalf of an estate.
9. As attorney for the estate of Homer Engle and Wende Throne, Special Administrator of the estate, I assisted Wende Throne with regard to her duties of continuing to administer the estate of Homer Engle; appeared at various status hearings and hearings related to the implementation of the Settlement Agreement, assisted with distribution of the tangible personal property, including acting as mediator between the parties, drafted orders and otherwise followed court instructions to facilitate final closure of the Estate of Homer Engle.

10. I, and employees of York Howell & Guymon, have expended substantial time and effort on behalf of Wende Throne and the estate of Homer Engle. The fees requested are reasonable based on the time and effort expended, and based on the knowledge and experience contributed to and on behalf of the estate of Homer Engle and Wende Throne in her capacity as Special Administrator.

11. The Work Performed Report, attached as **Exhibit A**, reflects the substantial time and effort I, and employees of York Howell & Guymon, expended on behalf of Wende Throne and the estate of Homer Engle from the period of June 1, 2016 through February 22, 2017.

12. The allocation of legal fees for which payment is sought at this time is as follows:

Services for general representation and accounting June 1, 2016 through December 31, 2016	\$38,078.00
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Services for general representation January 1, 2017 through February 22, 2017	\$22,237.25
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TOTAL DUE	\$60,315.25
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13. The request for payment in the amount of \$60,315.25 is appropriate and justified under the statutory requirements for compensation of counsel of personal representative as provided under U.C.A. § 75-3-718.

14. According to U.C.A. § 78B-5-705, upon information and belief I state under criminal penalty of the State of Utah that the preceding is true and correct.

DATED: February 24, 2017.

YORK HOWELL & GUYMON

/s/ Stephen J. Mayfield
Stephen J. Mayfield, JD, LLM
Attorney for Special Administrator, Wende Throne

CERTIFICATE OF SERVICE

I state that I caused the preceding document to be served to the following persons by the indicated method on February 24, 2017.

Eldean Roy Engle
royengle2@gmail.com
 E-Filing
 US Mail
 E-Mail

Kathy Engle
kat22eng@ymail.com
 E-Filing
 US Mail
 E-Mail

Judy Engle
wildfire99_2@msn.com
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 E-Filing
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/s/ DP

Dallin Perry, Paralegal
YORK HOWELL & GUYMON

**WORK PERFORMED REPORT FOR
THE ESTATE OF HOMER ENGLE**
for the period of June 1, 2016
through February 21, 2017



SUMMARY	Hours	Average Rate	Amount
Work performed from June 1, 2016 through December 31, 2016	144.01	\$264.41	\$38,078.00
Work performed from January 1, 2017 through February 22, 2017	85.05	\$261.46	\$22,237.25

