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**Jul 01 2022**

**SC Court of Appeals**

**EXHIBIT**

**1**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF:

Estate of Florence Petrak Mensch

Shauna M. Waddell, individually and as  
Personal Representative of the Estate of  
Florence Petrak Mensch and John R.  
Mensch,

Petitioners,

vs.

Sterling Raymond Mensch III, individually,  
as former Personal Representative of the  
Estate of Florence Petrak Mensch and in  
his former capacity as Agent under Power  
of Attorney for Florence Petrak Mensch,

Respondent.

IN THE PROBATE COURT  
THIRTEENTH JUDICIAL CIRCUIT  
CASE NO. 2018ES2302854

**FILED**

MAY 13 2020

GREENVILLE COUNTY  
PROBATE COURT

**FIRST AMENDED  
PETITION**

The Petitioners, John R. Mensch and Shauna M. Waddell, individually and as Personal Representative of the Estate of Florence Petrak Mensch, complaining of the above-named Respondent, Sterling R. Mensch III, individually, in his former capacity as Personal Representative of the Estate of Florence Petrak Mensch and in his former capacity as Agent under Power of Attorney for Florence Petrak Mensch, would respectfully show unto this Honorable Court as follows:

**PARTIES AND JURISDICTION**

1. Petitioner, John R. Mensch, is a citizen and resident of West Linn, Oregon.
2. Petitioner, Shauna M. Waddell, is a citizen and resident of Easley, South Carolina.
3. Respondent, Sterling R. Mensch III, individually, as former Personal Representative of the Estate of Florence Petrak Mensch and in his former capacity as Agent under a Power of Attorney for Florence Petrak Mensch, is a citizen and resident of Greer, South Carolina.
4. Florence Petrak Mensch died on April 26, 2018 in Greenville County, State of South Carolina ("Decedent").

5. Petitioners are adult descendants, successors in interest and named as beneficiaries in Decedent's Will, which is on file with the Court, and named as beneficiaries of certain non-probate assets owned by Decedent.
6. Respondent was appointed Personal Representative of the Estate of Florence Petrak Mensch by this Court on January 23, 2019.
7. Respondent was removed as Personal Representative of the Estate of Florence Petrak Mensch by Order of this Court on December 4, 2019.
8. Respondent, Sterling Raymond Mensch, III, was named as Agent under a Power of Attorney for Florence Mensch in that certain Durable Power of Attorney recorded in the Greenville County Register of Deeds Office on May 18, 2010 in Deed Book 2372 at Page 3133.
9. That this Court has personal jurisdiction over the parties hereto.
10. This Court has subject matter jurisdiction over the causes of action set forth herein.

#### GENERAL ALLEGATIONS

11. Sterling Raymond Mensch, III, John R. Mensch and Shauna M. Waddell are the biological children of Florence P. Mensch and named as equal beneficiaries in Florence P. Mensch's Will, which has been filed with the court.
12. Florence P. Mensch was not married at the time of her death.
13. Respondent, Sterling Raymond Mensch, III was named as Agent under a Power of Attorney for Florence P. Mensch in that certain Durable Power of Attorney recorded in the Greenville County Register of Deeds Office on May 18, 2010 in Deed Book 2372 at Page 3133.
14. After numerous requests by Petitioners for Respondent to communicate with Petitioners and provide information relating to the Decedent's assets, Respondent continued to ignore such requests and to withhold information from Petitioners.

15. Several months after Florence Mensch's death in 2018, when Respondent had failed to file the Application for Probate, Petitioner, Shauna Waddell, attempted to set up at least three meetings with Respondent to review the assets of the Estate and Respondent cancelled each time. At a fourth meeting scheduled by Shauna Waddell at the house owned by Florence Mensch which Respondent did and still does reside, Respondent attended the meeting but would not provide any of the requested records, and only vaguely described Florence Mensch's accounts without providing any specific information and failed to disclose the transfers he had made nor the fact that he had not filed tax returns for 2017 or 2018.
16. When asked by Shauna Waddell about the status of the Estate, Respondent indicated that he was waiting on his mother's income tax return to be prepared. A few months later, when asked again about the status of the Estate, Respondent indicated that he was dropping everything off at the attorney's office so that the attorney could administer the Estate. When Shauna Waddell called David Merline's office, which is the attorney that Respondent claimed to be using, David Merline told Shauna Waddell that he had not heard from Respondent. Subsequently, when Shauna Waddell asked Respondent about why David Merline had not heard from him, Respondent indicated that the secretary at Merline & Meachem's office must have lost the documents.
17. Pursuant to § 62-8-114 of the South Carolina Power of Attorney Act, Petitioners requested Respondent, Sterling Raymond Mensch III, to provide an accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during his time serving as Agent under a Power of Attorney for Principal, and such provides that the Agent under the Power of Attorney must comply with the request within thirty (30) days from the date of the request which was made on March 22, 2019. Respondent, Sterling

Raymond Mensch, III, failed to comply, or respond with a reason why he needed more time to comply, and therefore has violated § 62-8-114 of the South Carolina Power of Attorney Act.

18. Subsequent to the filing of Petitioner's Petition, upon motion by Petitioners for partial summary judgment and to compel, the Court issued an Order on August 28, 2019, attached to this Petition as Exhibit A, which required Respondent to produce an accounting of all receipts, disbursements and transactions conducted on behalf of the principal from May 17, 2010 until Florence Petrak Mensch's death on April 26, 2018, along with supporting documentation for such, along with an accounting of all probate and non-probate assets.
19. At the hearing on August 21, 2019, Respondent's attorney brought a box of documents to the hearing which were given to the Respondent's attorney the day before the hearing. Such documents did not constitute a complete accounting of all receipts and transactions conducted by Respondent, nor did it satisfy the request for an accounting of the probate and non-probate assets of the Estate.
20. The Order dated August 28, 2019 warned Respondent that there would be severe consequences if he did not comply.
21. Respondent did not produce the information required after the August 28, 2019 Order was issued, and Petitioner's refiled its Motion for Partial Summary Judgment and Motion to Compel in accordance with the Order.
22. The Court issued an Order on December 4, 2019, attached to this Petition as Exhibit B which required Respondent to do the following:
  - A. Provide a full accounting of the probate and non-probate assets of the Estate of Florence Mensch, along with all supporting documentation for such accounting, and subpoena any records which were not in Respondent's possession and control

within ten (10) days from entry and execution of the Order; to comply with § 62-8-114 and provide a full accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during Respondent's time as Agent under Power of Attorney for Florence Petrak Mensch within ten (10) days from entry and execution of the Order; and to comply with the Petitioners request for a non-probate property inventory in accordance with South Carolina Probate Code § 62-3-706 within ten (10) days from entry and execution of the Order.

B. Reimburse the Petitioners from Respondent's personal funds in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) within thirty (30) days of entry and execution of this Order.

C. Comply with the instructions set-forth in the Order dated August 28, 2019 and produce the records and accountings required therein within ten (10) days from entry and execution of the August 28, 2019 Order, which include, but not are not limited to: the items that Respondent failed to produce as outlined in the Affidavits of John Mensch and Shauna Waddell which were filed with the Court.

D. Respondent was to identify the name and identity of the account holder and institution for any financial accounts that received funds from any account formerly owned by Florence Petrak Mensch (regardless of whether or not such account was owned jointly with another person), or accounts now owned by the Estate of Florence Petrak Mensch, including any funds which were transferred before or after her death, via online transfer, withdrawal of cash or check written to such person or account. Such accounts specifically include, but are not limited to: the account

ending in 3259 and all accounts outlined in the Affidavits of John Mensch and Shauna Waddell which were filed with the Court. Respondent was ordered to identify any and all financial accounts in his name, or any other person or entity's name, which received funds from an account formerly owned by Florence Petrak Mensch, including but not limited to: the bank of America checking account ending in 7059 and the UBS retirement account ending in 1480 GE. Sterling Mensch was to provide the information outlined in this paragraph to Petitioners within five (5) days from entry and execution of this Order.

23. Respondent did not provide any information after the entry and execution of the December 4, 2019 Order, and therefore it follows that Respondent has still not accounted for, nor provided the necessary documentation required by the August 28, 2019 and December 4, 2019 Orders.
24. After over six months from the entry and execution of the December 4, 2019 Order, Respondent has not produced any further information and has continued to disregard the Court's Orders.
25. The December 4, 2019 Order removed Respondent as Personal Representative of the Estate of Florence Petrak Mensch.
26. The December 4, 2019 Order stated, "Due to the Respondent's willful failure to comply with the Order dated August 28, 2019, the clear risk of loss to the Estate of Florence Mensch and Respondent's violation of South Carolina Probate Code § 62-3-704 and § 62-3-706, Respondent Sterling Mensch is hereby removed as Personal Representative of the Estate of Florence Petrak Mensch."
27. The December 4, 2019 Order appointed Shauna Waddell as Personal Representative of the Estate of Florence Petrak Mensch.

28. Respondent's counsel filed a Motion to be relieved as counsel on February 11, 2020 which stated, "Sterling Raymond Mensch, III has been uncooperative, non communicative and nonresponsive to the undersigned's numerous requests for information to enable the undersigned to properly represent him. In particular, Sterling Raymond Mensch, III did not respond to numerous email requests for meetings necessary to properly prepare for the hearing held on November 20, 2019, and in fact failed to appear at such hearing. In addition the undersigned on December 9, 2019 emailed Mr. Mensch the order issued as a result of the hearing and to date the undersigned has had no response or other communication from Sterling Raymond Mensch, III."

29. After obtaining statements and other documentation from the various bank accounts owned by Florence Petrak Mensch, Petitioners discovered that Sterling Mensch had made hundreds of online transfers to himself and to his family which amounted to hundreds of thousands of dollars from Florence Mensch's accounts to his own accounts during his time as Power of Attorney for Florence Petrak Mensch.

30. Respondent withdrew a large amount of cash from Florence Mensch's bank account through various teller withdrawals.

31. Respondent transferred funds from the Bank of America checking account of Florence Petrak Mensch, account number ending in 7059 for online payments of the credit card bill for the Bank of America credit card owned by Sterling Mensch, to account ending in account number 7061.

32. The transfers made by Sterling Mensch were in violation of the South Carolina Power of Attorney Act, the Power of Attorney of Florence Petrak Mensch and other applicable statutory and common laws of South Carolina.
33. After further obtaining bank statements for accounts owned by Sterling Mensch, Petitioners discovered that Respondent, Sterling Mensch, had spent the money Respondent transferred from Florence Petrak Mensch to his Bank of America Checking Account ending in 3259 on extravagant dinners, events for his family, jewelry, extensive travel, furniture, wine and liquor and other expenditures for Respondent's own personal benefit.
34. Upon information and belief, Sterling Mensch added himself as a joint owner of Florence Mensch's Bank of America checking account ending in account number 7059.
35. In less than three and a half years, between December 23, 2014 and April 23, 2018, Sterling withdrew and/or transferred well over a million dollars from the IRA and investment accounts of Florence Mensch into her Bank of America checking account ending in 7059.
36. Florence Mensch's rent, meals and memory care expenses at managed care facilities for those three and a half years totaled only \$215,410.39 and, between December 23, 2014 and April 23, 2018 she received approximately \$116,254.55 in income from GE Pension and Social Security during that time.
37. On April 23, 2019, three days before Florence Petrak Mensch passed away while she was in hospice care and when it was obvious that she was very close to death, Respondent transferred \$259,000.00 from Florence Mensch's UBS retirement account, which would have passed to Florence Mensch's three children under her Will, to Florence Mensch's Bank of America checking account ending in 7059. From the time of Florence Mensch's death until February

- 18, 2019, Respondent proceeded to transfer these funds from Florence Mensch's Bank of America checking account to his checking account ending in 3259.
38. Prior to the Court removing Respondent as Personal Representative of the Estate, Respondent listed Florence Petrak Mensch's UBS Retirement Account on the Probate Inventory with a value of \$409,652.44, which is what it would have been had Respondent not transferred \$259,000.00 from the UBS retirement account to Florence Petrak Mensch's checking account three days before Florence Mensch's death, which Sterling Mensch had made himself a joint owner of.
39. The transfers made by Respondent from the retirement accounts of Florence Mensch created unnecessary tax liability for Florence Petrak Mensch and her Estate.
40. Respondent failed to file tax returns for Florence Mensch for years 2017 and 2018, and the taxes which were due have now accrued failure to file penalties, failure to pay penalties and other penalties and interest which continue to accrue to Florence Mensch's Estate.
41. After Florence Petrak Mensch's death, Respondent failed to notify the Company paying Florence Mensch's pension that she had passed away, and Respondent continued to remove funds from Florence Petrak Mensch's checking account which included the pension funds. By the time Sterling Mensch was replaced as Personal Representative by Shauna Waddell, the balance in Florence Mensch's checking account was less than the Pension payments her account received after her death.
42. Respondent has subjected the Estate to potential liability for the pension funds due to Respondent not reporting Florence Mensch's death to the Company and taking the pension funds out of Florence Mensch's account for his own personal use.

43. While Respondent was Power of Attorney for Florence Mensch, he kept a large proportion of her assets in GE Stock, which lost a substantial amount of value, and even as it continued to decline he neglected to seek financial advice or to sell the stock, despite being advised that he should sell such by Shauna Waddell.
44. While Sterling Mensch was Agent under Power of Attorney for Florence Mensch, Ms. Mensch had to pay penalties and interest to South Carolina Department of Revenue and the IRS for five years in a row: 2012, 2013, 2014, 2015 and 2016.
45. During Respondent's time as Agent under the Power of Attorney for Decedent, Decedent had several liens filed against her for failure to pay homeowners association dues and failure to pay income taxes. A Lis Pendens and Complaint was filed by the homeowner's association against Decedent in the Greenville County Court of Common Pleas for failure to pay homeowners association dues, and only after such was filed did Respondent pay the homeowners association dues.
46. Respondent also failed to recover over 18 parcels of unclaimed property in Decedent's name in the amount of \$38,208.00 even after being informed of such by Petitioner, Shauna M. Waddell, on multiple occasions.
47. Upon an accounting of the assets of the Estate, along with an accounting of the receipts and disbursements by Respondent during his time as Agent under the Power of Attorney for Florence Petrak Mensch, such accounting will show that assets were misappropriated by Respondent in violation of the South Carolina Power of Attorney Act and other applicable South Carolina laws.
48. Respondent has continued to transfer large amounts of funds from his financial accounts in an effort to make himself judgment proof.

**FOR A FIRST CAUSE OF ACTION  
(FAILURE TO COMPLY WITH § 62-8-114 OF THE SOUTH CAROLINA POWER OF  
ATTORNEY ACT)**

49. That all allegations set forth herein which are not inconsistent herewith are hereby realleged as if fully set forth in this cause of action.

50. Petitioners are Successors in Interest to Decedent's Estate as named beneficiaries in Decedent's Will which has been filed with the Court and have been named as beneficiaries on certain non-probate assets.

51. Respondent, Sterling Raymond Mensch, III, was appointed Agent under the Power of Attorney for Florence R. Mensch in that certain Durable Power of Attorney recorded in the Greenville County Register of Deeds Office on May 18, 2010 in Deed Book 2372 at Page 3133, and such is attached hereto as Exhibit A.

52. Pursuant to § 62-8-114 of the South Carolina Power of Attorney Act, Petitioners requested Respondent, Sterling Raymond Mensch III, for an accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during his time serving as Agent under a Power of Attorney for Principal, and such provides that the Agent under the Power of Attorney must comply with the request within thirty (30) days from the date of the request which was made on March 22, 2019.

53. Respondent, Sterling Raymond Mensch, III, failed to comply, or respond with a reason why he needed more time to comply, and therefore has violated § 62-8-114 of the South Carolina Power of Attorney Act. As previously stated herein, the Court has issued Orders attached hereto as Exhibit A and Exhibit B demanding that Petitioner comply with § 62-8-114 and provide an accounting of the assets of the Estate.

54. Respondent has willfully disregarded the Court's Orders and has not produced documentation nor responses of any kind after the December 4, 2019 Order was issued.

55. Petitioners request the Court issue further Orders and Rules to Show Cause demanding Sterling Raymond Mensch, III to comply with the statute and to provide an accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during Sterling Raymond Mensch, III's time serving as Agent under the Power of Attorney since May 17, 2010.