TOTAL DUE	229.06	\$263.32	\$60,315.25
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DETAILED DESCRIPTION OF WORK PERFORMED	Who	Date	Hours	Rate	Amount
Hearing on petition to close estate, inclusive of all oral arguments by attorneys, parties, etc. re attorneys fees, Hi Country and fraud claims by Judy.	steve@yorkhowell	2/21/2017	7.00	\$325.00	\$2,275.00
Attend and participate in hearing regarding our Petition to settle the estate.	Brett Hastings	2/21/2017	6.10	\$250.00	\$1,525.00
Correlation with assistant re documents to include for hearing appearance.	steve@yorkhowell	2/17/2017	0.10	\$325.00	\$32.50
Prepare for hearing on Feb. 21, 2017 to settle estate.	dallin@yorkhowell.com	2/17/2017	1.70	\$125.00	\$212.50
Preparation for Feb. 21, 2017 hearing.	dallin@yorkhowell.com	2/16/2017	3.30	\$125.00	\$412.50
Phone conference with Kathy Engle re proposed order on Feb. 6, 2017 hearing on tangible items; hi-country documents responses; and request for approval of Analysis of pleadings filed by Kathy re objection to Judy and objection to Isaac's petition for fees from escrow.	dallin@yorkhowell.com	2/15/2017	0.60	\$125.00	\$75.00
	steve@yorkhowell	2/14/2017	0.20	\$325.00	\$65.00
TC with Brett re response to Judy and Isaac re whether YHG is a first priority claimant and whether to attack Judy as vexacious litigant.	steve@yorkhowell	2/14/2017	0.30	\$325.00	\$97.50
Correlation with assistant to finalize orders re firearms, tangible items and the supplement to affidavit of counsel for S. A. re request for payment of attorneys Further discussion with Brett.	steve@yorkhowell	2/14/2017	0.60	\$325.00	\$195.00
	steve@yorkhowell	2/14/2017	0.30	\$325.00	\$97.50
Draft joinder. Edit and review proposed order on distribution of tangible items.	dallin@yorkhowell.com	2/14/2017	0.90	\$125.00	\$112.50
Phone conference with Kathy Engle regarding proposed order additions,					
Edit and review proposed order on tangible items. Review Exhibits to proposed order on tangible items from Feb. 6 hearing. File the same with the court. Edit	dallin@yorkhowell.com	2/14/2017	0.80	\$125.00	\$100.00
Finalize Reply to Objections to Petition to Settle Estate. Forward to Steve M. for review and approval. Update Estate Accounting with John Limb non-cash transactions. Update spreadsheet of current YHG legal fees to Estate	Brett Hastings	2/14/2017	2.60	\$250.00	\$650.00
Phone conference with Kathy Engle re proposed order on distribution of tangible	dallin@yorkhowell.com	2/13/2017	0.70	\$125.00	\$87.50
Continue drafting Reply to Objections to Petition to Settle Estate.	Brett Hastings	2/13/2017	1.80	\$250.00	\$450.00
Correlation re status of orders for tangibles and firearms.	steve@yorkhowell	2/10/2017	0.10	\$325.00	\$32.50
Review drafts of orders for tangibles and firearms.	steve@yorkhowell	2/10/2017	0.20	\$325.00	\$65.00
Review of proposed order and correlation with assistant re inclusion of exhibits.	steve@yorkhowell	2/10/2017	0.10	\$325.00	\$32.50
Edit and review proposed order regarding distribution of estate firearms. Draft email correspondence to Roy Engle regarding approval as to form on the	dallin@yorkhowell.com	2/10/2017	0.50	\$125.00	\$62.50
Edit and review proposed order on distribution of tangible personal property; assemble and review exhibits to the same.	dallin@yorkhowell.com	2/10/2017	0.40	\$125.00	\$50.00
Analysis of objection and petition from Isaac Paxman; analysis of objection from Hi Country and some pleadings from Judy; outline issues and priorities for hearing; research on confirming notice was sent to Hi Country; email correspondences with Kathy and assistant re Hi Country.	steve@yorkhowell	2/8/2017	1.30	\$325.00	\$422.50
Begin to draft order re distribution of tangible items; draft email to Wende re order and tangibles issues, and instruct her to correlate with Engle to sell the	steve@yorkhowell	2/7/2017	0.50	\$325.00	\$162.50
Correlation with assistant re documents for hearing on tangible items.	steve@yorkhowell	2/6/2017	0.20	\$325.00	\$65.00
Attended hearing on issues of tangibles; provided oral argument re issues of firearms; mediated disputes between Judy and parties re tangibles; provided	steve@yorkhowell	2/6/2017	4.20	\$325.00	\$1,365.00

ADDENDUM U

Name: Kathy Engle, Pro Se
Address: P.O. Box 2225
Arvada, CO 80001
Telephone No: 801 898-2444

FILED DISTRICT COURT
Third Judicial District

MAR 06 2017

Pro Se

SALT LAKE COUNTY

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH, PROBATE DIVISION
450 South State Street, Salt Lake City, UT 84114

Deputy Clerk

In the matter of the Estate of

OBJECTION AND RESPONSE

**TO YHG'S SUPPLEMENT TO
AMENDED SUPPLEMENTAL
DECLARATION OF COUNSEL RE
REQUEST FOR APPROVAL OF
ATTORNEY FEES DATED
FEBRUARY 24, 2017**

Deceased

Probate No. 103901948

Judge Keith Kelly

I, Kathy Engle, Pro Se, hereby submits my Objection and Response to the YHG Law Firm's SUPPLEMENT TO AMENDED SUPPLEMENTAL DECLARATION OF COUNSEL RE REQUEST FOR APPROVAL OF ATTORNEY FEES DATED FEBRUARY 24, 2017.