56. As a direct and proximate result of Respondent's failure to comply with § 62-8-114 of the South Carolina Power of Attorney Act and with the Court's Orders, the Estate of Florence Mensch has suffered damages, including but not limited to: actual, consequential, incidental and punitive damages.

57. Petitioners are therefore entitled to recover damages for Respondent's failure to comply with § 62-8-114 of the South Carolina Power of Attorney Act and subsequently with the Court's Orders in an amount to be determined by the Court.

**FOR A SECOND CAUSE OF ACTION  
(ACCOUNTING)**

58. All allegations set forth herein which are not inconsistent herewith are hereby realleged as if fully set forth in this cause of action.

59. Decedent's Will explicitly states in Item 12 on Page 9 and 10:

"My Personal Representative and Trustee shall keep all records and books of account and shall prepare inventories and accountings which must be filed with the Probate Court, and shall give the beneficiaries a statement of their receipts and disbursements and investments at least annually."

60. Decedent's Will further states in Item 12 on Page 10:

"At all reasonable times my Personal Representative and Trustee shall make all records, books of account, inventories and related papers and documents available for inspection by the beneficiaries hereunder or their authorized representatives."

61. Despite several demands by Petitioners, and several Orders issued by the Court, Respondent has failed to provide or otherwise make available all records, books of account, inventories and related papers and documents.

62. In addition, Petitioners filed a demand for non-probate property inventory with the Probate Court and Respondent has not provided such as of the filing of this Petition.

63. Petitioners are entitled to seek an accounting by Sterling Mensch of all receipts and expenditures made to or from funds or accounts of Florence Mensch or the Estate of Florence Mensch and for all other personal property of Florence Mensch used or possessed by Sterling Mensch for the entire period during which Sterling Mensch held power of attorney for Florence Mensch and of all of the probate and non-probate assets of the Estate, and Petitioners request an Order from the Court demanding that Respondent produce an accounting disclosing all transactions conducted by him in his capacity as former Agent under Power of Attorney for Florence Mensch and as former Personal Representative of her Estate.

**FOR A THIRD CAUSE OF ACTION  
(PETITION TO REVIEW AGENT'S CONDUCT UNDER POWER OF ATTORNEY  
AND GRANT APPROPRIATE RELIEF PURSUANT TO § 62-8-116 AND § 62-8-117 OF  
THE SOUTH CAROLINA POWER OF ATTORNEY ACT)**

64. That all allegations of this Petition are reaffirmed as fully as if repeated herein.

65. Petitioners, as beneficiaries named in Decedent's Will, request the Court to construe the Power of Attorney and review Respondent, Sterling Raymond Mensch's conduct during his time as Agent under the Power of Attorney for Decedent.

66. Decedent had several liens filed against her for failure to pay homeowners association dues and income taxes during Respondent's time as Agent under a Power of Attorney for Decedent. A Lis Pendens and Complaint was filed by the homeowner's association against Decedent in the Greenville County Court of Common Pleas for failure to pay homeowners association dues, and only after such was filed did Respondent pay the homeowners association dues.

67. Decedent's Estate is valued substantially lower than Petitioners expected, and upon an accounting of the receipt and disbursements, such accounting will prove large amounts of assets were misappropriated by Respondent in violation of the South Carolina Power of Attorney Act and Florence Mensch's Power of Attorney.

68. Upon review of the bank statements of Florence Petrak Mensch, Respondent made a large amount of online transfers and teller withdrawals during his time serving as Agent under Power of Attorney for Florence Mensch.

69. Respondent failed to file tax returns for Florence Mensch for 2017 and 2018 which have caused, and will continue to cause, large amounts of penalties and interest to be owed by her Estate.

70. Petitioners request the Court order Sterling Raymond Mensch, III, to restore the value of the Principal's property to what it would have been had the violation(s) not occurred pursuant to § 62-8-117 of the South Carolina Probate Code, including any interest and appreciation that should have accrued from the time of the violation.

**FOR A FOURTH CAUSE OF ACTION  
(BREACH OF FIDUCIARY DUTY)**

71. That all allegations set forth herein not inconsistent herewith are hereby realleged

as if fully set forth in this cause of action.

72. Respondent owed fiduciary duties including a duty of care and duty of loyalty to Florence Mensch and the successors in interest to her Estate by virtue of his capacity as Agent under power of attorney for Florence Mensch.

73. Respondent breached these fiduciary duties by:

A. Making numerous transfers from Florence Mensch's account(s) to his own bank accounts for Respondent's personal gain;

B. Failing to keep an adequate record of all receipts, disbursements and transactions made on behalf of Florence Mensch;

C. Failing to act only within the scope of authority granted in the power of attorney;

D. Failing to act loyally for the Principal's benefit;

E. Failing to attempt to preserve Principal's estate plan;

F. Failing to file tax returns for Florence Mensch causing her to incur substantial penalties and interest which continue to accrue to her Estate;

G. Failing to invest Florence Mensch's assets in a prudent manner;

74. In addition to the duties owed to Florence Mensch and to the successors in interest to her Estate during her life, Respondent, as Personal Representative of the Estate owed fiduciary duties including duty of care and duty of loyalty to the Petitioners as beneficiaries of Florence Mensch's Estate.

75. Respondent ignored requests by Petitioners for an accounting of receipts and disbursements during his time as Power of Attorney despite the requirement to provide such under § 62-8-114 of the South Carolina Power of Attorney Act.

76. As Personal Representative of the Estate of Florence Petrak Mensch, Respondent has a fiduciary duty to the beneficiaries of the Estate and has breached that duty by failing to comply with the requests for an accounting of receipts and disbursements made by him as Agent under the Power of Attorney in accordance with § 62-8-114 of the South Carolina Power of Attorney Act.

77. Decedent's Will explicitly states in Item 12 on Page 9 and 10:

"My Personal Representative and Trustee shall keep all records and books of account and shall prepare inventories and accountings which must be filed with the Probate Court, and shall give the beneficiaries a statement of their receipts and disbursements and investments at least annually."

78. Decedent's Will further states in Item 12 on Page 10:

"At all reasonable times my Personal Representative and Trustee shall make all records, books of account, inventories and related papers and documents available for inspection by the beneficiaries hereunder or their authorized representatives."

79. Despite numerous requests by Petitioners for Respondent to communicate with Petitioners and provide information relating to the Decedent's assets, Respondent continued to ignore such requests and to withhold information from Petitioners, and has still not provided the accounting or documentation that the Court demanded him provide in the August 28, 2019 and December 4, 2019 Orders.

80. When asked by Shauna Waddell about the status of the Estate, Respondent indicated that he was waiting on his mother's income tax return to be prepared. A few months later, when asked again about the status of the Estate, Respondent indicated that he was dropping everything off at the attorney's office so that the attorney could administer the Estate. When

Shauna Waddell called David Merline's office, which is the attorney that Respondent claimed to be using, David Merline told Shauna Waddell that he had not heard from Respondent. Subsequently, when Shauna Waddell asked Respondent about why David Merline had not heard from him, Respondent indicated that the secretary at Merline & Meachem's office must have lost the documents.

81. During the time Respondent was refusing to provide information and refusing to move forward with probating the Estate, he transferred a large amount of the funds he had taken from Florence Mensch's accounts to his own accounts and engaging in excessive spending as shown by his financial accounts and as will be further shown by an accounting of the transactions Respondent engaged in.

82. Upon an accounting of the assets of the Estate, and of the receipts and disbursements from the transactions conducted by Respondent during his time as Agent under the Power of Attorney for Florence Petrak Mensch, such accounting will prove that assets were misappropriated and/or used improperly by Respondent in violation of the South Carolina Power of Attorney Act and other applicable laws of South Carolina.

83. As Personal Representative of the Estate of Florence Petrak Mensch, Respondent has a fiduciary duty to the beneficiaries of the Estate and has breached that duty by failing to comply with the requests for an accounting of receipts and disbursements made by him as Agent under the Power of Attorney in accordance with § 62-8-114 of the South Carolina Power of Attorney Act, along with his failure to properly respond and make records available to the beneficiaries of the Estate, which continues as of the date of this Amended Petition despite the Orders from the Court demanding that Respondent provide the accounting and supporting documentation.

84. In addition, Respondent breached that duty by failing to inform Petitioners that he had not filed tax returns, that he had stolen money from the pension fund, that he had converted assets belonging to the Estate to his own and that he had spent most of the money he took for his and his families own personal benefit and enjoyment.