Mr. Mayfield on behalf of the York Howell & Guymon (YHG) Law Firm, filed another supplement to its prior request for approval of attorney fees, increasing the amount to \$60,315.25. The amount is excessive, whereas it included legal fees for the conflict of interest with Wende Throne, the Special Administrator and Wende Throne, individually regarding the Decedent's tangible personal property and the legal fees regarding Brett Hastings, an attorney who is not affiliated with the YHG Law Firm. Mr. Hastings has his own law practice separate from YHG.

Kathy Engle moves the Court to deny the YHG Legal fees for the following grounds:
The YHG legal fees are not just and reasonable compensation for services rendered on behalf of the

estate of Homer Engle and to Wende Throne, Special Administer of the estate, whereas there is approximately \$8,304.50 in legal fees regarding a conflict interest for a dual representation; there is excessive legal services; the payment of the legal fees is inconsistent with the terms of Settlement and the Priority 1 Claim balance of \$11,750.36 owing to Kathy Engle has not been paid.

1. The YHG failed to invoice and substantiate at least \$16,250.25 of his legal services (\$4,318.00 + \$9,158.50 + \$2,773.75) in its prior requests for attorney fees. These legal fees could not be verified or reviewed on a timely matter and included \$4,318.00 in duplicate charges relating to Mr. Hasting's legal fee services. See *Exhibit A*

2. On or about February 20, 2017, YHG filed a Supplement to include the missing invoice in the amount of \$2,773.75.

3. February 26, 2017, YHG filed another Supplement and with a new Declaration which included an itemized list of all its legal services by date order. This list also included legal services for Brett Hastings.

4. The newly itemized list did not include the duplicate billing of \$4,318.00. However, the list of services included an additional amount of \$3,442.50.50, for legal services, not previously stated in the original request for legal fees, filed February 14, 2017. These new charges should be denied as they were not included in the February 14, 2017 request for legal service, the deadline to file this document.

5. The \$3,442.50 amount appears to be an offset for the duplicate billing of \$4,318.00.

Amount billed 2/14/17	\$54,803.25	
Less Duplicate Billing	<u>(\$4,318.00)</u>	
Adjusted Amount Billed		\$50,485.25
Payment Requested 2/24/17	\$60,315.25	
Less new charges 2/13/17 to 2/21/17	<u>(\$ 6,387.50)</u>	
Adjusted Amount Billed		<u>\$53,927.75</u>
Amount not included in 2/14/17 Payment Request		<u>\$ 3,442.50</u>

6. The \$60,315.25 itemize list included new charges for legal fees in the amount of \$6,387.50 for the period of February 13, 2017 to February 21, 2017 which was not included on the February 14, 2017 request for payment. See **Exhibit B**

The following includes additional issues as a result of the supplements filed by the YHG on or about February 20, 2017 and February 24, 2017.

I

DUAL REPRESENTATION – CONFLICT OF INTEREST

7. There is a conflict of interest with the Special Administrator and with Wendie Throne, individually whereas, the YHG Law Firm cannot represent both parties. During the Court hearing January 6, 2017, Mr. Mayfield stated he could not represent Wendie Throne individually regarding the tangibles due to a conflict of interest when he is representing the Estate.

8. The dual representation during the hearing regarding the coins and other charges regarding the tangible property and Wendie Throne must be denied and redacted / credited off all YHG legal fees charges to the Estate. It is not ethical or fair for these legal fees to be charged to the Estate, which prevents creditors and priority 1 claims from being paid in part or in full.

9. Approximately \$8,304.50 in legal services relating to the tangible distribution and the coin hearing was identified as services rendered on behalf of Wendie Throne, individually. This included \$4,927.50¹ from October 3, 2016 and November 30, 2016, identified on the invoice dated December 13, 2016.² and approximately \$3,377.00 from December 8, 2016 to January 12, 2017. See **Exhibit B**

II

EXCESSIVE LEGAL SERVICES

10. Brett Hasting is hired by YHG for legal services provided to the Estate of Homer Engle and has charged at least \$12,725.00 plus an unknown amount of legal services for the Estate's accounting.

¹ \$4,927.50 legal fee regarding the conflict of interest was identified on Kathy's Objection to the Petition to Close Estate.

² Objection to Petition to Close the Estate, Kathy's Exhibit M

The legal fees charged by Bret Hasting is excessive and not reasonable. The \$12,725.00 must be denied.