85. As a direct and proximate result of Respondent's breach of his fiduciary duties, the Estate of Florence Mensch has suffered damages, including but not limited to, actual, consequential and incidental damages associated with the Agent's breach. Petitioners are therefore entitled to recover damages for the Respondent's breach in an amount to be determined by the trier of fact.

**FOR A FIFTH CAUSE OF ACTION  
(FRAUDULENT AND NEGLIGENT MISREPRESENTATION AND CONCEALMENT)**

86. That all allegations contained herein are re-alleged and incorporated herein by reference as if fully set forth herein.

87. After Respondent refused to move forward with administering the Estate, and after several months passed with no information from Respondent, Shauna Waddell began to inquire as to the status of the Estate and the assets of the Estate.

88. Shauna Waddell attempted to set up at least three meetings with Respondent to review the assets of the Estate and Respondent cancelled each time. At a fourth meeting scheduled by Shauna Waddell, Respondent showed up to the meeting, because such was at Florence Mensch's property which Respondent was occupying, but did not provide any of the requested records, only vaguely described the accounts without providing any specific information and failed to disclose that he had not filed tax returns for Florence Mensch nor that he had taken hundreds of thousands of dollars from Florence Mensch's accounts during his time as power of attorney for Florence Mensch.

89. When asked by Shauna Waddell about the status of the Estate, Respondent stated that he was waiting on his mother's income tax return to be prepared. A few months later, when asked again about the status of the Estate, Respondent indicated that he was dropping everything off at the attorney's office so that the attorney could administer the Estate. When Shauna Waddell called David Merline's office, which is the attorney that Respondent claimed to be using, David Merline told Shauna Waddell that he had not heard from Respondent. Subsequently, when Shauna Waddell asked Respondent about why David Merline had not heard from him, Respondent indicated that the secretary at Merline & Meachem's office must have lost the documents.

90. In contrast to the representation by Respondent that he was waiting on the 2018 tax return to be filed, Respondent in fact did not file a tax return for Florence Mensch in 2017 nor 2018 and had not retained David Merline to help with administration of the Estate.

91. Respondent intentionally made the false representation due to the fact that he had taken large amounts of money from Florence Mensch during the years that he served as Agent under Power of Attorney for Florence Mensch, and was attempting to delay any action or knowledge by Petitioners so that he could further transfer and spend the funds he had taken and was continuing to take from Florence Mensch and her Estate.

92. Prior to the Court removing Respondent as Personal Representative of the Estate, Respondent listed Florence Petrak Mensch's UBS Retirement Account on the Probate Inventory with a value of \$409,652.44, which is what it would have been had Respondent not transferred \$259,000.00 from Florence Mensch's UBS retirement account to Florence Mensch's checking account three days before Florence Mensch's death. Upon information and belief, Sterling Mensch had previously made himself a joint owner of such checking account which was also never disclosed to Petitioners. Such was a misrepresentation to Petitioners as beneficiaries of the Estate,

and also a misrepresentation to the Court in the notarized Probate Inventory he submitted to the Court.

93. Respondent's failure to produce an accounting to Petitioners, even after two Orders were issued from the Court demanding that he do so, and his failure to disclose the fact that he had taken large amounts of money from Florence Mensch and not filed tax returns, constitute fraudulent concealment as he had a duty to speak due to the Court's Orders and due to his position as Personal Representative of the Estate of Florence Mensch.

94. Respondent owed a duty of care to communicate truthfully with Shauna Waddell and John Mensch as equal beneficiaries under Florence Mensch's Will and successors in interest to the Estate of Florence Mensch.

95. Respondent continuously breached his duty by failing to exercise due care in communicating and providing information to Petitioners.

96. Petitioners justifiably relied on the representations by Respondent.

97. Petitioners have suffered loss as a result of the misrepresentations by Respondent in an amount to be shown at the trial of this case.

98. Petitioners are entitled to all actual, consequential and incidental damages caused by Respondent's Fraudulent and Negligent Misrepresentations and Concealments. Respondent's actions were willful, wanton or in reckless disregard of Petitioners' rights and therefore Petitioners are entitled to punitive damages.

**FOR A SIXTH CAUSE OF ACTION  
(CONVERSION)**

99. That all allegations contained herein are re-alleged and incorporated herein by reference as if fully set forth herein.

100. Respondent used his capacity as Power of Attorney to exercise exclusive control and dominion over funds, financial accounts, and other property owned by Florence Mensch for Respondent's own benefit, including but not limited to, numerous teller cash withdrawals and online transfers from accounts owned by Florence Mensch to accounts owned by Respondent.

101. Respondent made hundreds of online transfers from accounts owned by Florence Mensch to himself and to his family during his time as Power of Attorney for Florence Petrak Mensch and during his time as Personal Representative of the Estate of Florence Mensch.

102. Respondent withdrew cash from Florence Mensch's accounts through numerous teller withdrawals.

103. Respondent used such funds transferred from Florence Mensch's accounts to his accounts to benefit Respondent in the form of extravagant purchases and expenditures for Respondent and his family.

104. On April 23, 2019, three days before Florence Petrak Mensch passed away, while she was in hospice care and when it was obvious that she was very close to death, Respondent transferred \$259,000.00 from Florence Mensch's UBS retirement account, which would have passed to Florence Mensch's three children under her Will, to her checking account ending in 7059. From the time of Florence Mensch's death until February 18, 2019, Respondent proceeded to transfer funds from the checking account ending in 7059 to his checking account ending in 3259.

105. In the event that Respondent added his name as a joint account holder to any accounts owned by Principal, such creation of a joint account was improper in breach of Respondent's fiduciary duties to Florence Mensch and the successors in interest to her Estate.

106. Pursuant to S.C. Code Ann. §62-6-201 and the common law of South Carolina,

any funds in a joint account of Sterling Mensch and Florence Mensch belonged to Florence Mensch because Florence Mensch contributed the funds to the joint account(s).

107. The Estate of Florence Mensch is the rightful and beneficial owner of the funds converted by Respondent.

108. Agent has refused to relinquish control over the property described above.

109. Agent has therefore converted property owned by Florence Mensch and her Estate.

110. The Estate of Florence Mensch is therefore entitled to an order for possession of the property described above; damages for Respondent's unlawful retention of the property; or, in the event the property may not be had, for an order directing payment of the value of the property improperly converted by Respondent.

**FOR A SEVENTH CAUSE OF ACTION  
(NEGLIGENCE)**

111. That all allegations contained herein are re-alleged and incorporated herein by reference as if fully set forth herein.

112. Respondent owed a fiduciary duty to Florence Mensch and her successor in interest as her Agent under Power of Attorney.

113. Respondent breached his duty by not diversifying her investments and leaving a large amount of Florence Mensch's assets in GE stock and failing to sell the stock despite significant decline in the stock. Respondent further breached this duty by failing to file tax returns for Florence Mensch for 2017 and 2018 despite taxes being due which in addition to the tax liability which was unnecessarily incurred has also caused large amounts of penalties and interest, including but not limited to: failure to file and failure to pay penalties.

114. Respondent made large amounts of transfers and liquidated Florence Mensch's interest in certain assets which would have gained in value if such transfers and liquidations had not occurred.

115. Respondent's negligence proximately caused damage to Florence Mensch, her Estate and her successors in interest.

116. Due to Respondent's negligence in not diversifying Florence Mensch's assets and not filing tax returns, among other facts listed in previous paragraphs of this Petition and to be further discovered in discovery for this matter, the Estate of Florence Mensch and Petitioners as her successors in interest have been damaged in an amount to be determined by the Court.

**FOR A EIGHTH CAUSE OF ACTION  
(MOTION FOR EVICTION/EJECTMENT)**

117. That all allegations contained herein are re-alleged and incorporated herein by reference as if fully set forth herein.

118. In the Court's December 4, 2019 Order attached hereto as Exhibit B, the Court states, in pertinent part, "The Court will not issue as part of this Order for Sterling Mensch to vacate the Home located at 512 New Tarleton Way, Greer, SC 29650 (the "Home") because that issue is not properly before the Court and Respondent was not on notice of such request. However, the successor Personal Representative, Shauna M. Waddell, has certain statutory powers and authority under the Will and she may decide how she wishes to possess or control the Home. In addition, the Court cautions Respondent against removing any fixtures in the Home and against damaging the Home, or the surrounding Property, in any way. There will be severe consequences if the Respondent causes damage to the home, including sanctions and potentially being held in contempt until such damages is repaired by Respondent."