11. Mr. Hasting has appeared in Court at six difference hearings, from August 15, 2017 to February 21, 2017. Mr. Hasting's hourly billing rate is \$250/hour. Mr. Mayfield's hourly billing rate is \$300/hour for a total hourly fee of \$550 for both attorneys to attend court hearings on behalf of the Estate. This is excessive and unnecessary, especially when Mr. Mayfield is fully aware of the limited amount of funds available from the sale of the Payson property.

Mr. Hasting's legal fees for the six court hearings³ is \$6,800.00.

12. Mr. Hasting charged at least \$5,925.00 in legal fees to prepare the Estate's response to Kathy, Judy and Roy's Engle objections, to the Petition to Close the Estate. These legal fees are excessive and not reasonable or justified.

13. The reply was very briefly stated, which included allegations regarding Judy Engle's Objection, which were vexatious. Mr. Hasting simply stated Judy was addressing the same issues and he did not provide any support to his vexatious claims. The reply for Roy was also briefly stated but with some valid points. Mr. Hasting made statements regarding the accounting issues raised by Kathy Engle as being the same issues. The Estate's accounting issues have not been present before the Court and have not been resolved. The accounting is incomplete, inaccurate and with improper transactions. Mr. Hasting did not provide any supporting documents to support his reply to Kathy's accounting issues.

14. Mr. Hasting's reply did not command a great deal of research and analysis to simply state the same old issues, when his legal fees services included at least \$5,925 to prepare spreadsheets and time to analyze the objections filed by the Siblings. The \$5,925 is excessive for the amount of work expended for the Reply he filed.

³ The five court hearings included; 8/15/16 \$800; 8/31/16 \$900 (meth issues, Payson sale); 9/27/16 \$900 (meth); 10/3/16 \$1,475; 10/27/16 \$1,200 and 2/21/17 \$1,525

15. It should also be noted, the Special Administrator's accounting prepared by Mr. Hasting was not prepared according to General Accepted Accounting Principles, which was stated in Kathy's Objection to the Petition to Close the Estate, filed January 30, 2017. Legal services for insufficient accounting should be denied.

III INCONSISTENT WITH TERMS OF SETTLEMENT

16. To be consistent with the terms of Settlement, Kathy Engle's Priority one claim balance of \$11,750.36 must be paid prior to any payment for administrative expenses and priority two claims, which includes the YHG legal fees. The legal fees must be denied until all priority one claims have been satisfied to be consistent with term of Settlement.

Pursuant to Utah Code Title 75-3-1102(3) – “all further disposition of the estate is in accordance with the terms of the agreement.”

Pursuant to Settlement page 12 – if we later discover that there were gaps where the parties neglected some detail or operated on differing assumptions The court will fill in those gaps based on what it believes is “*fair and reasonable*” and *most consistent with the terms we agreed to*. See *Exhibit D*

17. To pay YHG legal services prior to paying Priority 1 Claims is not fair and reasonable and is not “*most consistent with the terms we agreed to*”. All administrative expenses for legal service were included in Priority 2 categories to be paid after the Priority 1 claims have been paid in full.

18. Kathy Engle has a priority one claim balance owing of \$11,750.36.

19. It is not fair the other parties have their priority one claims paid in full, while Kathy's priority one claim is not paid in full.

20. It is not fair and “*most consistent with the terms we agreed to*” when the YHG legal fees are paid prior to paying Kathy's Priority 1 Claim.

21. Kathy Engle's two priority one claims included the McKinley pay off and the \$20,000 Administrative claim.

22. The McKinley pay off was paid by Kathy Engle from her personal funds. If the McKinley contract had not been paid by Kathy, the Settlement would have been compromised or possibly broken. Per the Settlement, McKinley was in first position to be paid. Kathy assumed that position, when she paid off the contract. See **Exhibit D**

23. To Kathy's detriment, she was not paid in the first position. She was forced to compromise her position to purchase an equity in the Price Property. The compromise has caused harm to Kathy, whereas the Price Property has not been sold. As a result, Kathy is currently paying over \$350/month on her funds used to pay off the McKinley contract.

24. Judy refuses to communicate with Kathy on the rental income and expenses. A law suit may need to be filed against Judy to recover these funds. Settling for the Price equity was another sacrifice on behalf of Kathy to move the Settlement forward, whereas, it was not in Kathy's best interest to be a partner with Judy in the Price Property purchase.

25. It is unfair Kathy made the necessary sacrifices and is continuing to pay over \$350/month on the funds used to pay off the McKinley contract, when Kathy was in a secured creditor's position to be paid first from any available funds.