119. Petitioners request an Order from the Court requiring the Petitioner to vacate the Property located at 512 New Tarleton Way, Greer, SC 29650.

120. To the extent of any damage caused to the home, Petitioners request an Order from the Court requiring Respondent repair such damages.

**FOR A NINTH CAUSE OF ACTION  
(UNJUST ENRICHMENT/MONEY HAD AND RECEIVED)**

121. That all allegations contained herein are re-alleged and incorporated herein by reference as if fully set forth herein.

122. Respondent took funds, financial accounts, and other property owned by Florence Mensch and utilized said property for his own personal benefit in violation of the Power of Attorney Act and the Financial Power of Attorney.

123. Respondent has refused to return any of the funds and/or property he improperly converted for his own personal benefit.

124. As a result of Respondent's actions and conduct described herein, Respondent has received and appreciated benefits that would be inequitable for him to retain under the circumstances.

125. Respondent should be required to disgorge all moneys, profits and other gains that he has obtained at the expense of Florence Mensch and her Estate.

**FOR A TENTH CAUSE OF ACTION  
(CONSTRUCTIVE TRUST)**

126. That all allegations contained herein are re-alleged and incorporated herein by reference as if fully set forth herein.

127. Petitioners request the Court to impose a Constructive Trust in favor of the Estate of Florence Mensch over all funds which were transferred, or withdrawn, by Sterling Mensch from Florence Mensch's accounts.

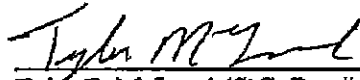
128. Petitioners request the Court to impose a Constructive Trust in favor of the Estate of Florence Mensch over all funds which were transferred by Sterling Mensch from Florence Mensch's UBS retirement account, or any other account owned by Florence Mensch, to the Bank of America Checking Account which Sterling Mensch made himself a joint owner of and over all funds which Sterling Mensch now has in his possession.

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**WHEREFORE**, the Petitioners pray as follows:

- 1) For an Order compelling Respondent, Sterling Raymond Mensch, III, to provide an itemized accounting of all receipts and disbursements made as Agent under Power of Attorney to or from funds or accounts owned by Florence Petrak Mensch since May of 2010, as he is required to under § 62-8-114 of the South Carolina Power of Attorney Act;
- 2) For an Order compelling an accounting of all of the probate and non-probate assets of the Estate, and an order from the Court demanding that Respondent make all records, books of account, inventories and related papers and documents available for inspection by the Petitioners or their authorized representatives;
- 3) For the Court to construe the Power of Attorney of Florence Petrak Mensch and review the Agent's conduct, and grant appropriate relief pursuant to § 62-8-116 and as provided in § 62-8-117 to restore the value of the principal's property to what it would have been had the violation(s) not occurred;
- 4) Petitioners request the Court to impose a Constructive Trust in favor of the Estate of Florence Mensch over all funds which were transferred by Sterling Mensch from Florence Mensch's UBS retirement account, or any other account owned by Florence Mensch, to the Bank of America Checking Account which Sterling Mensch made himself a joint owner of and over all funds which Sterling Mensch now has in his possession;
- 5) A judgment for damages, including all actual, consequential and punitive damages;
- 6) Reasonable attorney's fees and costs of this action;
- 7) For such other and further relief as the Court deems just and proper.

**BROWN, MASSEY, EVANS,  
MCLEOD & HAYNSWORTH, LLC**



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Tyler E. McLeod (S.C. Bar # 101309)

R. David Massey (S.C. Bar #3681)

106 Williams St.

Greenville, SC 29602

(864) - 271-7424

[tmcleod@bmemhlaw.com](mailto:tmcleod@bmemhlaw.com)

[davidmassey@bmemhlaw.com](mailto:davidmassey@bmemhlaw.com)

*Attorneys for Petitioners,  
Shauna M. Waddell and John R. Mensch*

May 12, 2020

# Exhibit A

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
IN THE MATTER OF THE ESTATE )  
OF FLORENCE PETRAK MENSCH )  
John R. Mensch and Shauna M. Waddell, )  
Petitioners, )  
vs. )  
Sterling Raymond Mensch III, individually, )  
as Personal Representative of the Estate of )  
Florence Petrak Mensch and in his former )  
capacity as Agent under a Power of )  
Attorney for Florence Petrak Mensch, )  
Respondent. )

IN THE PROBATE COURT  
THIRTEENTH JUDICIAL CIRCUIT  
C.A. No.: 2018-ES-2302854

**FILED**  
AUG 28 2019  
GREENVILLE COUNTY  
PROBATE COURT

## ORDER

This matter comes before the Court on August 2, 2019 upon Petitioners, John R. Mensch and Shauna M. Waddell, filing the following motions: (i) a Motion for partial Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to Petitioners' claims for failure to comply with § 62-8-114 of the South Carolina Probate Code, Accounting, Removal of Personal Representative, and Application for Appointment of Personal Representative; and (ii) a Motion to Compel requesting the Court to compel Respondent to comply with § 62-8-114 of the South Carolina Probate Code, which requires Respondent to provide an accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during Respondent's time as Agent under Power of Attorney for Florence Petrak Mensch. Petitioners also requested an Order compelling Respondent to provide an accounting of the probate and non-probate assets of the Estate, and for Respondent to

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make all records, books of account, inventories and related papers and documents available for inspection by the beneficiaries or their authorized representatives pursuant to Decedent's original Will which is on file with the Court. In addition, Petitioners requested the Court to demand Respondent to produce a non-probate property inventory, based upon Petitioners having filed Form 327, which was filed with the Court and served on Respondent on March 18, 2019, and which Respondent had not provided to Petitioner as of the day of the hearing. A hearing was held on the pending motions on August 21, 2019. Present at the hearing were Tyler E. McLeod of Brown, Massey, Evans, McLeod & Haynsworth, LLC representing Petitioners and Shauna Waddell, and Ben Leaphart of Ashmore Leaphart & Rabon, LLC representing Respondent.

Based on the pleadings filed in this matter, the Court's file, affidavits filed with the Court and the arguments of Counsel, I find as follows:

**I. Petitioner's Motion for partial Summary Judgment**

As to Petitioners' claim for failure to comply with § 62-8-114 of the South Carolina Power of Attorney Act, Respondent produced a one-page spreadsheet showing some of the financial information one day prior to the hearing and produced records at the hearing which Respondent's Counsel represented to the Court may be all of the records. The Court makes no ruling as to the sufficiency or completeness of such spreadsheet or records. If anything is missing from the spreadsheet or the records, Respondent shall provide Petitioners with a complete accounting of all receipts, disbursements or transactions conducted on behalf of the principal from May 17, 2010 until Decedent's death on April 26, 2018, along with supporting documentation for such, within ten (10) days from entry and execution of this Order. If anything is missing from the records, Respondent shall be responsible for obtaining such records, including but not limited to, serving any subpoenas upon banks or other financial institutions to

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obtain such records, within ten (10) days from entry and execution of this Order. Due to the records being produced at the hearing on August 21, 2019, Petitioners did not have an opportunity to review such records prior to the hearing and therefore could not confirm whether the records were sufficient. If Petitioners determine that such accounting or supporting records are insufficient, or Respondent fails to produce the complete accounting and all records within ten (10) days from entry and execution of this Order, then Petitioners may refile their motion for summary judgment. Considering that Respondent produced certain records and in a light most favorable to the Respondent, the records may be sufficient; therefore, Petitioners' Motion for Summary Judgment with regard to Petitioners' claim for failure to comply with § 62-8-114 of the South Carolina Power of Attorney Act is DENIED, although Petitioner may refile a motion for summary judgment if Petitioner determines that Respondent has not produced the accounting showing all receipts and disbursements along with all supporting documentation, or has failed to subpoena any necessary records, within ten (10) days of entry and execution of this Order.

As to Petitioners' claims for an accounting and demand for non-probate property inventory, Respondent did not respond to Petitioners' request to make all the records, books of account, inventories and related papers and documents available to the beneficiaries as requested by Petitioners and as required by Decedent's Will. At 3:30 p.m. on the day before this hearing, Respondent provided to Petitioners a box of information along with a one-page spreadsheet summary showing some of the financial information. Petitioners contend that the summary was insufficient and was not a satisfactory response to their request for all records, books of account, inventories and related papers and documents. Due to the last minute delivery of the documents, Petitioners have had insufficient time to review the records. Respondent shall send Petitioners all records for the probate and non-probate assets within ten (10) days from entry of this Order.

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In addition, Respondent shall send Petitioners the non-probate property inventory within ten (10) days from entry of this Order. Respondent shall be responsible for requesting and issuing any subpoenas for all records, including but not limited to serving any subpoenas upon institutions to obtain such records, within ten (10) days from entry of this Order. If Respondent does not deliver all the records, books of account, inventories and related papers and documents in his possession, along with the non-probate property inventory, to Petitioners within ten (10) days from entry of this Order Respondent will be sanctioned and ordered to pay attorney's fees and costs of Petitioners, including the attorney's fees and costs to file a subsequent motion to enforce this Order. In the event that Respondent must order or subpoena financial records to comply with this Order, Respondent must order or subpoena such records within ten (10) days from entry and execution of this Order and provide a copy of the request or subpoena to Petitioners. Respondent must provide to Petitioners copies of any records received pursuant to a subpoena or request within ten (10) days from receipt of such records.

As to Petitioners' claim for removal of Sterling Mensch, III as Personal Representative, in reviewing this matter in a light most favorable to the nonmoving party and considering the guidance provided by our Supreme Court, in *Blackman v. Weaver*, 366 S.C. 245, 164, 621 S.E.2d 42 (S.C., 2005) , "...The power to remove a personal representative should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Citing *Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920), the Court finds that there is not sufficient evidence at this time to support Respondent's removal as Personal Representative. However, the Court is concerned by the Respondent's irresponsiveness, and he is cautioned that he is walking on thin ice. For this reason, if Respondent continues to fail to perform his duties as

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Personal Representative of the Estate, or there appears to be a risk of loss to the Estate, the Court will reconsider this matter, or Petitioner, Shauna Waddell, may request review in a formal hearing related to her Application for Appointment as Personal Representative. Therefore, Petitioner's Motion for Summary Judgment as to removal of Personal Representative is DENIED, subject to the Court reserving the right to review this matter on its own or upon motion by Petitioners, and to remove the Personal Representative if he continues to fail to perform his duties as Personal Representative of the Estate or there appears to be a risk of loss to the Estate.

## II. Petitioner's Motion to Compel

As to Petitioners' Motion to Compel the required documents under § 62-8-114 of the South Carolina Power of Attorney Act, the non-probate property inventory and all records, books of account, inventories and related papers and documents, Respondent produced one day prior to the hearing a one-page spreadsheet showing some of the financial information and produced records at the hearing which Respondent's Counsel represented to the Court may be all of the records, except for Bank of America account statements for the year 2016. The Court makes no ruling as to the sufficiency or completeness of such spreadsheet or the records. If anything is missing from the accounting or the records, Respondent shall provide Petitioners with a complete accounting of all receipts, disbursements or transactions conducted on behalf of the principal from May 17, 2010 until Decedent's death on April 26, 2018, along with supporting documentation for such, within ten (10) days from entry of this Order. Respondent shall also produce the non-probate property inventory and all records, books of account, inventories and related papers and documents as required by the Decedent's Will within ten (10) days from entry of this Order. If anything is missing from the records, Respondent shall be responsible for

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obtaining such records, including but not limited to serving any subpoenas upon institutions to obtain such records, within ten (10) days from entry of this Order. Due to the records being produced on the day of the hearing, Petitioners had no opportunity to review the records thoroughly and therefore could not confirm whether the records were sufficient. Respondent provided a spreadsheet listing some expenses of the Estate and records which may or may not be all of the records of the Estate, and the Court makes no finding as to accuracy or completeness of the records or any accounting. If Petitioners determine that records are deficient, or Petitioner determines that Respondent has not produced all records or documents within ten (10) days from entry of this Order, Petitioner can file an additional Motion to Compel requesting a more sufficient and complete production of records from Respondent. Respondent is ordered to produce all such records within ten (10) days of entry of this Order. In the event that Respondent must order or subpoena financial records to comply with this Order, Respondent must order or subpoena such records within ten (10) days from entry of this Order and provide a copy of the request or subpoena to Petitioners. Respondent must provide to Petitioners copies of any records received pursuant to a subpoena or request within ten (10) days from receipt of such records.


Due to the Respondent's failure to produce all records within the timeframe required by § 62-8-114 of the South Carolina Power of Attorney Act, failure to make all records available pursuant to the Will, and failure to respond to Petitioners' demand for non-probate property inventory, Respondent's share of this estate shall be reduced by \$1,500.00, representing a portion of the attorney's fees and costs incurred by Petitioners as a result of pursuing these motions.

If Respondent fails to comply with this Order, he will not enjoy any more leniency from the Court, and there may be severe consequences for Respondent, including imposition of

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sanctions, attorney's fees, and costs of Petitioners.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Clayton L. Jennings  
Associate Probate Judge  
Greenville County Probate Court

August 28, 2019  
Greenville, South Carolina

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1. I find that the Respondent has willfully failed to comply with the Court's Order dated August 28, 2019, which ordered Respondent to provide a full accounting of the probate and non-probate assets of the Estate of Florence Mensch, along with all supporting documentation for such accounting, and to subpoena any records which were not in Respondent's possession and control within ten (10) days from entry and execution of the Order; to comply with § 62-8-114 and provide a full accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during Respondent's time as Agent under Power of Attorney for Florence Petrak Mensch within ten (10) days from entry and execution of the Order; and to comply with the Petitioners request for a non-probate property inventory in accordance with South Carolina Probate Code § 62-3-706 within ten (10) days from entry and execution of the Order.

2. Due to Respondent's willful failure to comply with the Order dated August 28, 2019, the clear risk of loss to the Estate of Florence Mensch and Respondent's violation of South Carolina Probate Code § 62-3-704 and § 62-3-706, Respondent, Sterling Mensch, is hereby removed as Personal Representative of the Estate of Florence Petrak Mensch.

3. The Court appoints Shauna M. Waddell to serve as successor Personal Representative of the Estate of Florence Petrak Mensch because she is named as the first successor in the First Codicil to the Will of Florence Petrak Mensch, and she shall serve without bond.

4. Respondent, due to his failure to comply with the Order dated August 28, 2019, has caused the Petitioners to incur unnecessary attorney's fees and costs and therefore the Court orders that Respondent must reimburse the Petitioners from Respondent's personal funds in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) within thirty (30) days of entry and execution of this Order, in addition to the \$1,500.00 that Respondent paid as ordered by the court

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in the Order dated August 28, 2019. As an alternative to Petitioners seeking collection from Respondent, in the event that Respondent fails to make the payment within thirty days (30) from entry and execution of this Order, the Respondent's share of the Estate, if any, shall be reduced by Ten Thousand and 00/100 Dollars (\$10,000.00), along with interest which will begin to accrue after thirty days (30) from entry and execution of this Order on amounts unpaid by Respondent at the legal rate of interest. If a Court later determines that Respondent does not have an interest in the Estate, or if Respondent's share of the Estate is not sufficient to cover the full amount, Respondent shall still owe from his personal funds Ten Thousand and 00/100 Dollars (\$10,000.00), along with any interest that accrues on such amount, to Petitioners. The Petitioners may also seek further sanctions against Respondent if he fails to comply with this Order, including attorney's fees and costs incurred to enforce this Order and collect such amounts.

5. The Court Orders that any financial accounts formerly in the name of the Decedent, Florence Petrak Mensch, and financial accounts now owned by the Estate of Florence Petrak Mensch, shall be transferred into the name of Shauna M. Waddell, as Personal Representative of the Estate of Florence Petrak Mensch, including but not limited to: the Bank of America checking account ending in 7059 and the UBS retirement account ending in 1480 GE. The Personal Representative should not distribute funds unless authorized to do so by this Court.

6. The Court Orders that all assets of the Estate of Florence Petrak Mensch shall be transferred to Shauna Waddell, as Personal Representative of the Estate of Florence Mensch, and she shall have the right to take possession and control of all assets of the Estate of Florence Mensch.