26. The Payson Loan proceeds were earmarked to reimburse Kathy the McKinley loan payoff, which payment was not made. Instead, Judy received \$6,000.00 to make repairs to the Price Property and \$10,000 was paid to YHG Law firm. The Estate used Kathy's funds for its benefit at the detriment of Kathy Engle.

27. Kathy was denied the McKinley reimbursement payment which allowed the Estate the use of her funds without just compensation and violated the terms of Settlement. Kathy was not treated fairly and most consistent with the terms of Settlement.

28. The McKinley payment to Kathy was finally made through the Price Property sale.

29. A portion of Kathy's \$20,000 Priority 1 claim was also paid when the Price property was purchased.

30. The remaining balance owing on Kathy \$20,000 Priority 1 Claim is \$16,750.36, which is stated on the Price Property order. See Exhibit C

31. The following is a summary of the \$20,707.36 McKinley payoff and the \$3,249.64 funds from the Priority 1 Claim used to Purchase an equity in the Price Property

	<u>Priority 1 Claim</u>	<u>Price Purchase</u>
McKinley Payoff		\$20,797.36
Priority 1 Claim	\$20,000.00	
Less Funds for Price Property	(<u>\$ 3,249.64</u>)	<u>\$3,249.64</u>
Total funds used for Price Purchase		<u>\$24,047.00</u>

Amount owed to Kathy – Priority 1 Claim \$16,750.36

32. The \$16,750.36 amount was reduced by the \$5,000 payment to Mr. Paxman for Settlement of legal fee dispute. *The balance owing is \$11,750.36.* This payment is requested to be paid prior to payments for legal fees, per the terms of Settlement.

33. Kathy Priority 1 Claim balance in the amount of \$11,750.36 has not been paid and must be paid prior to Priority 2 Claims, which includes all Administrative expenses, YHG legal fees.

34. Kathy filed an objection to the Petition to Close the Estate January 30, 2017 and requested payment for the \$11,750.36 balance owing on her Priority 1 Claim. **See Exhibit R in the Objection.**

35. It is not fair to pay the other parties' priority claims in full and not pay Kathy Engle's Priority 1 claim in full, when there are funds available to pay Kathy.

36. The Siblings and Wende Throne's priority one claims are included in the Settlement Agreement on the attached Schedule C. See Exhibit D

Pursuant Settlement – Schedule C – Claims in each class are paid out of probate assets, meaning Payson + Price + tangibles.

Priority 1: each claim paid in full, in the order listed, until all are paid in full

McKinley Payoff	\$18,000.00
State St Taxes - Wende	\$22,000.00
Roy Engle – Labor	\$15,000.00
Judy – Zions Mortgage, Cherokee	\$30,000.00

Kathy - Sch C \$15,000 was modified to	\$20,000.00
Wende	\$15,000.00

Pursuant to Settlement Page 3 – WHEREAS, Kathy who is pro se in this matter, has also incurred substantial litigation costs, which the Parties agree are in the nature of administrative expenses with respect to the Estate.

Page 5 – Priority 1 includes McKinley, State St taxes, Payson taxes, Watson, Fannin 12K. It also includes \$30K of cash towards the Zions mortgage on Cherokee, plus \$15 to each of Roy, Kathy, Wende.

The sum of cash being paid to Kathy will be \$20,000 instead of \$15,000. (These payments remain as Priority 1 items.

37. Judy, Roy’s priority one claims were all paid in full with the purchase of the Price Property

See Exhibit C, which included:

Judy Engle – Zions Mortgage - Cherokee Property	\$32,653.00
Roy Engle – labor claims, Woods Cross & Price	\$15,000.00

38. Judy Engle was the big winner, she was allowed to pull \$32,653 from the Cherokee Property for an advanced distribution of the property Settlement. This was basically a cash out to Judy. The mortgage would have normally stayed with the property, whereas the mortgage was attached to the Cherokee Property.

It should be noted, the \$32,653 Judy received is approximately half the value of the Crystal property (property Kathy received in Settlement) the other half of the Crystal value, Kathy used her personal funds to pay off the McKinley contract. These funds now tied up in the Price Property, which Kathy is paying over \$350/month on.