7. The Court will not issue as part of this Order for Sterling Mensch to vacate the Home

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located at 512 New Tarleton Way, Greer, SC 29650 (the "Home") because that issue is not properly before the Court and Respondent was not on notice of such request. However, the successor Personal Representative, Shauna M. Waddell, has certain statutory powers and authority under the Will and she may decide how she wishes to possess or control the Home. In addition, the Court cautions Respondent against removing any fixtures in the Home and against damaging the Home, or the surrounding Property, in any way. There will be severe consequences if the Respondent causes damage to the Home, including sanctions and potentially being held in contempt, until such damage is repaired by Respondent.

8. The instructions set forth in the Order dated August 28, 2019 still apply, and Respondent must produce the records and accountings required therein within ten (10) days from entry and execution of this Order, which include, but are not limited to: the items that Respondent failed to produce as outlined in the Affidavits of John Mensch and Shauna Waddell which were filed with the Court.

9. In addition, I find that Respondent must identify the name and identity of the account holder and institution for any financial accounts that received funds from any account formerly owned by Florence Petrak Mensch (regardless of whether or not such account was owned jointly with another person), or accounts now owned by the Estate of Florence Petrak Mensch, including any funds which were transferred before or after her death, via online transfer, withdrawal of cash or check written to such person or account. Such accounts specifically include, but are not limited to: the account ending in 3259 and all accounts outlined in the Affidavits of John Mensch and Shauna Waddell which were filed with the Court. Sterling Mensch must identify any and all financial accounts in his name, or any other person or entity's name, which received funds from an account formerly owned by Florence Petrak Mensch, including but not limited to: the bank of


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copy

America checking account ending in 7059 and the UBS retirement account ending in 1480 GE. Sterling Mensch shall provide the information outlined in this paragraph to Petitioners within five (5) days from entry and execution of this Order.

I commend Respondent's attorney, Ben Leaphart, for his efforts at communication with his Client and his efforts in attempting to get his Client to comply with the Court's Order. However, it appears to this Court that Sterling Mensch has disregarded the Court's Order dated August 28, 2019 and has attempted to hide certain information from Petitioners.

If Respondent continues to disregard the Court's Orders, there will be further consequences, including the possibility of sanctions, being held in contempt of court, and payment of all reasonable attorney's fees and costs of Petitioners.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Clayton L. Jennings  
Associate Probate Judge  
Greenville County Probate Court

December 4, 2019  
Greenville, South Carolina

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE MATTER OF:  
Estate of Florence Petrak Mensch

Shauna M. Waddell, individually and as  
Personal Representative of the Estate of  
Florence Petrak Mensch and John R.  
Mensch,

Petitioners,

vs.

Sterling Raymond Mensch III, individually,  
as former Personal Representative of the  
Estate of Florence Petrak Mensch and in  
his former capacity as Agent under Power  
of Attorney for Florence Petrak Mensch,

Respondent.

IN THE PROBATE COURT  
THIRTEENTH JUDICIAL CIRCUIT  
CASE NO. 2018ES2302854

PROOF OF DELIVERY

**FILED**  
**FILED**

MAY 13 2020  
MAY 13 2020

GREENVILLE COUNTY  
GREENVILLE COUNTY  
PROBATE COURT

**FILED**

MAY 13 2020

GREENVILLE COUNTY  
GREENVILLE COUNTY  
PROBATE COURT

On the 12<sup>th</sup> day of May, 2020, I mailed or delivered the following document(s):

First Amended Summons and Petition

- A copy of which is attached hereto and incorporated herein, or  
 The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

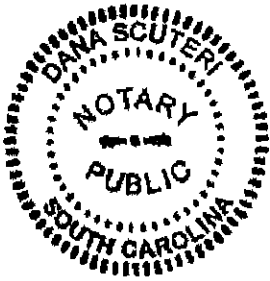
- personal delivery                       ordinary first-class mail  
 certified mail                               registered mail  
 commercial delivery

to each of the following persons at the address shown:

NAME	ADDRESS
Rachael Hardin (Attorney for Sterling Raymond Mensch, III)	3 Boyce Avenue, Greenville, SC 29601

SWORN to before me this 12 day of May, 2020

Dana Scuteri  
Notary Public for South Carolina  
My Commission Expires: 11-13-23



Signature: Tyler McLeod  
Print Name: Tyler McLeod  
Address: 108 Williams St  
Greenville, SC 29601  
Telephone (Work): (864) 271-7424  
(Home): \_\_\_\_\_  
(Cell): (864) 386-6224  
E-mail: tmcleod@brmemflaw.com  
Relationship to Decedent/Estate: Attorney for Petitioners

THE STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 IN THE MATTER OF: )  
 Estate of Florence Petrak Mensch )  
 )  
 John R. Mensch and Shauna M. Waddell )  
 Individually and as Personal Representative )  
 Of the Estate of Florence Petrak Mensch and )  
 John R. Mensch, )  
 )  
 Petitioners, )  
 )  
 -vs- )  
 )  
 Sterling Raymond Mensch, III, Individually )  
 As Personal Representative of the Estate of )  
 Florence Petrak Mensch and in the former )  
 Capacity as Agent under a Power of )  
 Attorney for Florence Petrak Mensch )  
 )  
 Respondent. )  
 )

IN THE PROBATE COURT  
 C.A. NO.: 2018-ES-23-02854

**FILED**  
 JUN 22 2020  
 GREENVILLE COUNTY  
 PROBATE COURT

RESPONDENT'S ANSWER TO  
 AMENDED PETITION

The Respondent, answering the First Amended Summons and Petition ("Petition") of the Petitioners, would respectfully show unto the Court as follows:

**FIRST DEFENSE**  
**General Denial**

1. Each allegation of the Petition not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

**AS TO PARTIES, JURISDICTION, AND GENERAL ALLEGATIONS**

2. The allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Petition are admitted.

3. The allegations contained in paragraphs 14, 15, and 16 of the Petition are denied.

4. As to the allegations contained in paragraph 17, Respondent admits he has provided previously-prepared accountings to Petitioners and is now preparing a more detailed accounting for Petitioners' review. The remaining allegations contained in paragraph 17 are denied.
5. The allegations of paragraph 18 detail the procedural history of this case and therefore require no response.
6. As to the allegations contained in paragraph 19, Respondent admits Respondent's attorney at the time brought a box of documents to the hearing which were Respondent's records. The remaining allegations contained in paragraph 19 are denied.
7. The allegations of paragraph 20, 21, and 22 detail the procedural history and contents of an order in this case and therefore require no response.
8. Respondent at this time is preparing an updated accounting for Petitioners. Respondent denies the remaining allegations contained in paragraph 23.
9. Respondent has produced all documents in his possession. Respondent denies the remaining allegations contained in paragraph 24.
10. The allegations of paragraph 25, 26, 27, and 28 detail the procedural history and contents of an order in this case and therefore require no response.
11. Respondent is without first-hand knowledge or information sufficient to form a belief as to Petitioners' allegations contained in paragraph 29 and therefore denies those allegations.
12. The allegations of paragraph 30 and 31 are denied.
13. Paragraph 32 is a legal conclusion and therefore no response is required. To the extent a response is required, Respondent denies the allegations contained in paragraph 32.
14. Respondent denies the allegations contained in paragraphs 33, 34, 35, 36, and 37.

15. As to the allegations of paragraph 38, Respondent admits he listed Florence Petrak Mensch's UBS Retirement account on the probate inventory with a value of \$409,652.44. The remaining allegations contained in paragraph 38 are denied.

16. The allegations contained in paragraph 39 are a legal conclusion and therefore no response is required. To the extent a response is required, Respondent denies the allegations contained in paragraph 39.

17. The allegations contained in paragraph 40 and 41 are denied.

18. The allegations contained in paragraph 42 are a legal conclusion and therefore no response is required. To the extent a response is required, Respondent denies the allegations contained in paragraph 42.

19. The allegations contained in paragraph 43, 44, 45, and 46 are denied.

20. The allegations contained in paragraph 47 are a legal conclusion and therefore no response is required. To the extent a response is required, Respondent denies the allegations contained in paragraph 47.

21. The allegations contained in paragraph 48 are denied.

**AS TO THE FIRST CAUSE OF ACTION**  
**(FAILURE TO COMPLY WITH §62-8-114**  
**SOUTH CAROLINA POWER OF ATTORNEY ACT)**

22. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into the defense by reference thereto.