39. Wende Throne has received many benefits which has satisfied payment on her \$15,000.00

Priority 1 Claim which included but not limited to:

State Street Property delinquent taxes	\$7,942.98
Cash withdrawals from Estate Checking account by Wende Throne	\$4,215.76
Estate funds used for Wende’s personal benefit:	
Auto Insurance payments for her personal vehicle	\$2,519.82
T-Mobile – Wende’s cell Phone	\$70.00
Parking – Matheson Court	\$243.25

40. The Siblings did not agree Wende could take benefits more than the siblings including

paying court parking. This was a Settlement. Wende took her administrative expenses in the \$15,000 Priority 1 Claim. Wende is double dipping.

41. The payoff on the State Street delinquent property taxes was May 27, 2015 in the amount \$30,474.85 which included \$7,942.98 for years 2013 and 2014 delinquent property taxes. See **Exhibit E**

42. The amount of Wende's priority 1 claim for the State Street taxes was \$22,000 for years 2009 to 2012. See **Exhibit D**

43. The Settlement did not state Wende could receive the State Street Property free of taxes after 2012. Rather, the Settlement specifically stated, Wende continues to manage units 2-5 and the management remained as status quo for the State Street Property (which included paying property taxes from rental income. See **Exhibit D**

Pursuant to Settlement Page 9 - Wende continues to manage 2 -5 and Payson. She will continue to use rent proceeds from State St 2-5 to pay utilities, maintenance, etc. just as now.

In Harmony with the modification noted above that the status quo shall remain in place until both Payson and Price have sold.

44. Wende benefited \$7,942.98 for her portion of the tax payment on the State Street delinquent property taxes, after Settlement. This amount should be applied to Wende's priority one claims of \$15,000.

45. Kathy Engle did not receive equal benefits for the Crystal property taxes after Settlement. The Crystal delinquent property taxes are currently \$4,992 and have not been paid. The taxes have not been paid because the Estate did not timely reimburse Kathy for the McKinley payoff which the funds are now tied up in the Price Property. It is a burden and a hardship on Kathy, if the \$11,750.36 priority 1 claim is not paid. The Crystal property taxes must be paid. See **Exhibit H**

46. Wende Throne benefited when she failed to pay \$7,942.98 in delinquent property taxes for the two years after Settlement on the State Street property.

47. Wende benefited when she received at least \$4,215.76 (\$1,300.00 + \$2,915.76) in cash withdrawals from the Estate's Checking accounting without any supporting documentation and \$2,453.05 for her personal auto insurance and vehicle repairs which was stated on the General Ledger Details. See Exhibit F

48. The unauthorized cash withdrawals, vehicle expenses and the State Street after settlement delinquent property taxes were not agreed funds per the terms of Settlement. The Siblings did not receive equal benefits. Wende Throne must be responsible for funds used for her personal benefit, which should reduce her Priority 1 Claim.

49. Wende Throne also benefit from Estate funds, when she did not report at least \$27,000 in rental income or include source documents to substantiate at least \$13,006.38 for expenses included in the Estate's accounting. See Kathy's Objection to the Petition to Close out Estate, filed January 30, 2017.

50. Wende Throne's two priority one claims (for the State Street Taxes and her \$15,000 administrative Priority 1 claim) have been paid in full.

51. It is unfair for Judy, Roy and Wende to receive benefits and have their priority one claims paid, when Kathy has not received equal benefits and her priority 1 claim, which may not be paid if the YHG legal fees are paid outside the terms of Settlement, in a first position.

52. It is unfair Judy is compensated for her labor and expenses when she has received rental income and claims additional funds to reimburse her for improvements to the Cherokee and Woods cross properties, which is a benefit to Judy who will receive the properties.

53. Kathy does not receive equal benefits for the Crystal property. The Crystal property does not have rental income. All expenses for weeds and yard maintenance and other issues is paid from Kathy's personal funds. There is currently a zoning issue with the dilapidate double wide mobile home, which must be removed by May 2017. The cost to remove the mobile home is estimated at \$5,000.

54. The mobile home situation was inherited with the Crystal property, the same situation Judy has with the single wide mobile home on the Woods Cross property.

55. It is not fair for Judy to receive expenses and compensation to improve the Woods Cross and Cherokee properties from Estate Funds, if Kathy does not receive equal benefits for the Crystal property. The properties are distributed "as is". The excess income from the Woods Cross property is sufficient to cover any out of pocket expenses for the State Street #1 and the Price Property. Judy's claim for expenses and compensation for these properties must be denied. See Kathy Objection filed January 30, 2017.

56. It is a burden and a hardship on Kathy, if the \$11,750.36 priority 1 claim is not paid. The Crystal property taxes must be paid and the mobile home must be removed, with an estimated cost of \$10,000.00. Additionally, there is an estimated cost of \$15,000 to demolish the old buildings vandalized during the period the Special Administrator was preserving and protecting the Crystal Property.

57. Judy Engle, Roy Engle and Wende Throne all have had their priority 1 Claims paid in full. There must be equal benefits to Kathy Engle to have her Priority 1 Claims paid in full, especially when \$10,000 from the Capital Assets Loan was paid to the YHG law firm and \$6,000 was paid to Judy (for the Price Property repairs) which funds were originally ordered to be paid to Kathy Engle for the McKinley contract payoff.

58. Kathy prays the Court to pay her the balance owing of \$11,750.36 on her priority 1 claim prior to any payments to any other party or creditor, including YHG for legal fees, to be consistent with the terms of Settlement.

59. It is respectfully requested, the Court Escrow account balance of \$26,000.00 is used to compensate Judy, Roy, Kathy and Wende equally for their management of the properties and tangible distribution. To be split four ways to resolve the many conflicts and disputed claims between the

parties.

60. The YHG is not entitled to the Court Escrow funds, as stated in Kathy's Objection to the Petition to Close the Estate, filed January 30, 2017. Any payment to the YHG or Isaac Paxman from the Court Escrow funds, now consolidated with the Estate, must be denied to be fair with the parties and in compliance with the terms of Settlement.

61. For Clarity, regarding Mr. Paxman's \$5,000 payment. Kathy did not ever state the \$5,000 she paid to Mr. Paxman should be subtracted from the Escrow funds should the Court award 50% of the court escrow funds to Mr. Paxman.

62. It was Mr. Paxman who stated on his Declaration, the \$5,000 payment he received from the Court was for legal fees. These legal fees were not related to Kathy's payment to him. See Mr. Paxman's Declaration - page 2, Line 5 Exhibit I, Page 2, Line 5

CONCLUSION

1. It is respectfully requested YHG and Mr. Paxman's legal fees are NOT paid from the Court Escrow rather both YHG and Mr. Paxman are paid from the proceeds of the Payson loan, after Kathy Engle's Priority 1 claim balance of \$11,750.36 has been paid in full, which is "most consistent with the terms of Settlement. The court may fill in the gap to be "most consistent" with the terms we agree to.

2. It is respectfully requested, the Court Escrow account balance of \$26,000.00 is used to compensate Judy, Roy, Kathy and Wende equally for their management of the properties and tangible distribution. To be split four ways to resolve the many conflicts and disputed claims between the parties.

3. It is respectfully requested the YHG's legal fees are reduced for the following but not limited to:

- a. Conflict of Interest – Wende Throne individually \$8,304.50
- b. Excessive legal fee charged by Brett Hasting \$12,725.00
Regarding Court hearings and Reply to Objections
Plus an unknown amount for the incomplete, unreliable
Estate accounting, which did not include source documents.
- c. Additional legal fees charged, which replaced the duplicate legal fees and unsubstantiated billings, which were not timely file on February 14, 2017 \$3,442.50

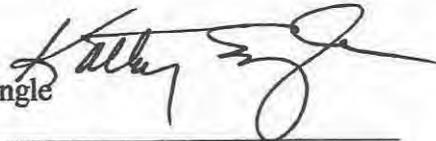
Estimated Legal fees denied \$24,472.00
Plus legal fees regarding the Estate accounting

d. All further disposition of the estate is in accordance with the terms of Settlement.

Utah Code Title 75-3-1102(3)

DATED: February 28, 2017

/s/ Kathy Engle



Kathy Engle, Pro Se

CERTIFICATE OF SERVICE

I hereby certify I caused on February 29, 2017, a true and correct copy of the foregoing Document, Objection and Response to YHG's Supplement to Amended Supplemental Declaration of Counsel RE: Request for Approval of Attorney fees dated February 24, 2017, which was served by email on the following persons:

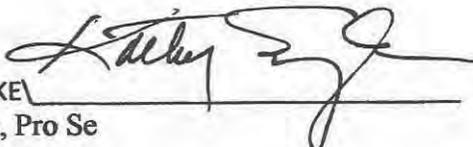
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