23. Each allegation of the First Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

24. The allegations contained in paragraph 49 do not require a response.

25. The allegations in paragraph 50 are only admitted in that the Petitioners are Successors in the interest to the decedent's Estate as named beneficiaries in the decedent's Will. Respondent lacks sufficient information or knowledge with which to form a belief as to the remaining allegations of paragraph 50 of the Petition and therefore denies same.

26. The allegations of paragraph 51 are admitted.

27. As to the allegations contained in paragraph 52, Respondent admits that Petitioners requested Respondent for an accounting of receipts, disbursements and transactions conducted on behalf of the Principal, Florence Petrak Mensch, during his time serving as Agent under a Power of Attorney. The remaining allegations contained in paragraph 52 are denied.

28. As to the allegations of paragraph 53, the Respondent admits that he has not provided all the information requested by the Petitioners and fully intends to provide a full and complete accounting of the assets of the Estate. Respondent denies the remaining allegations contained in paragraph 53.

29. The allegations contained in paragraph 54 are denied.

30. The allegations of paragraph 55 request relief from the court and therefore require no response. To the extent a response is required, the allegations of paragraph 55 is denied.

31. The allegations contained in paragraphs 56 and 57 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 56 and 57.

**AS TO THE SECOND CAUSE OF ACTION**  
**(ACCOUNTING)**

32. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

33. Each allegation of the Second Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

34. The allegation of 58 requires no response.

35. The allegations contained in paragraphs 59 and 60 are admitted.

36. As to the allegations contained in paragraph 61, Respondent has provided all documentation in his possession. All remaining allegations contained in paragraph 61 are denied.

37. As to the allegations contained in paragraph 62, Respondent admits Petitioners filed a demand for non-probate property inventory with the Probate Court. Respondent denies the remaining allegations contained in paragraph 62.

38. The allegations contained in paragraph 63 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraph 63.

**AS TO THE THIRD CAUSE OF ACTION**  
**(PETITION TO REVIEW AGENT'S CONDUCT UNDER POWER OF ATTORNEY**  
**AND GRANT APPROPRIATE RELIEF PURSUANT TO § 62-8-116 AND § 62-8-117 OF**  
**THE SOUTH CAROLINA POWER OF ATTORNEY ACT)**

39. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

40. Each allegation of the Third Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

41. The allegations of 64 and 65 require no response.

42. The allegations contained in paragraphs 66, 67, 68, and 69 are denied.

43. The allegations of paragraph 70 request relief from the court and therefore require no response. To the extent a response is required, the allegations of paragraph 70 are denied.

**AS TO THE FOURTH CAUSE OF ACTION**  
**(BREACH OF FIDUCIARY DUTY)**

44. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

45. Each allegation of the Fourth Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

46. The allegations of paragraph 71 require no response.

47. The allegations contained in paragraph 72 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraph 72.

48. The allegations of paragraph 73 are denied.

49. The allegations contained in paragraph 74 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraph 74.

50. The allegations contained in paragraph 75 are denied.

51. The allegations contained in paragraph 76 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraph 76.

52. The allegations contained in paragraphs 77 and 78 are admitted.

53. As to the allegations of paragraph 79, Respondent has provided all documentation to Petitioners in his possession. The remaining allegations contained in paragraph 79 are denied.

54. The allegations of paragraphs 80, 81, and 82 are denied.

55. The allegations contained in paragraphs 83, 84, and 85 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 83, 84, and 85.

**AS TO THE FIFTH CAUSE OF ACTION**  
**(FRAUDULENT AND NEGLIGENT MISREPRESENTATION AND CONCEALMENT)**

56. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

57. Each allegation of the Fifth Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

58. The allegations of paragraph 86 require no response.

59. The allegations of paragraph 87, 88, 89, 90, and 91 are denied.

60. As to the allegations of paragraph 92, Respondent admits he listed Florence Petrak Mensch's UBS Retirement account on the probate inventory with a value of \$409,652.44. The remaining allegations contained in paragraph 92 are denied.

61. The allegations of paragraph 93 are denied.

62. The allegations contained in paragraphs 94, 95, 96, 97, and 98 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 94, 95, 96, 97, and 98.

**AS TO THE SIXTH CAUSE OF ACTION**  
**(CONVERSION)**

63. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

64. Each allegation of the Sixth Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

65. The allegations of paragraph 99 requires no response.
66. The allegations contained in paragraphs 100, 101, 102, 103, and 104 are denied.
67. The allegations contained in paragraphs 105, 106, 107, 108, 109, and 110 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 105, 106, 107, 108, 109, and 110.

**AS TO THE SEVENTH CAUSE OF ACTION**  
**(NEGLIGENCE)**

68. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.
69. Each allegation of the Seventh Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.
70. The allegation of paragraph 111 requires no response.
71. The allegations contained in paragraph 112 are legal conclusions and therefore no response is required. To the extent a response is required, Respondent denies the allegations contained in paragraph 112.
72. The allegations contained in paragraphs 113 and 114 are denied.
73. The allegations contained in paragraphs 115 and 116 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 115 and 116.

**AS TO THE EIGHTH CAUSE OF ACTION**  
**(MOTION FOR EVICTION/EJECTMENT)**

74. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

75. Each allegation of the Eighth Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

76. The allegations of paragraph 117 requires no response.

77. The allegations of paragraph 118 detail the contents of an order of the court and procedural history of this case and therefore require no response.

78. The allegations contained in paragraphs 119 and 120 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 119 and 120.

**AS TO THE NINTH CAUSE OF ACTION**  
**(UNJUST ENRICHMENT/MONEY HAD AND RECEIVED)**

79. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

80. Each allegation of the Ninth Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

81. The allegations contained in paragraphs 122, 123, 124, and 125 are denied.

**AS TO THE TENTH CAUSE OF ACTION**  
**(CONSTRUCTIVE TRUST)**

82. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

83. Each allegation of the Tenth Cause of Action not hereinafter admitted, modified or explained is specifically denied and strict proof demanded thereof.

84. That the allegations of paragraph 126 requires no response.

85. The allegations contained in paragraphs 127 and 128 are legal conclusions and therefore no responses are required. To the extent responses are required, Respondent denies the allegations contained in paragraphs 127 and 128.

**SECOND DEFENSE**  
(Failure to State a Claim)

86. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

87. Petitioners have failed to state facts in their Petition sufficient to constitute a cause of action against Respondent.

**FOR A THIRD DEFENSE**  
(Waiver)

88. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

89. Petitioners' claims are barred by the equitable doctrine of waiver.

**FOR A FOURTH DEFENSE**  
(Unclean Hands)

90. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

91. Petitioners' claims are barred by the equitable doctrine of unclean hands.

**FOR A FIFTH DEFENSE**  
(Laches)

92. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

93. Petitioners' claims are barred by the equitable doctrine of laches.

**FOR A SIXTH DEFENSE**

(Estoppel)

94. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

95. Petitioners' claims are barred by the equitable doctrine of estoppel.

**FOR A SEVENTH DEFENSE**

(Reliance)

96. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

97. Any action taken by Respondent was done in reliance on the advice of a professional.

**FOR AN EIGHTH DEFENSE**

(Ratification)

98. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

99. Petitioners' claims are barred by the doctrine of ratification.

**FOR A NINTH DEFENSE**

(Accord and Satisfaction)

100. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

101. Petitioners' claims are barred by the applicable doctrine of accord and satisfaction.

**FOR A TENTH DEFENSE**

(Punitive Damages Barred)

102. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

103. Petitioners' claim for punitive damages is barred because the conduct alleged in the Petition is insufficient as a matter of law to support an award of punitive damages.

**FOR AN ELEVENTH DEFENSE**  
(Reservation of Right to Amend)

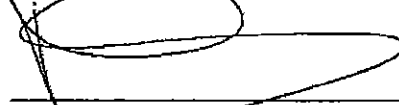
104. All previous responses contained in this Answer not inconsistent herewith are specifically incorporated into this defense by reference thereto.

105. Respondent may have other defenses against Petitioners and reserves his right to assert such defenses in a timely fashion after the facts to assert such defenses become known to them and to request amendments to these affirmative defenses to conform to the evidence.

WHEREFORE, having fully answered the Petition, the Respondent prays that the allegations of the Petition which are denied be dismissed with prejudice.

Respectfully submitted,

TRULUCK THOMASON, LLC



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Greenville, South Carolina  
June 18, 2020